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Criminal Fines Issuing Tax Invoices Not Based on Actual Transactions with More than One Perpetrator

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Abstract: This study analyzed the enforcement of criminal fines in the criminal offense of issuing tax invoices not based on actual transactions (TBTS) with more than one perpetrator, viewed from the perspective of legal objectives, namely justice, benefit, and legal certainty. The method used is normative legal research with a case study and conceptual approach. Case studies are conducted on court decisions with permanent legal force, while the conceptual approach refers to relevant legal theories. This study offers novelty by highlighting the differences in applying criminal fines to perpetrators of TBTS crimes involving more than one person, which have not been explicitly regulated in Law Number 16 of 2009 on General Provisions and Tax Procedures. In practice, the enforcement of criminal fines differs among courts; some impose fines on each perpetrator, while others divide the value of fines based on state losses. This inconsistency causes problems with the objectives of the law, especially in achieving justice and legal certainty. The results showed that the difference in the enforcement of criminal fines hampered the recovery of state losses and undermined the principle of justice. For this reason, a precise regulation is needed regarding the mechanism for applying criminal fines that pay attention to justice between perpetrators. In conclusion, the consistent and proportional enforcement of criminal fines against TBTS perpetrators not only functions as a means of recovering state losses but also supports the legal objectives of justice, expediency, and legal certainty.

Keywords: Fines; TBTS Tax Invoice; Justice; Legal Certainty; Benefit.

Abstrak: Penelitian ini menganalisis penegakan pidana denda dalam tindak pidana penerbitan faktur pajak tidak berdasarkan transaksi yang sebenarnya (TBTS) dengan pelaku lebih dari satu orang, ditinjau dari sudut pandang tujuan hukum, yaitu keadilan, kemanfaatan, dan kepastian hukum. Metode yang digunakan adalah penelitian hukum normatif dengan pendekatan studi kasus dan konseptual. Studi kasus dilakukan terhadap putusan pengadilan yang telah berkekuatan hukum tetap, sedangkan pendekatan konseptual mengacu pada teori-teori hukum yang relevan. Penelitian ini menawarkan kebaruan dengan menyoroti perbedaan penerapan pidana denda terhadap pelaku tindak pidana TBTS yang melibatkan lebih dari satu orang yang belum diatur secara eksplisit dalam Undang-Undang Nomor 16 Tahun 2009 tentang Ketentuan Umum dan Tata Cara Perpajakan. Dalam praktiknya, penegakan pidana denda berbeda antar pengadilan, ada yang

menjatuhkan pidana denda kepada setiap pelaku, ada pula yang membagi nilai pidana denda berdasarkan kerugian negara. Ketidakkonsistenan ini menimbulkan permasalahan terhadap tujuan hukum, terutama dalam mencapai keadilan dan kepastian hukum. Hasil penelitian menunjukkan bahwa perbedaan pemberlakuan pidana denda tersebut menghambat pemulihan kerugian negara dan mencederai asas keadilan. Untuk itu diperlukan pengaturan yang tepat mengenai mekanisme penerapan pidana denda yang memperhatikan keadilan antar pelaku. Kesimpulannya, penegakan pidana denda yang konsisten dan proporsional terhadap pelaku TPPT tidak hanya berfungsi sebagai sarana pengembalian kerugian negara tetapi juga mendukung tujuan hukum yaitu keadilan, kemanfaatan, dan kepastian hukum.

Kata kunci: Pidana Denda; Tindak Pidana di Bidang Perpajakan; Keadilan; Kepastian Hukum; Kemanfaatan.

1. INTRODUCTION

Tax Law is the entirety of the regulations covering the government's authority to take a person's wealth and give it back to the community through the State treasury, so it is part of public law, which regulates legal relationships between the State and persons or legal entities who are obliged to pay taxes.¹ Although it is part of administrative law, tax legislation has different characteristics from other administrative laws because the nature of tax law is to give broad authority to the State to collect taxes from taxpayers. The State has the authority to determine taxpayers and force taxpayers to fulfill their obligations.²

The diversity of crimes in the field of taxation is closely related to the rules of tax law that parties must implement based on their duties and obligations in the field of taxation. Following the data in the annual report of the directorate general of taxes, *Laporan Tahunan Ditjen Pajak* (DJP) 2023, there were 112 cases of tax crimes. There are several modus operandi, namely the incorrect submission of SPT occupies the highest position with 38 cases; then issuing and/or using TBTS tax invoices and not submitting SPTs in 29 cases each; not depositing taxes that have been collected in 11 cases; money laundering and corporate crime in 3 cases; and not registering Tax Registration Number (NPWP) / PKP and misusing NPWP / PKP in 2 cases.³

