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UNVEILING THE ESSENCE OF PANCASILA IN THE PRINCIPLE OF ULTIMUM REMEDIUM: A REFLECTION ON CRIMINAL TAX LAW

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Abstract. *This study aims to investigate how the Ultimum Remedium principle in tax criminal law enforcement is philosophically grounded in the ideals of Pancasila and examines Law No. 6 of 1983 on General Provisions and Tax Procedures, amended by Law No. 7 of 2021 and the Omnibus Law on Job Creation. To ensure that law enforcement upholds state authority and embraces broader societal ideals of fairness, justice, and equality, this study will assess how Pancasila influences the guiding principles of tax criminal law. This study analyzes the ideals of Pancasila, laws, and legal doctrines related to the ultimum remedium principle using normative-juridical methods with a philosophical perspective. The findings indicate that the ultimum remedium principle, which implements tax criminal law proportionally, humanely, and as a last resort after administrative efforts have been exhausted, is guided by the Pancasila values of divinity, humanity, unity, democracy, and social justice. The main obstacles to incorporating Pancasila ideals into the ultimum remedium principle are the tendency toward a repressive approach and the disparity in judicial decisions resulting from unclear sentencing guidelines. This study recommends Pancasila-based regulatory reform training, clearer sentencing guidelines, strengthened law enforcement, and restorative justice to improve taxpayer compliance.*

Keywords: *Criminal Law, Pancasila, Philosophical, Taxation, Ultimum Remedium.*

1. Introduction

Tax crimes constitute one of the principal challenges in maintaining taxpayer compliance and ensuring the fiscal sustainability of the state. Taxation, as the backbone of state revenue, plays a strategic role in financing national development, including infrastructure, education, and health (Yulianto et al., 2025). However, tax violations such as tax evasion and the falsification of tax returns or invoices, frequently cause significant revenue losses for the state. According to a report from the Directorate General of Taxes (DGT), for the 2022 period, criminal tax law enforcement helped recover Rp1.69 trillion in state revenue losses through investigations and asset seizures totaling Rp315.1 billion (Direktorat Jendral Pajak, 2023).

Furthermore, tax dispute data from the Tax Court of the Republic of Indonesia reveals trends in legal disputes that may serve as indicators about effectiveness in the practice of law enforcement in resolving tax disputes. The following table summarizes the number of tax dispute cases filed between 2020 and 2024 (Sekretarian Pengadilan Pajak, 2025):

Table 1. Number of Tax Dispute Cases, 2020–2024

NO.	DEFENDANT	YEAR					TOTAL
		2020	2021	2022	2023	2024	
1.	Director General of Taxes	14.672	12.31 7	11.602	10.038	9.794	58,423
2.	Director General of Customs and Excise	1.830	2.804	2.889	2.615	2.023	12,161
3.	Local Government	144	67	218	61	18	508
	TOTAL	16,646	15.188	14.709	12.714	11.835	71.092

Source: Data from Tax Court Reports of the Indonesian Ministry of Finance

The above data demonstrates that the number of tax disputes declined from 16,646 cases in 2020 to 11,836 cases in 2024. Nevertheless, such a decline does not signify comprehensive resolution. Each year, a significant number of disputes remain unresolved, thereby reflecting inefficiencies in dispute settlement that are not sufficiently mitigated by optimal criminal law enforcement. This is further illustrated in the following data (Sekretariat Pengadilan Pajak, 2025):

Table 2. Resolution of Tax Disputes, 2020–2024

NO.	JUDGEMENT RESULTS	YEAR					TOTAL
		2020	2021	2022	2023	2024	
1.	Revocation and Determination	130	232	507	339	286	1,494
2.	Unacceptable	573	1.381	959	1.174	684	4,771
3.	Rejected	2.507	3.297	4.634	4.574	5.230	20,242
4.	Increase in Tax Liability	6	9	1	2	24	42
5.	Partially Approved	2.282	2.590	3.004	2.769	3.309	13,954
6.	Fully Approved	4.598	5.338	6.374	7.399	7.638	31,347
7.	Reject	21	112	82	21	29	265
	TOTAL	10,117	12.959	15.561	16.278	17.200	72.115

Source: Data from Tax Court Reports of the Indonesian Ministry of Finance

The data above reveals a persistent disparity between the number of tax dispute filings and the number of cases resolved annually. This imbalance indicates the potential accumulation of pending cases before the Tax Court, which ultimately hampers both the effectiveness and legal certainty of tax dispute resolution. One of the root causes of this condition may be traced to the inconsistency in law enforcement, particularly in the selection of instruments for dispute resolution between administrative and criminal avenues.

This phenomenon underscores the urgent need for a balanced enforcement approach, wherein criminal sanctions should not be employed excessively (overcriminalization) in response to every potential tax violation. Instead of adopting a predominantly repressive approach, tax law enforcement must adhere to the principle of *ultimum remedium*, positioning criminal sanctions strictly as a last resort after administrative and corrective measures have been exhausted (Yumanto & Hutauruk, 2022). Such a proportional approach is crucial not only to prevent excessive burdens on the tax adjudication system but also to preserve taxpayer trust in the national tax system and to realize the values of justice inherent in Pancasila, which places social justice as well as protection of individual rights as foundational pillars**.**

The problem of legal uncertainty in the practice of enforcement criminal tax law in Indonesia has long been a subject of scholarly critique. Hiariej (2018) observes that law enforcement officials, such as judges, both in the general courts and Tax Court, additionally, the lack of clarity between criminal and administrative procedures has created confusion, with some cases being handled criminally when they might be more appropriately addressed through administrative measures. In a similar perspective, Nugroho (2010) has critiqued the Law on General Provisions and Tax Procedures (*Undang-Undang Ketentuan Umum dan Tata Cara Perpajakan/*UU KUP), arguing that it fails to clearly define which actions by taxpayers should lead to administrative penalties and which ones should incur criminal penalties. This lack of clarity in distinguishing administrative and criminal penalties under the UU KUP undermines the principle of ultimum remedium, which states that criminal penalties should only be applied as a last resort after all administrative measures have been exhausted. This ambiguity leads to creating a wide margin in discretionary authority on the hands of law enforcement officials during the stages of formulation, application, and execution, thereby diminishing legal certainty and justice for taxpayers (Priyono & Intarti, 2019).