As described above, one form of criminal offense in the field of taxation is the issuance of tax invoices that are not based on actual transactions (TBTS) as stipulated in Article 39A of Law of the Republic of Indonesia Number 16 of 2009 on the Stipulation of Government Regulation in Lieu of Law Number 5 of 2008 on the Fourth Amendment to Law

¹ Syarioto Budiman et al., "Analisis Hukum Perpajakan Terhadap Investasi Properti Terkait Dengan Penerimaan Pajak Di Kota Medan," *ARBITER: Jurnal Ilmiah Magister Hukum* 2, no. 1 (2020): 13–22, <https://doi.org/10.31289/arbiter.v2i1.99>.

² Pemungutan Pajak Dan, "Pemungutan Pajak Dan Permasalahannya Di Indonesia," *Jurnal Ilmiah Hukum Dirgantara* 7, no. 1 (2014): 142–57, <https://doi.org/10.35968/jh.v7i1.128>.

³ Niru Anita Sinaga, "Reformasi Pajak Dalam Rangka Meningkatkan Pendapatan Negara," *Jurnal Ilmiah Hukum Dirgantara* 8, no. 1 (2014), <https://doi.org/10.35968/jh.v8i1.136>.

Number 6 of 1983 Concerning General Provisions and Tax Procedures into Law (hereinafter referred to as KUP Law).⁴ In this provision, any person who issues and/or uses TBTS tax invoices shall be punished with imprisonment for a minimum of two years and a maximum of six years and a fine of at least two times and a maximum of six times the value of the TBTS tax invoice. The imposition of sanctions is not the only effort. However, it is expected to influence or make aware taxpayers, tax officers, or third parties who commit acts that deviate from the applicable law.⁵

In practice, more than one perpetrator often commits the criminal act of issuing TBTS tax invoices. It follows the provisions of Article 43 of the KUP Law, which stipulates that the criminal provisions stipulated in Article 39A shall also apply to the proxy, an employee of the taxpayer, or other parties who order, encourage, or assist in committing criminal acts in the field of taxation.⁶ However, the law does not regulate the enforcement of criminal fines to the criminal act of issuing TBTS tax invoices with more than one perpetrator. This has led to differences in the enforcement of fines against the perpetrators of TBTS tax invoice issuance, where there is more than one perpetrator. As an example, there is a case of TBTS tax invoice issuance crime in the Sumedang District Court where the criminal fine is imposed on each perpetrator with an acceptable value equal to the loss of state revenue and/or the value of TBTS tax invoices. At the same time, in the Central Jakarta District Court, there is a case of TBTS tax invoice issuance where the criminal fine is imposed by dividing the loss of state revenue and/or the value of TBTS tax invoices for each perpetrator.

Differences in the enforcement of criminal fines can lead to the non-achievement of legal objectives, namely legal certainty, justice, and benefit. When there are differences in enforcement, this does not fulfill a sense of justice because criminal fines should be applied equally to perpetrators who commit the same criminal offense. There must be legal certainty in terms of the mechanism for applying criminal fines for the perpetrators of the criminal act of issuing TBTS tax invoices where there is more than one perpetrator. Criminal fines in taxation crimes aim to recover state revenue losses arising from the criminal act of issuing TBTS tax invoices. Therefore, applying criminal fines against the perpetrators of the issuance of TBTS tax invoices must achieve expediency to recover state revenue losses arising from the issuance of TBTS tax invoices.⁷

⁴ Ratu Dini Citra Utami and Rahman Abd Saleh, "Kajian Yuridis Penegakan Hukum Pajak Terhadap Pembuat Dan Pengguna Faktur Pajak Tidak Berdasarkan Transaksi Sebenarnya (TBTS)," *Journal Of Social Science Research* 4, no. 1 (2024): 2863–74.

⁵ I Made Walea Putra, Marcus Priyo Gunarto, and Dahliana Hasan, "Penentuan Kesalahan Korporasi Pada Tindak Pidana Perpajakan (Studi Putusan Pengadilan Negeri Jakarta Barat No.: 334/Pid.Sus/2020/PN Jkt.Brt)," *Media Iuris* 5, no. 2 (2022): 231–58, <https://doi.org/10.20473/mi.v5i2.33369>.

⁶ Prabowo Setyo Aji and Hartawiningsih, "Pertanggungjawaban Pidana Korporasi Sebagai Pelaku Tindak Pidana Perpajakan (Analisa Putusan Nomor: 334/Pid.Sus/2020/PN Jkt.Brt Atas Nama PT Gemilang Sukses Garmino)," *Jurnal Ilmu Hukum, Humaniora Dan Politik* 4, no. 3 (2024): 227–40, <https://doi.org/10.38035/jihhp.v4i3.1896>.

⁷ Rischad Widiyanto Siregar, Niru Anita Sinaga, and Selamat Lumban Gaol, "Legal Study on the Criminal Offence of Falsification of Tax Invoice Who Has Obtained Tax Amnesty Kajian Hukum Atas Tindak Pidana Pemalsuan Faktur Pajak Yang Telah Memperoleh Pengampunan Pajak," *JURNAL HUKUM SEHASEN* 10, no. 2 (2024): 567–76, <https://doi.org/https://doi.org/10.37676/jhs.v10i2.5978>.

The existence of special arrangements regarding the enforcement of criminal fines in the issuance of TBTS tax invoices is an important issue regarding the regulatory function of criminal fines in this criminal offense. The handling of the issuance of TBTS tax invoices was initially resolved administratively, where taxpayers were allowed to make corrections to the issuance of TBTS tax invoices and pay administrative sanctions in the form of fines whose value was calculated by multiplying the value of the TBTS tax invoice issuance. If the taxpayer does not make corrections or pay administrative sanctions in fines, his actions are resolved in the criminal process. It shows a shift in the realm of law from the realm of administrative law to the realm of criminal law. The existence of special arrangements related to criminal fines whose value is multiplied by the value of TBTS tax invoices raises questions about the legal objectives of criminal fines. The enforcement of the same law, regardless of the position of the existing entity/subject, indicates injustice in applying the law.

Some studies discussed legal certainty, taxation, or tax crimes that have similarities and differences with the current study, namely Zainal Muttaqin, 2013 entitled "*Kewenangan Direktorat Jenderal Pajak Untuk Mengeksekusi Putusan Pengadilan Berkaitan Dengan Tindak Pidana Pajak.*" It is about the authority of the directorate general of taxes to execute court decisions regarding tax crimes. This study examines and contains law enforcement in the field of taxation, which gives taxpayers the right to resolve administrative issues. However, in the case of tax evasion of a business entity AAG, the cassation judge made a legal breakthrough with considerations outside or not following the law regarding the general provisions of taxation, especially the enforcement of fines against corporations for actions that are personal and personification of the corporation. It is justified by relying on considerations of legal interests and public interests. There are similarities and differences between the study the researchers conducted and the research conducted by Zainal Muttaqin. The similarity is that they both examine the enforcement of fines in taxation cases. The difference is that the research conducted by the researcher discusses the enforcement of criminal fines for the issuance of TBTS tax invoices with more than one perpetrator; on the other hand, Zainal Muttaqin's research is about criminal fines in tax cases with corporate subjects.⁸

Hence, based on the description above, this article will specifically discuss the enforcement of criminal fines to criminal offenses in the field of taxation to issue tax invoices that are not based on actual transactions (TBTS) with more than one perpetrator in the perspective of legal objectives. This paper aims to analyze the enforcement of criminal fines for issuing tax invoices not based on actual transactions (TBTS) involving more than one perpetrator from the perspective of legal objectives.

⁸ Farrel Alanda Fitrah, Agus Takariawan, and Zainal Muttaqin, "Kedudukan Penyidik Pegawai Negeri Sipil Direktorat Jenderal Pajak Dalam Kerangka Penegakan Hukum Pidana Perpajakan Di Indonesia," *SIGN Jurnal Hukum* 3, no. 1 (2021): 1–25, <https://doi.org/10.37276/sjh.v3i1.107>.

2. METHOD

The study used normative legal research, which examined formal legal rules, such as laws, regulations, and literature containing theoretical concepts related to the problems to be discussed in this thesis. The study used a case study approach based on court decisions with permanent legal force and a conceptual approach based on theories, legal concepts, and legal principles relevant to the problem.

3. DISCUSSION

3.1. The Enforcement of Fines for the Issuance of Tax Invoice (TBTS) Involving More than One Actor in the Perspective of Legal Objectives

Mochtar Kusumaatmadja defined law as a tool for societal change processes and the law is a tool to protect, maintain, and order society. He also stated that the law is a rule and a valuable principle in regulating community relations with justice. Law is not only a whole of principles and rules governing human life in society but also includes institutions and processes that realize the enactment of these rules in reality.