The absence of detailed technical guidelines, coupled with disparities in judicial decisions, further exacerbates the gap between humanistic legal norms and the realities of law enforcement practice. The ultimum remedium principle, which should serve to safeguard taxpayers' rights, is often reduced to a normative slogan without consistent implementation. This fact emphasizes the need for the principle's application to be reformed in order to better conform to the Pancasila-mandated principles of social justice and humanity. The ideals of divinity, humanity, unity, democracy, and social justice are embodied in *Pancasila*, the philosophical foundation of Indonesia's national legal system. These ideals necessitate striking a balance between the interests of the state and individual rights (Susilawati & Sultoni, 2021). In criminal tax law, these fundamental values emphasize the need for policies that are fair, balanced, and uphold the dignity of taxpayers as legal individuals, rather than viewing them merely as sources of state revenue (Rohid et al., 2025). Non-punitive strategies, such as administrative actions, corrective measures, and mediation, align with the principles of fairness and civilized humanity (*kemanusiaan yang adil dan beradab*) as well as social justice for all citizens of Indonesia (*keadilan sosial bagi seluruh rakyat Indonesia*).

The urgency of this research is increasingly pressing given the country's growing dependence on criminal law enforcement instruments to protect tax revenues amid sustained fiscal pressures and tax reform initiatives. Increased criminal law enforcement without an integrated framework risks causing overcriminalization, which could erode taxpayer confidence in the legal system, particularly around tax crimes. In addition, Supreme Court Regulation Number 1 of 2024 has emphasized restorative justice and non-repressive dispute resolution, providing critical normative momentum to reevaluate the role of criminal sanctions in tax law. Thus, this research seeks to prevent a widening gap between progressive legal idealism and enforcement practice, particularly in the domain of criminal tax law.

Previous research has examined the implementation of ultimum remedium in criminal tax law, including research by Saptono and Ayudia (2021), that examine procedural deviations and legal certainty issues resulting from the prioritization of criminal enforcement over administrative law enforcement. Although these studies offer valuable empirical critiques, their analysis remains predominantly technical, focusing on statutory compliance rather than the philosophical justification of criminalization. As a result, the ultimum remedium principle has been largely assessed through the lens of legal certainty and procedural correctness, without interrogating the deeper normative question of whether the existing enforcement framework is philosophically legitimate under Indonesia's foundational state ideology.

The integration of Pancasila as an operational normative framework rather than a rhetorical constitutional symbol, is therefore not supplementary to the technical analysis of ultimum remedium, but constitutive of it. Without this philosophical grounding, any reform of Indonesia's criminal tax enforcement framework risks reproducing the same fiscally-driven enforcement logic and doesn't value the taxpayer's rights that the ultimum remedium principle was originally designed to constrain. This study directly addresses that gap by constructing a Pancasila-grounded evaluative framework through which the adequacy, consistency, and justice of criminal tax law enforcement in Indonesia can be systematically assessed.

This study highlights that the application of the ultimum remedium principle in criminal tax law must align with Pancasila values to guarantee fair, humane, and proportional enforcement. However, there is an unclear sentencing guideline, inconsistent judicial decisions, and the limited use of restorative justice mechanisms, shows a gap between normative ideals and law enforcement practice in real life. Furthermore, this research contributes to tightening the gap between normative principles and tax law enforcement practice by developing a Pancasila-based framework for applying ultimum remedium principle in criminal tax law. Furthermore, this framework will be practical guidance for strengthening proportionality and legal certainty in criminal tax law enforcement in order to enhance taxpayer compliance and trust.

The relevance of Pancasila values is further reflected in the adoption of restorative justice mechanisms under Supreme Court Regulation Number 1 of 2024, which prioritizes dispute resolution through deliberation and consensus (*musyawarah mufakat*) to avoid unnecessary criminalization (Santiarto, 2024). Accordingly, the application of criminal tax law grounded in Pancasila not only reinforce the legitimacy of Indonesian's national tax system but also prevents the excessive criminalization of taxpayers. Against this backdrop, this study seeks to examine this following research problem: (1) How may the use of the ultimum remedium principle in criminal tax law be philosophically grounded in the essence of Pancasila values? And (2) What are the challenges and solutions in integrating Pancasila values with ultimum remedium principle to accomplish justice in the tax law enforcement?

2. Research Methods

This study adopts a normative-juridical approach, supplemented by a philosophical viewpoint, to examine the significance of Pancasila in the context of criminal law, especially in relation to tax offenses (Soekanto & Mamudji, 2009). This study is operationalized through three analytical methods such as statutory approach, conceptual approach, and comparative approach. The author aims to conduct a thorough investigation into the connection between Pancasila and the principles of criminal tax law in a structured and contextual way (Moleong, 2012). This approach is applied because the relationship between Pancasila and *ultimum remedium* principle concerns the coherence of legal norms, principle, and philosophical values. This study aims to provide a structured and contextual analysis of legal provisions to assess whether the formulation of General Provisions and Tax Procedures aligns with the values of Pancasila.