The diversity of legal understandings put forward by legal experts also influences the elaboration of legal objectives, so several legal experts put forward various theories of legal objectives based on the flow of law and legal understanding according to each legal expert.

Furthermore, Gustav Radburch argued that law has three objectives such as expediency, certainty, and justice. To implement these three legal objectives, the principle of priority must be used. He also said that a priority scale must be followed, where the priority is always justice, expediency, and legal certainty. Law performs its function as a means of conserving human interests in society.

Mochtar Kusumaatmadja, through the Legal Theory of Development, argued that the primary purpose of law, when reduced to just one thing, is order, which is the primary condition for the existence of an organized society. Another goal of law is the achievement of justice, which varies in content and size according to society and its era. Further, legal certainty is sought in human relations in society to achieve order because it is impossible for humans to optimally develop the talents and abilities given to them by God without legal certainty and order. In addition, Mochtar also added pragmatic goals (for the sake of development), namely law as a means (instrument) to develop society, in the sense that norms are expected to direct human activities towards what is desired by development and renewal. This thought is in line with the opinion of Sjachran Basah, who stated that the expected function of law, apart from its classic function, can also serve as a guide in building the society to be achieved per the objectives of state life.⁹

Criminal charges are a punishment or suffering inflicted on someone guilty of

⁹ Mochtar Kusumaatmadja, *Konsep-Konsep Hukum Dalam Pembangunan* (Bandung: Alumni, 2002).

committing an act prohibited by criminal law. By these penalties, it is hoped that people will not commit a criminal offense.¹⁰ Criminal charges against perpetrators who make and use TBTS tax invoices are imprisonment for a minimum of two years, a maximum of six years, a fine of at least 2 two times, and a maximum of six times the amount of tax in the tax invoice. What becomes a problem is when the criminal act of issuing TBTS tax invoices involves more than one person because, based on the provisions of Article 43 Paragraph (1) of the KUP Law, the enforcement of this criminal offense also applies to representatives, proxies, employees of taxpayers, or other parties who order, participate in, encourage, or assist in committing criminal acts in the field of taxation.

The provisions of Article 43 Paragraph (1) of the KUP Law cannot necessarily be entirely implemented in implementing criminal fines against all perpetrators charged with the criminal offense of issuing TBTS tax invoices. Looking at examples of court decisions in the enforcement of fines for the issuance of TBTS tax invoices where there is more than one perpetrator, there are differences in the way of implementation. This is none other than because there are no regulations governing the implementation of fines in the criminal act of issuing TBTS tax invoices with more than one perpetrator.¹¹

In practice, there are differences in the enforcement of criminal fines in the criminal act of issuing TBTS tax invoices with more than one perpetrator, as follows:

| No. | Taxpayer | Name of Convict | Criminal Fines |
|-----|---------------------------|---|---|
| 1. | PT. Hendrika Putra Sejati | Sepi Muharam (the conviction of PN Jakarta Timur Number 162/Pid.Sus/2022 /PN Jkt. Tim) As the person who issues TBTS tax invoices and seeks companies using TBTS tax invoices. | 2 x TBTS Tax Invoice Value divided by 2 (Two) with the defendant Hendrik Abdul Rohman. If he does not pay the fine within a month, his property will be confiscated and auctioned off by the prosecutor. If the property is not sufficient, he will be sentenced to confinement in lieu of a fine for 3 (three) months. |
| | | Hendrik Abdul Rohman | 2 x TBTS Tax Invoice Value divided by 2 (Two) with the |

¹⁰ Muharuddin Muharuddin, Wahab Aznul Hidayat, and Jamaluddin Rumatiga, "Tanggungjawab Pemerintah Daerah Terhadap Kerusakan Terumbu Karang Di Kabupaten Raja Ampat," *JUSTISI* 6, no. 2 (2020): 64–76, <https://doi.org/https://doi.org/10.33506/js.v6i2.949>.

¹¹ Citra Utami and Saleh, "Kajian Yuridis Penegakan Hukum Pajak Terhadap Pembuat Dan Pengguna Faktur Pajak Tidak Berdasarkan Transaksi Sebenarnya (TBTS)."

conviction of PN defendant Sepi Muharam. If Jakarta Timur Number he does not pay the fine 161/Pid.Sus/2022/ PN within a month, his property Jkt. Tim) will be confiscated and auctioned by the prosecutor. As the Director of PT Hendrika Putra Sejati If the property is not who issued Tax Invoice sufficient, he will be TBTS. sentenced to confinement in lieu of a fine for 3 (three) months.