The legal materials used in this research are categorized into three types. (a) Primary sources: Law Number 6 of 1983 on General Provisions and Tax Procedures amended by Law No. 7 of 2021 and the Omnibus Law on Job Creation, along with pertinent judicial decisions; (b) Secondary sources: scholarly journals, legal literature, and reference books that address both philosophical and juridical aspects of law enforcement; and (c) Tertiary sources: official Directorate General of Taxes reports. The data collection technique applied is a library-based research method, involving the collection of legal materials from statutory regulations, legal doctrines, and relevant academic literature (Ibrahim, 2006). In addition, document analysis is employed to examine judicial decisions and official government reports, including data from the Directorate General of Taxes, thereby providing a robust empirical foundation for the study to the reader. It should be noted that this method is only optional for original research articles.

3. Results and Discussion

3.1. The Essence of Pancasila as a Philosophical Foundation in the Implementation of the Ultimum Remedium Principle in Criminal Tax Law

As the foundational ideology of the State and the source of all sources of law, *Pancasila* embodies fundamental values that must be actualized in every aspect of legal administration in Indonesia, including in the enforcement of tax criminal law (Mahkamah Konstitusi, 2015). These values serve as moral and ethical guidelines in formulating, applying, and enforcing the law so that its implementation is not merely oriented toward fiscal interests, while also prioritizes the values of humanity, social justice, and regard for taxpayers' dignity. Therefore, the implementation of the ultimum remedium principle in criminal tax law must appropriately align with the five principles (*sila*) of Pancasila. The core values of Pancasila encompass these five principles, each carrying philosophical importance in the enforcement of criminal tax law (Effendi, 2023):

a) *Sila 1*: Law enforcement must uphold justice, truth, and morality; punishment must not be arbitrary or contrary to divine values.
b) *Sila 2*: Avoid excessive criminalization; prioritize humane treatment of taxpayers, with administrative remedies being exhausted first.
c) *Sila 3*: Preserve harmony between the fiscal interests of the state and the rights of taxpayers; ensure public trust in the taxation system.
d) *Sila 4*: Encourage public participation in tax policy-making; ensure transparency and accountability in tax law enforcement.
e) *Sila 5*: Guarantee fair and proportional legal treatment for all taxpayers without discrimination; prevent inequality in tax law enforcement.

The application of the ultimum remedium principle in criminal tax law should not be viewed solely as a normative doctrine, but should also align with the philosophical values that form the basis of the national legal framework, particularly Pancasila. As the guiding philosophical foundation of the state, Pancasila offers moral and ethical guidance to ensure that criminal sanctions are used sparingly and only as a final measure when administrative or civil solutions have failed to restore order or justice (Sriwidodo, 2019).

The absence of detailed technical guidelines, coupled with disparities in judicial decisions, has widened the gap between humanist legal norms and the realities of law enforcement (Sinaga, 2016). The ultimum remedium principle, which ought to serve as the final safeguard protecting taxpayers from disproportionate criminalization, is often reduced to a hollow slogan without consistent application. In this context, the integration of Pancasila values becomes imperative as a philosophical benchmark guiding law enforcement officials toward greater prudence in interpreting and applying criminal provisions.

From this philosophical perspective, the concept of belief in the One and Only God emphasizes that law enforcement must respect moral and spiritual values, ensuring that penalties are not imposed arbitrarily or without due consideration of fundamental justice. The Second Principle (*Sila* 2), Just and Civilized Humanity, requires humane treatment of taxpayers, emphasizing administrative settlement or educational measures before resorting to criminal sanctions. Police Regulation 8/2021 about the Handling of Criminal Offenses Based on Restorative Justice demonstrates how Indonesia's legal system now incorporates restorative justice ideas (Koto, 2023).

The Third Principle (*Sila* 3), the Unity of Indonesia, promotes harmonization between the State's interest in collecting tax revenues and taxpayers' rights to fair treatment, ensuring that they are not subjected to excessive criminalization, thereby maintaining public trust in the taxation system. The Fourth Principle (*Sila* 4), Democracy Driven by Thoughtful Deliberation and Representation, is crucial for promoting active public participation in the creation of tax laws, ensuring that criminal tax regulations truly reflect the desires of society. The Fifth Principle (*Sila* 5), Social Justice for All People of Indonesia, asserts that the ultimate goal of tax law enforcement should be the achievement of substantive justice. This concept aligns with restorative justice, which emphasizes restitution and the recovery between the perpetrators, victims, as well as society, rather than merely inflicting suffering through punishment.

This restorative justice paradigm corresponds with the broader shift in Indonesian's criminal justice system becoming a restorative model which was previously a retributive model, as articulated by Atmasasmita (1996). The restorative approach is expected to fill the void in the implementation of the ultimum remedium principle in tax law by opening avenues for dispute resolution through non-criminal mechanisms such as mediation or the imposition of proportional administrative sanctions. The new provision under Article 54(2) of the 2023 Criminal Code (*KUHP*), granting judges the authority to issue judicial pardon (*rechterlijk pardon*) on the grounds of justice and humanity, underscores the relevance of integrating *Pancasila* values with the ultimum remedium principle in criminal law, including tax-related offenses. Judges are thereby afforded discretion to assess concrete situations, determining whether the imposition of punishment is appropriate or whether resolution through non-criminal means is more consistent with the realization of social justice (Atmasasmita, 1996).

As emphasized in the Integrative Legal Theory, law cannot be perceived merely as a rigid collection of written norms, but as a holistic entity comprising three essential elements: norms (rules), actors (legal subjects), and values (Atmasasmita, 2012). Within this perspective, the ultimum remedium principle in criminal tax law must be understood not solely as a procedural principle regulating stages of law enforcement, but also as a reflection of harmony among these three elements (Kartanto et al., 2020). Norms are embodied in statutory provisions defining boundaries and legal consequences for violations; actors include taxpayers, law enforcement officials, and tax authorities; while values encompass principles of justice, humanity, welfare, and national development objectives as mandated by Pancasila (Akbar, 2021).

The application of the ultimum remedium principle in tax criminal law thus constitutes a vital mechanism for balancing the State's need to secure tax revenues with the protection of taxpayers' rights as citizens. Indonesia's taxation system must not be operated solely on a rule-based model that prioritizes fiscal targets, but must also be grounded in a value-based model that upholds the nation's fundamental values (Jefferdian, 2023). These values include fairness in tax burden distribution, respect for human dignity through fair and proportional treatment, and the promotion of public welfare as the ultimate goal of fiscal policy and law enforcement (Hasibuan et al., 2015).

Integrating the ultimum remedium principle with Pancasila values ensures that the enforcement of tax law does not devolve into merely repressive measures, rather emphasizes constructive approaches of guidance, education, and restorative resolution (Anindyajati et al., 2015). The five principles of *Pancasila* collectively provide ethical, moral, and philosophical foundations ensuring that punishment in the field of taxation is not imposed excessively, but rather serves as the last resort after administrative or civil measures prove ineffective. Through the application of this principle, tax law enforcement in Indonesia may operate in a just, proportional, and humanistic manner, in alignment with societal needs and the broader trajectory of sustainable national development.

Upon deeper analysis, the integration of *Pancasila* values within the ultimum remedium principle also positively contributes to the cultivation of strong tax morale among taxpayers (BPHN Kemenkumham RI, 2021). Compliance with tax obligations is no longer rooted solely in fear of punishment but develops from a deeper awareness of taxation's vital role as an instrument for financing national development and ensuring equitable welfare distribution. Consequently, Indonesia's taxation system can foster sustainable voluntary compliance, build mutual trust between the government and society, and reinforce the legitimacy of the taxation system as an integral component in realizing the constitutional aspiration of social justice for all the people of Indonesia (Hakim et al., 2017).

However, there is a fundamental tension between the normative aspirations of Pancasila and the structural realities of tax criminal law enforcement in Indonesia. While Pancasila prescribes a humanistic and restorative orientation, the existing legal architecture of the UU KUP still places prosecutorial discretion largely in the hands of the Directorate General of Taxes, without clear, binding, and measurable criteria for determining when administrative remedies have been genuinely exhausted before criminal referral is initiated (Arimuladi & Arif, 2022). This discretionary gap creates a systemic vulnerability wherein the ultimum remedium principle, despite its philosophical alignment with Pancasila, operates as a discretionary privilege rather than a justiciable right of the taxpayer. Consequently, its application remains susceptible to inconsistency, selective enforcement, and institutional bias, all of which directly contradict the Fifth Principle's guarantee of equal and non-discriminatory legal treatment.

A deeper critical concern lies in the risk of what Husak (2008) terms "overcriminalization," wherein the expansion of criminal liability into regulatory domains, including taxation, diminishes the moral authority of criminal law itself. When criminal sanctions are deployed not as a genuine last resort but as a tool of fiscal coercion, the legitimacy of the entire tax enforcement system is undermined, eroding precisely the voluntary compliance and tax morale that Pancasila-based governance seeks to cultivate. This critique is particularly relevant in the Indonesian context, where empirical studies indicate that taxpayer trust is significantly negatively affected by perceptions of disproportionate enforcement (Cahyonowati, 2011). Therefore, the integration of Pancasila values within the ultimum remedium principle must transcend rhetorical alignment and be translated into concrete legislative reforms, including codified prosecutorial criteria, mandatory pre-criminal administrative exhaustion requirements, and independent oversight mechanisms to ensure principled and consistent application.

3.2. Challenges and Solutions in Integrating Pancasila Values with the Principle of *Ultimum Remedium* to Realize Justice in the Enforcement of Tax Criminal Law

The General Taxation Law (UU KUP) essentially incorporates the principle of ultimum remedium to address tax-related crimes, as outlined in Article 8 paragraph (3) and Article 44B of UU KUP, in conjunction with the Harmonized Tax Law (UU HPP). In cases of tax offenses, Article 8 paragraph (3) together with Article 8 paragraph (3a) stipulates that resolution should be achieved through the disclosure of the taxpayer's misconduct, along with payment of the outstanding tax amount and an administrative penalty equal to 100% of the underpaid tax. However, this provision is applicable only to offenses covered under Article 38 and Article 39 paragraph (1) letters c and d of the Law, provided that the case is still under preliminary evidence examination and that the investigation has not yet been communicated to the public prosecutor by the police investigator. Likewise, under Article 44B of the said Law, in the interest of state revenue and upon the request of the Minister of Finance, the Attorney General may terminate the investigation after the taxpayer/defendant has settled the state revenue loss along with an administrative penalty ranging from 1 to 4 times the amount of the loss, provided that the case has not yet been referred to the court. Moreover, there is a guarantee that if, during the court proceedings, the defendant repays the loss to state revenue, such repayment shall be taken into consideration for prosecution without the imposition of imprisonment.

While the ultimum remedium principle is normatively stipulated in tax law enforcement, its practical implementation often gives rise to issues. One of the issues is the application of criminal law as a primary remedy, without considering the urgency of recovering state revenue losses. This condition is closely related to the integration of Pancasila values with the principle of last resort for the implementation of tax law, which encounters various obstacles. The foremost challenge is judicial inconsistency in imposing criminal sanctions, as illustrated by the accumulation of tax dispute case files previously outlined in the background section, and the sentencing disparities reflected in the following Table 3.