The conviction does not contain legal considerations to impose a fine on each perpetrator by dividing the fine in half.

2. PT. Defa Rahayu Cepy Jamal (the conviction of PN Sumedang Number: 165. Pid.Sus/2022/ Pn.Smd.) A fine of 2 x TBS Tax Invoice Value, provided that if the fine is not paid within a month, the property will be confiscated and auctioned by the prosecutor. If the property is not sufficient, then imprisonment in lieu of a fine for 6 (six) months.

As the person authorized by the Director to issue TBTS Tax Invoice.

Gunawan (the conviction of PN Sumedang Number: 166. Pid.Sus/2022/ Pn.Smd.) 2 x the Value of the TBS Tax Invoice, provided that if the fine is not paid within a month, the property shall be confiscated and auctioned by the prosecutor. If the property is not sufficient, then imprisonment in lieu of a fine for 6 (six) months.

As the Director of PT. Defa Rahayu who issued Tax Invoice TBTS.

The conviction does not contain legal considerations for applying fines to each perpetrator multiplied by the value of the TBTS tax invoice.

3 PT. Selular Media Mandiri Chendra Tanoto a.k.a Chendra Tanoto Juwono Bin Sutopo Yuwono a.k.a Achin (the conviction of PN Jakarta Pusat Number 5 x loss of state revenue, taking into account the loss to state revenue plus an administrative sanction in the form of a fine of 4 x loss of state revenue, as the amount

: 549/Pid.Sus/2022/PN Jkt.Pst) that the defendant has deposited.

As the Director of PT Selular Media Mandiri who issued Tax Invoice TBTS.

Christian Jong (the conviction of PT DKI Jakarta Number 368/Pid.Sus/2016/PT. DKI Jo. The conviction of PN Jakarta Pusat Number 355/Pid.Sus/2016/PN.Jkt.Pst

As Tax Consultant who issued TBTS Tax Invoice.

In the verdict on Christian Jong, there is no legal consideration to enforce a fine by multiplying the TBTS tax invoice value. As for Chendra Tanoto, the legal considerations outlined that he was not sentenced to imprisonment because he had deposited money with the value of the TBTS tax invoice plus administrative sanctions in the form of fines imposed on him.

Based on the case example above, at least two things can be observed in the enforcement of criminal fines against the perpetrators of the criminal act of issuing tax invoices with more than one perpetrator.¹² First, namely regarding the enforcement of criminal fines in TBTS tax invoices, and second, regarding the subject of the perpetrator. Concerning the first matter, the enforcement of criminal fines against the perpetrators of the issuance of TBTS tax invoices with more than one perpetrator has not been applied similarly. There are those whose enforcement is that each perpetrator is subject to a fine equal to the loss of state revenue and/or the value of the TBTS tax invoice; there are those who apply the fine using the value of the loss of state revenue and/or the value of the TBTS tax invoice divided for each perpetrator. Some perpetrators are subject to fines even though the loss of state revenue and/or the value of the TBTS tax invoice has been imposed on other perpetrators.¹³ Whereas in the provisions of Article 44C of Law Number 7 of 2021 on

¹² Nabitatus Sa'adah and Kadek Cahya Susila Wibawa, "Batasan Kewenangan Mengadili Sengketa Pajak Antara Pengadilan Pajak Dan Pengadilan Tata Usaha Negara," *Masalah-Masalah Hukum* 52, no. 1 (2023): 21–29, <https://doi.org/10.14710/mmh.52.1.2023.21-29>.

¹³ Tata Wijayanta, "Asas Kepastian Hukum, Keadilan Dan Kemanfaatan Dalam Kaitannya Dengan Putusan Kepailitan Pengadilan Niaga," *Jurnal Dinamika Hukum* 14, no. 2 (2014): 216–26, <https://doi.org/10.20884/1.jdh.2014.14.2.291>.

Harmonization of Tax Regulations (hereinafter referred to as the HPP Law), the fine cannot be replaced by imprisonment and must be paid by the convict with the provision that if the convict within 1 (one) month does not pay the fine, his property will be confiscated and auctioned by the prosecutor to pay the fine.

By viewing the provisions of the explanation of Article 44B Paragraph (2) of the Harmonization of Tax Regulations Law (hereinafter referred to as the HPP Law), one of the conditions for the termination of investigation of tax criminal cases is that the suspect repays the amount of loss to state revenue and/or the amount of TBTS tax invoices. Whenever there is more than one suspect, the burden is carried out following the proportion of the burden of each suspect plus administrative sanctions in the form of fines. In addition, considering that the handling of criminal cases in the field of taxation prioritizes the recovery of losses to state revenue rather than punishment, the opportunity for the defendant to pay off the amount of losses to state revenue; the amount of tax payable that is not or underpaid; the amount of tax in the tax time, tax collection slip, tax withholding slip, and/or tax deposit slip; the amount of restitution requested and/or tax compensation or crediting made, following the proportion of his burden plus administrative sanctions in the form of fines is extended to the trial stage.¹⁴

However, the provisions of the explanation of Article 44B paragraph (2) of HPP Law are enforced if the suspect submits a request for termination of investigation and requests information on losses to state revenue that they must repay. Thus, if no suspect submits a request for investigation, then the calculation of the proportional fine is not carried out. It is further complicated when, in handling the case, it cannot be proven as to what percentage value of profit each perpetrator obtained.

The provisions of the explanation of Article 44B paragraph (2) of the HPP Law mentioned above should be interpreted as that the enforcement of fines in the case of issuance of TBTS tax invoices with more than one perpetrator can also be applied if the perpetrator does not submit a termination of the investigation. It is because the legal objective in the enforcement of criminal fines for the issuance of TBTS tax invoices is to recover the loss of state revenue arising from the issuance of TBTS tax invoices so that the enforcement of criminal fines for the crime of issuing TBTS tax invoices with more than one perpetrator at least needs to consider 2 (two) main things, namely the benefits obtained by each perpetrator and the value of state revenue losses caused by the actions of the perpetrators. In addition to being proportional, fines must be applied objectively to more than one perpetrator. The amount of profit or benefit obtained by the perpetrator is calculated objectively following the evidence obtained.¹⁵

¹⁴ Jawahir Thontowi, "Pengaturan Masyarakat Hukum Adat Dan Implementasi Perlindungan Hak-Hak Tradisionalnya," *Pandecta: Research Law Journal* 10, no. 1 (2015): 1–13, <https://doi.org/10.15294/pandecta.v10i1.4190>.

¹⁵ Budiman et al., "Analisis Hukum Perpajakan Terhadap Investasi Properti Terkait Dengan Penerimaan Pajak Di Kota Medan."

The crime of issuing TBTS tax invoices is closely related to the economic benefits obtained from the issuance of TBTS tax invoices and also the loss of state revenue on TBTS tax invoices, so the enforcement of criminal fines against more than one perpetrator must pay attention to the main thing, namely the benefits obtained by each perpetrator and also how much the value of the loss of state revenue arising from the actions of the perpetrators. If all perpetrators are subject to a fine equal to the value of the TBTS tax invoice, of course, this is not in line with a sense of justice where one taxpayer issues the TBTS tax invoice, then the loss of state revenue arising is one. If the perpetrators are all subject to a fine equal to the value of the TBTS tax invoice, it is as if the loss of state revenue due to the TBTS tax invoice becomes more than one and/or multiplies according to the number of perpetrators. It does not follow the principle of legal certainty regarding the loss of state revenue arising because, from the beginning, the loss of state revenue was the TBTS tax invoice issued by the taxpayer, not the individual perpetrators.

Furthermore, the efforts to calculate the proportional value of fines that can be applied to each perpetrator can be determined at the investigation level, considering that in handling cases of criminal acts of issuing TBTS tax invoices, investigators can confiscate to recover losses to state revenue against movable or immovable property including bank accounts, receivables, and securities belonging to taxpayers, taxpayers and/or other parties who have been determined as suspects. In addition, either in the investigation, prosecution, or during the trial process, the perpetrators of the crime of issuing TBTS tax invoices are allowed to pay off losses to state revenue along with administrative sanctions for case settlement without imposing criminal sanctions on the person concerned.¹⁶

As an example of the enforcement of fines in the criminal offense of issuing TBTS tax invoices with more than one perpetrator, there is a case of issuing TBTS tax invoices with a TBTS tax invoice value of IDR 100,000,000.00. In this case, there are 2 (two) perpetrators, namely A and B. Based on the evidence obtained, it is known that A received benefits of Rp15,000,000.00, while B received benefits of Rp5,000,000.00. In connection with this, the amount of TBTS tax invoice value as a reference for the enforcement of fines is as follows:

- A in the amount of $(Rp15,000,000.00 / Rp20,000,000.00) \times Rp100,000,000.00 = Rp75,000,000.00$. The fine that can be imposed on A is at least 2 x or at most 6 x Rp75,000,000.00.
- B is in the amount of $(Rp. 5,000,000.00 / Rp20,000,000.00) \times Rp100,000,000.00 = Rp25,000,000.00$. The fine that can be imposed on B is at least 2 x or at most 6 x Rp25,000,000.00.