Table 4. Disparity in Tax Court Decisions

No.	Decision Number	Article of General Taxation Law	Criminal Act	Sanctions Imposed
1.	235/Pid.B/2020/PN Jkt.Pst	Art. 39(1)(c)	Willful failure to file tax returns continuously	2 years 6 months imprisonment and fine of 2 × Rp19,966,622.000 = Rp39,933,244.000
2.	828/Pid.Sus/2021/PN Jkt.Brt	Art. 39(1)	Filing tax return with false content	2 years 8 months imprisonment and fine of 2 × Rp20,380,656.476 = Rp40,761,312.952
3.	476/Pid.Sus/2022/PN Jkt.Tim	Art. 39(1)(c)(d)	Failure to file 2015 annual tax return and filing 2017 return with false content	2 years imprisonment and fine of 2 × Rp1,121,509.000 = Rp2,243,018.000
4.	123/Pid.Sus/2022/PN Sby	Art. 39(1)(d)	Filing tax return with false content related to VAT	3 years imprisonment and fine of 2 × Rp2,345,780.000 = Rp4,691,560.000
5.	53/Pid.Sus/2022/PN Jkt.Sel	Art. 39A(a)	Issuing false tax invoices	3 years 3 months imprisonment and fine of 3 × Rp1,609,349.200 = Rp4,828,047.600

Source: Primary data processed by the Author from the Supreme Court Verdict Directory

The specific cases in this table were selected based on verdicts from the Supreme Court Verdict Directory of Indonesia concerning violations of the Article 39 and 39 (A) of UU KUP regarding intent and aggravated intent that focused on instances of tax evasion, false invoicing, and fraudulent reporting to illustrate the resulting criminal sanctions such as imprisonment and penalty.

The foregoing data demonstrate the disparity in judicial decisions in tax crime cases. This disparity is influenced by the sanction model regulated with special minimum and maximum penalties, as stipulated in tax legislation. Such a sanction model grants judges discretion under Article 1(1) of Law Number 48 of 2009 on Judicial Authority. Consequently, in cases involving similar legal characteristics (same offence) and comparable circumstances, judicial decisions may vary significantly, thereby creating sentencing disparity (Sinaga, 2016).

This discrepancy highlights the inequality in the application of the law, which could undermine the moral principles of justice as reflected in Pancasila values, especially the Fifth Principle (Social Justice for All Indonesians) and the Second Principle (Just and Civilized Humanity). In the absence of clear sentencing guidelines, judicial decisions tend to rely on subjective rather than objective and equitable considerations grounded in

Pancasila's ethical values. Sudarto (2007) has emphasized the necessity of sentencing guidelines to provide judges with clear direction in imposing sanctions, particularly once the defendant has been lawfully and conclusively established as guilty of the alleged offense. However, Indonesia still lacks comprehensive regulations or legal instruments serving as sentencing guidelines in tax criminal cases. This legal vacuum creates irregularities in the application of the ultimum remedium principle, whereby judges may freely impose criminal sanctions without a definite standard requiring the prior application of administrative or non-criminal sanctions (Virginia & Soponyono, 2021).

These challenges in integrating Pancasila values with the ultimum remedium principle can be systematically mapped across all five sila. The First Principle is undermined when punishment is imposed arbitrarily without moral deliberation. The Second Principle is violated when taxpayers facing administrative errors are subjected to criminal prosecution without exhausting humane alternatives. The Third Principle suffers when sentencing disparity erodes public trust in the taxation system. The Fourth Principle is disregarded when tax criminal policy is formulated without participatory legislative mechanisms. The Fifth Principle is directly contravened when identical offenses produce disproportionately different sanctions based on judicial subjectivity rather than objective, equitable standards. Therefore, it also requires solutions that are not merely procedural but are philosophically grounded in each of these Pancasila dimensions.

These challenges becomes more complex when considered in light of the State's need to achieve tax revenue targets, which often encourages law enforcement authorities to prefer punitive measures rather than adopting a humanistic approach aligned with ultimum remedium (Saptono & Ayudia, 2020). Yet, under Pancasila's framework, tax law enforcement must not be oriented solely toward fiscal interests but must also safeguard the rights and dignity of taxpayers as citizens. A strategic solution thus requires urgent regulatory reform, particularly in formulating explicit and measurable sentencing guidelines in the field of taxation. Such guidelines would direct judges to apply the ultimum remedium principle as an integral part of a legal enforcement process that upholds humanity and social justice as mandated by Pancasila (Leonard, 2016). Moreover, providing comprehensive Pancasila-based training for law enforcement professionals in the taxation sector, such as judges, prosecutors, and tax investigators, acts as a supplementary measure to strengthen their philosophical understanding in making just and proportional decisions.

Considering the absence of standardized sentencing guidelines as mentioned earlier, developing alternative tax dispute resolution methods that align with values of humanity and social justice becomes a viable solution These approaches not only address the legal gap but also help reduce the emphasis on punitive actions as the main tool for enforcing tax laws (Kusumo et al., 2022). One illustration of this is the implementation of restorative justice, which has been made legal by Indonesian National Police Regulation Number 8 of 2021 and Supreme Court Regulation (PERMA) Number1 of 2024 (Santiarto, 2024). These regulations allow for resolving criminal cases through dialogue, mediation, and the application of restorative and educational sanctions instead of solely relying on repressive measures.