Punishment must be applied proportionally, referring to the role played by the perpetrator; if the role is very significant, then the imposition of fines applied is higher. Law

¹⁶ Andi Ulil Amri Burhan and Gunadi Gunadi, "Optimalisasi Wewenang PPNS DJP Dalam Penyitaan Dan Pemblokiran Aset Untuk Pemulihan Kerugian Pendapatan Negara," *Owner* 6, no. 4 (2022): 4199–4209, <https://doi.org/10.33395/owner.v6i4.1102>.

enforcement agencies must be objective in applying fines following the role of each perpetrator based on the evidence obtained. However, the factor that becomes a problem in imposing fines on the perpetrators of the criminal offense of issuing TBTS tax factors where there is more than one perpetrator is that sufficient evidence is not obtained about the benefits obtained by each perpetrator. This situation results in the inability to determine or calculate the TBTS tax invoice value percentage that will be charged to each perpetrator as a fine. The Law on taxation and its implementing regulations have not regulated this matter, so it is necessary to make rules that can be the basis for applying criminal fines against the perpetrators of the issuance of TBTS tax invoices with more than one perpetrator.¹⁷

A review of several court decisions related to the enforcement of fines for the crime of issuing TBTS tax invoices with more than one perpetrator has not fulfilled legal objectives because there are differences in the way fines are applied. In the three decisions on the issuance of TBTS tax invoices above, the panel of judges in their decision applied a fine to each perpetrator with a fine calculated only on the value of the TBTS tax invoice.¹⁸ The panel of judges did not consider the principle of proportionality according to the benefits obtained by each perpetrator in imposing fines on the TBTS tax invoice issuance case involving more than one perpetrator. Whereas the principle of proportionality and objectivity in handling cases and applying penalties to the perpetrators of the issuance of TBTS tax invoices whose perpetrators are more than one must be prioritized to fulfill a sense of justice and legal certainty to create order in law enforcement. By gaining order in society, human interests can be protected for development. On the other hand, the existence of justice and legal certainty in the enforcement of punishment can increase compliance with the criminal sanctions imposed because the punishment applied is commensurate with the actions.

Moreover, the Attorney General's Office, as an institution that carries out the prosecution function, has the Guidelines of the Attorney General of the Republic of Indonesia Number 2 of 2019 on Criminal Charges for Criminal Acts in the Field of Taxation, which serves as a reference in the implementation of tax case prosecution. This guideline aims to create uniformity in case handling, especially in criminal charges, to avoid disparity in criminal charges in tax cases. However, this guideline does not regulate the enforcement of fines in tax criminal cases with more than one perpetrator. Considerations in determining the charges of imprisonment and fines only consider the amount of loss of state revenue and/or the value of TBTS tax invoices and the percentage of deposit of fine payment by the defendant.

¹⁷ Z A Kharisma, B B W Putra, and ..., "Model Pertanggungjawaban Atas Tindak Pidana Korupsi Oleh BUMN Sebagai Korporasi: Antara Tanggungjawab Korporasi Dan Pengurus," *Jurnal Hukum Lex ...* 2, no. 12 (2021): 1319–43,

<https://ojs.rewangrencang.com/index.php/JHLG/article/view/162%0Ahttps://ojs.rewangrencang.com/index.php/JHLG/article/download/162/74>.

¹⁸ Mohammad Faisol Soleh, "Penimbunan Alat Pelindung Diri Pada Masa Pandemi Covid-19: Kajian Hukum Pidana Bidang Perlindungan Konsumen," *Undang: Jurnal Hukum* 3, no. 1 (2020): 1–31, <https://doi.org/10.22437/ujh.3.1.1-31>.

The enforcement of fines calculated based on the value of TBTS tax invoices against more than one perpetrator is crucial, considering that, according to the provisions of the HPP Law, the enforcement of fines is imperative, namely as an obligation for convicts and not as an alternative or option as the provisions of fines in the Criminal Code. This provision is different from the provisions in the KUP Law, which does not regulate the existence of coercive efforts that the prosecutor can take out if the convict does not pay the fine.¹⁹

The prosecutor's authority to carry out confiscation and auction provides a breath of fresh air in law enforcement of criminal acts of issuing TBTS invoices, especially in fulfilling the principle of expediency, namely the recovery of state revenue losses. The prosecutor, as the executor, has the authority to carry out confiscation and auction of the property of the convicted person and is not limited to the goods used by the perpetrator in committing a criminal offense or the goods that result from the criminal offense.²⁰

As in Mochtar Kusuma-atmadja's Development Law Theory, law is part of social rules but not the only one. In addition to the law, human life in society is also guided by human moral rules, moral religion, decency, and customs. The law and other social rules are said to have a close intertwining relationship, one strengthening the other.