The ultimum remedium principle, which states that criminal law should only be used as a last resort after all administrative and non-criminal options have been tried, is congruent with the restorative justice approach (Saptono & Ayudia, 2020). More fundamentally, by emphasizing respect for human dignity and achieving social justice that serves both the State's financial interests and taxpayers' rights as citizens protected by the Constitution, this mechanism reflects the values of Pancasila, particularly the Second and Fifth Principles (Saptono & Ayudia, 2020). As articulated by Santiarto (2024), the reform of restorative justice in Indonesia must be understood as an effort to transform the criminal justice system into one that is more humanistic, just, and moral, ultimately balancing the interests of the State with the protection of legal subjects.

The integration of restorative justice mechanisms into tax law enforcement constitutes a Pancasila-aligned solution at multiple levels. It fulfills the Second Principle by restoring humanistic treatment of taxpayers through dialogue and mediation rather than incarceration. It realizes the Fifth Principle by ensuring that tax dispute resolution prioritizes substantive justice, that oriented in recovery of state revenue and restoration of social harm over a punitive retribution. It also reflects the Fourth Principle by enabling deliberative (*musyawarah*) processes between the state and taxpayers, consistent with Indonesia's constitutional democratic tradition. The absence of explicit statutory provisions for restorative justice in tax crimes therefore represents not merely a procedural gap, but a philosophical deficit in the actualization of Pancasila within the criminal tax law framework.

By way of comparison, the Netherlands has long consistently applied the ultimum remedium principle in its tax law system by prioritizing administrative and corrective measures before resorting to criminal sanctions. The Dutch Tax and Customs Administration (*Belastingdienst*) has strict procedures to systematically distinguish between administrative errors, negligence (*culpa*), and intentional criminal acts (*mens rea*), which form the basis for determining proportional sanctions (Hoelen & Veldhuizen, 2023). Unintentional administrative errors, such as miscalculations or late filings, are generally resolved through corrections and additional payments under Articles 67–68 of the *Algemene wet inzake rijksbelastingen* (AWR). In cases of negligence, administrative fines (*bestuurlijke boete*) are imposed pursuant to Article 67c AWR.

By contrast, where intentional acts are proven such as document falsification or income concealment the case may be referred to the Openbaar Ministerie (OM) under Article 68 AWR or the *Wet op de economische delicten* (WED) for criminal prosecution, with penalties ranging from substantial fines to a maximum of four years' imprisonment for serious violations. Determination of the violation type is conducted through audit (*controle*) and investigation (*onderzoek*), which, upon identifying indications of tax fraud (*belastingfraude*), are pursued jointly by the *Belastingdienst* and the Fiscal Intelligence and Investigation Service (*FIOD*) (Belastingdienst, 2013). This structured legal framework enables the Netherlands to prevent over-criminalization, reduce sentencing disparity, and ensure proportional and accountable application of the ultimum remedium principle in tax law enforcement.

This structured Dutch framework offers a highly instructive blueprint for Indonesian tax reform, particularly in operationalizing the philosophical tenets of Pancasila. In the Indonesian context, the *Belastingdienst's* strict, codified separation between simple negligence and criminal intent provides a tangible methodology for honoring the Second Precept of Pancasila (Just and Civilized Humanity/*Kemanusiaan yang Adil dan Beradab*). By embedding a similar investigative mechanism into the Indonesian tax law enforcement, the state can prevent the dehumanizing effects of over-criminalization, ensuring that honest taxpayers who commit simple administrative errors are treated with dignity rather than being thrust into the punitive criminal justice system. Furthermore, the Dutch approach directly supports the Fifth Principle (Social Justice for All Indonesian People/*Keadilan Sosial bagi Seluruh Rakyat Indonesia*) by ensuring economic proportionality.

In this context, the application of restorative justice in Indonesian tax disputes not only alleviates the judicial burden caused by excessive tax-related cases of an administrative nature but also addresses the problem of sentencing disparity arising from judicial discretion in the absence of sentencing guidelines (Hapsari, 2024). By synthesizing the operational clarity of the Dutch system with Pancasila's emphasis on deliberation and consensus (*musyawarah*), structured mediation between taxpayers and Indonesian tax authorities can achieve mutually beneficial resolutions. This allows the State to secure its fiscal rights while sparing taxpayers from the stigmatization and adverse social consequences of criminal proceedings.

The foregoing analysis reveals that the central challenge in integrating *Pancasila* values with the ultimum remedium principle is structural rather than merely interpretive. Indonesia's criminal tax law framework lacks the codified mechanisms necessary to translate Pancasila's philosophical mandates into consistent, measurable enforcement practice. Nonetheless, implementing this integrated approach faces additional operational challenges, including limited understanding among law enforcement officers regarding Pancasila's philosophical values as an ethical foundation in tax criminal enforcement (Ismawansa et al., 2025). Furthermore, the absence of specific provisions explicitly regulating restorative justice in the context of tax crimes presents an additional obstacle. This reform must clarify the scope, procedures, and standards for restorative justice in the field of taxation, and be paired with intensive training programs aimed at reinforcing the capacity of law enforcement officers to better internalize the essence of humanity and social justice values in every process of criminal tax law enforcement.

4. Conclusion

The aforementioned study leads to the conclusion that Pancasila functions not merely as a symbolic ideological backdrop but as a substantive philosophical mandate governing the moral and ethical boundaries of criminal tax law enforcement in Indonesia. Each of the five principle (sila) provides distinct normative directives that collectively operationalize the ultimum remedium principle. However, the central challenge in integrating these values with the ultimum remedium principle is structural rather than merely interpretive. The existing legal architecture of the UU KUP lacks codified, binding, and measurable criteria governing the transition from administrative to criminal proceedings, creating a discretionary gap that renders the principle susceptible to inconsistent and selective application that contradictive with Pancasila's mandates of humanity and social justice. This structural deficit is further compounded by the absence of standardized sentencing guidelines, the lack of explicit statutory provisions for restorative justice in tax criminal proceedings, and limited philosophical capacity among law enforcement officers to internalize Pancasila values in enforcement practice, as evidenced by persistent sentencing disparity across comparable tax crime cases.

To address these challenges, this study advances three principal recommendations, such as the codification of prosecutorial criteria and sentencing guidelines explicitly anchored to *Pancasila* values, the expansion of Supreme Court Regulation Number 1 of 2024 and National Police Regulation Number 8 of 2021 to expressly encompass tax criminal offenses, and the institutionalization of mandatory *Pancasila*-based capacity-building programs for judges, prosecutors, and tax investigators. Based on Romli Atmasasmita's Integrative Legal Theory to the tax law domain, reframing the ultimum remedium principle as a reflection of the tripartite harmony among norms, actors, and values and proposing a Pancasila-grounded taxonomy of enforcement challenges as a replicable analytical model for future normative studies. The comparative analysis of the Dutch *Belastingdienst* framework further affirms that codified separation between administrative errors and criminal intent is both legally feasible and philosophically consistent with Pancasila's humanistic mandates. Nonetheless, this study acknowledges its normative-juridical scope as a limitation, and future empirical research engaging enforcement practitioners and taxpayers directly would significantly enrich understanding of the practical gap between Pancasila's philosophical aspirations and the lived realities of tax criminal law enforcement in Indonesia, and also ensuring a balance between the state's fiscal interests and the safeguarding of taxpayers' rights.

5. References

Journals:

Akbar, M. F. (2021). Keadilan restoratif dalam sistem peradilan pidana sebagai perwujudan nilai-nilai Pancasila. *Justitia et Pax*, *37*(1), 85-101.

Anindyajati, T., Rachman, I. N., & Onita, A. A. D. (2015). Konstitusionalitas norma sanksi pidana sebagai ultimum remedium dalam pembentukan perundang-undangan. *Jurnal Konstitusi*, *12*(4), 872–892.

Arimuladi, S. U., & Arif, F. (2022). Reformulation of dual authority of article 44b of the general provisions and tax procedures law in Indonesia: An Opportunity principle perspective. *Scientium Law Review*, *1*(3), 77–85.

Cahyonowati, N. (2011). Model moral dan kepatuhan perpajakan: Wajib pajak orang pribadi. *Jurnal Akuntansi dan Auditing Indonesia, 15*(2), 161-177.

Effendi, Z. (2023). Pancasila sebagai dasar pemberantasan kejahatan korporasi di Indonesia. *Journal Equitable*, *8*(2), 95–110.

Hakim, Z., Handajani, L., & Inapty, B. A. (2017). Voluntary tax compliance wajib pajak perusahaan perhotelan: Determinan, kepercayaan dan kekuasaan legitimasi. *Jurnal Akuntansi*, *21*(2), 253.

Hapsari, S. D. (2024). Kemanfaatan, keadilan, dan kepastian hukum restorative justice pada ketentuan perpajakan. *Scientax*, *6*(1), 52–66.

Hasibuan, S., Ablisar, M., Marlina, M., & Barus, U. M. (2015). Asas Ultimum remedium dalam penerapan sanksi pidana terhadap tindak pidana perpajakan oleh wajib pajak. *USU Law Journal*, *3*(2), 115–125.

Ismawansa, Syahrin, A., Ekaputra, M., & Din, M. (2025). Restorative justice in Indonesian criminal law: Integrating Pancasila values in police discretion practices. *International Journal of Innovative Research and Scientific Studies*, *8*(2), 1978–1985.

Jefferdian, J. (2023). *Rekonstruksi regulasi yang memengaruhi budaya hukum pembayaran pajak daerah berbasis nilai keadilan*. Semarang: Universitas Islam Sultan Agung ((Doctoral dissertation).

Kartanto, L., Rijadi, P., & Priyati, S. (2020). Quo vadis ultimum remedium in tax criminal crimes in Indonesia. *International Journal of Scientific and Research Publications (IJSRP)*, *10*(3), 1-3.

Koto, Z. (2023). Penerapan keadilan restoratif dalam penanganan tindak pidana guna mewujudkan penegakan hukum yang berkeadilan. *Jurnal Ilmu Kepolisian*, *17*(1), 17-30.

Kusumo, B. A., Marwiyah, S., Yunus, N. R., & Koos, S. (2022). Rethinking criminal law policies in taxation to overcome tax violations. *BESTUUR*, *10*(2), 159-182.

Leonard, T. (2016). Pembaharuan sanksi pidana berdasarkan falsafah pancasila dalam sistem hukum pidana di Indonesia. *Yustisia Jurnal Hukum*, *95*(3), 44–50.

Priyono, A. P., & Intarti, A. (2019). Penegakkan hukum sanksi pidana perpajakan berdasarkan Undang-Undang Nomor 16 Tahun 2019 tentang Ketentuan Umum dan Tata Cara Perpapajakan Dikaitkan dengan asas ultimum remedium. *Wacana Paramarta: Jurnal Ilmu Hukum*, *18*(1), 1–14.

Rohid, R., Marsuni, L., & Ahmad, K. (2025). Implementation of criminal law on tax evasion in the policy of harmonizing tax regulations. *Qawanin Jurnal Ilmu Hukum*, *5*(2), 13-25.

Saptono, B. P., & Ayudia, C. (2020). The ultimum remedium principle and its implementation on tax crime in Indonesia: a case study. *International Journal of Scientific and Research Publications (IJSRP)*, *11*(1), 566–571.

Sinaga, H. D. R. (2023). *Penegakan Hukum Administrasi Dan Pidana Di Bidang Perpajakan*. Surabaya Universitas Airlangga (Master's Thesis)

Susilawati N, & Sultoni, S. (2021). Strengthening the Understanding of Pancasila as the State Foundation to Achieve National Goals. *Jurnal Prajaiswara*, *2*(1), 48–60.

Virginia, F. E., & Soponyono, E. (2021). Pembaharuan kebijakan hukum pidana dalam upaya penanggulangan tindak pidana perpajakan. *Jurnal Pembangunan Hukum Indonesia*, *3*(3), 299-311.

Yulianto, A. H., Haryono, W. S., & Krisnalita, L. Y. (2025). Reformulasi Kebijakan Hukum Pidana dalam Penegakan Sanksi Perpajakan untuk Optimalisasi Penerimaan Negara. *Krisna Law: Jurnal Mahasiswa Fakultas Hukum Universitas Krisnadwipayana*, *7*(1), 1–11.

Yumanto, B., & Hutauruk, P. A. S. (2022). Ultimum remedium dalam hukum pidana pajak: teori dan praktik. *Scientax*, *4*(1), 107–149.

Books:

Atmasasmita, R. (1996). *Sistem peradilan pidana (criminal justice system): perspektif eksistensialisme dan abolisionisme* (Cet.2 (Rev). Jakarta Selatan: Bina Cipta.

Atmasasmita, R. (2012). *Teori hukum integratif: Rekonstruksi terhadap teori hukum pembangunan dan teori hukum progresif*. Yogyakarta: Genta Publishing.

Hiariej, E. O. (2018). *Penegakkan Hukum Pidana Pajak: Ultimum Remedium Ataukah Primum Remedium?*. Jakarta: Kementerian Keuangan.

Husak, D. (2008). *Overcriminalization: The Limits of the Criminal Law*. Oxford: Oxford University Press.

Ibrahim, J. (2006). *Teori dan Penelitian Hukum Normatif*. Malang: Bayumedia Publishing.

Moleong, L. J. (2012). *Metodologi Penelitian Kualitatif* (Edisi Revi). Bandung: Remaja Rosdakarya.

Nugroho, A. D. (2010). *Hukum Pidana Pajak Indonesia*. Bandung: PT Citra Aditya Bakti.
Santiarto, D. B. (2024). *Mengenal pembaruan keadilan restoratif di pengadilan*. Jakarta: Mahkamah Agung.
Soekanto, S., & Mamudji, S. (2009). *Penelitian hukum normatif: suatu tinjauan singkat* (Ed.1. Cet.). Banjarmasin: Rajawali Pers.
Sriwidodo, J. (2019). *Kajian Hukum Pidana Indonesia "Teori dan Praktek"* (Cetakan Pe). Yogyakarta: Kepel Press.
Sudarto. (2007). *Hukum dan Hukum Pidana*. Bandung: Alumni.

Internet:

Belastingdienst. (2013). *The Dutch Tax and Customs Administration Organogram*. https://download.belastingdienst.nl/belastingdienst/docs/dutch_tax_customs_admin.pdf, accessed on 04 June 2025, at 09.00 pm.
BPHN Kemenkumham RI. (2021). *Rancangan Undang-Undang Perubahan Kelima Atas Undang-Undang Nomor 6 Tahun 1983 Kementerian Keuangan Republik Indonesia Tahun 2021*. https://bphn.go.id/data/documents/na_perpajakan.pdf, accessed on 04 June 2025, at 09.10 pm
Direktorat Jendral Pajak. (2023). *Penegakan Hukum Pidana di Bidang Perpajakan*. https://www.pajak.go.id/id/artikel/penegakan-hukum-pidana-di-bidang-perpajakan, accessed on 15 June 2025, at 20.30 pm.
Hoelen, M. C., & Veldhuizen, W. M. . (2023). *International Guide on Criminalization of Tax Offenses*. Backer McKenzie. https://resourcehub.bakermckenzie.com/en/resources/tax-dispute-resolution---criminal-proceedings/emea/ne , accessed on 15 June 2025, at 20.00 pm.
Hoelen, M. C., & Veldhuizen, W. M. . (2023). *International Guide on Criminalization of Tax Offenses*. Backer McKenzie. https://resourcehub.bakermckenzie.com/en/resources/tax-dispute-resolution---criminal-proceedings/emea/netherlands/topics/international-guide-on-criminalization-of-tax-offenses, accessed on 3 July 2025, at 12.30 pm.
Jefferdian. (2023). *Rekonstruksi Regulasi Yang Mempengaruhi Budaya Hukum Pembayaran Pajak Daerah Berbasis Nilai Keadilan* [Universitas Islam Sultan Agung]. [https://repository.unissula.ac.id/31132/1/Program Doktor Ilmu Hukum_10302100100_fullpdf.pdf](https://repository.unissula.ac.id/31132/1/Program%20Doktor%20Ilmu%20Hukum_10302100100_fullpdf.pdf), accessed on 5 July 2025, at 10.00 pm.
Mahkamah Konstitusi. (2015). Pendidikan dan Pelatihan Peningkatan Pemahaman Hak Konstitusional Warga Negara. *Pusat Pendidikan Pancasila dan Konstitusi*, 39. https://pusdik.mkri.id/uploadedfiles/materi/Materi_3.pdf , accessed on 3 July 2025, at 09.00 pm.
Sekretariat Pengadilan Pajak. (2025). *Statistik Jumlah Berkas dan Penyelesaian Sengketa Pajak Tahun 2020 s.d 2024*. accessed on 3 July 2025, at 09.00 pm.https://setpp.kemenkeu.go.id/statistik.