If the enforcement of criminal fines against perpetrators of criminal acts of issuance of TBTS tax invoices is carried out solely to achieve the recovery of state revenue losses by applying the maximum fine to the perpetrators without paying any attention to proportionality and objectivity, in this case, it will not achieve order in law enforcement because, in the enforcement of criminal fines, it will be related to coercive efforts that the prosecutor can carry out as the executor of the criminal fine. Moreover, in the enforcement of fines, the value is not only according to the value of the TBTS tax invoice but also multiplied again, namely at least 2 (two) times and a maximum of 6 (six) times the amount of tax in the TBTS tax invoice. Therefore, in applying fines where there is more than one perpetrator, it is crucial to pay attention to a sense of justice when connected to the purpose of the law, namely, creating an orderly society and creating order and balance.

Enforcing the replacement of fines for imprisonment will refer to efforts to achieve regularity and order, primarily regarding justice, certainty, and legal expediency. Justice for the perpetrators of TBTS tax invoice issuers in the imposition of the number of criminal fines, legal certainty in efforts to fulfill the criminal fines and the mechanism in replacing the criminal fines, and the most important thing is the existence of benefits in efforts to fulfill the loss of state revenue.

The existence of changes in regulatory norms in the enforcement of fines against perpetrators of criminal acts of issuing TBTS tax invoices can certainly encourage and

¹⁹ Kharisma, Putra, and ..., "Model Pertanggungjawaban Atas Tindak Pidana Korupsi Oleh BUMN Sebagai Korporasi: Antara Tanggungjawab Korporasi Dan Pengurus."

²⁰ Citra Utami and Saleh, "Kajian Yuridis Penegakan Hukum Pajak Terhadap Pembuat Dan Pengguna Faktur Pajak Tidak Berdasarkan Transaksi Sebenarnya (TBTS)."

support national development and lead to improvement, especially in law enforcement. The enforcement of fines against perpetrators of taxation crimes, which was initially alternative, namely that it could be subsidized by imprisonment, changed its nature to imperative, namely that the convict could not choose whether to pay a substitute penalty or only carry out substitute imprisonment. There is an affirmation that if within 1 (one) month the convict does not pay the fine, the prosecutor can confiscate his/her property as a means of forcing the convict to immediately pay off his/her obligations, as well as a guarantee that if after being subject to confiscation the convict still does not pay off his/her obligations, the property will be auctioned to pay it off. It follows the principle of expediency in law enforcement of tax crimes, namely, to recover state revenue losses.

Changes in norms regarding the enforcement of fines for the criminal offense of issuing TBTS tax invoices can provide order in the context of renewal and development, considering that taxes are essentially about the state's economic life and are the primary source of revenue for Indonesians.

Law enforcement agencies need consistency and objectivity in the enforcement of fines in handling criminal offenses in the field of taxation. Starting from the investigation process, prosecution, and trial, each law enforcement officer must be able to find evidence related to the perpetrators' actions, which will later be used as the basis for the imposition of punishment against each perpetrator based on their respective roles and benefits.

The enforcement of fines in taxation crimes prioritizes the *ultimum remedium* principle in which criminal law enforcement is the last resort in resolving criminal acts. The existence of harmony between the rule of law and its enforcement carried out by law enforcement agencies will create an orderly society and create a sense of legal certainty and a sense of justice in the community.

Tax law enforcement must be related to the fundamental ideals of forming provisions in taxation. Law enforcement is not only interpreted as forcing people to obey the applicable provisions but is also more repressive, namely the possibility of influencing people to implement the applicable provisions.

After the enactment of the HPP Law, there have been fundamental changes in the implementation of criminal fines, especially in handling cases of criminal acts such as issuing TBTS tax invoices. Before the HPP Law, the regulation of criminal acts in the field of taxation was carried out based on the provisions of the KUP Law, which did not specifically regulate the enforcement of criminal fines against perpetrators of the criminal act of issuing TBTS tax invoices. The KUP Law only regulates the threat of fines that can be imposed on the perpetrators, which then, in its implementation, follows the provisions in the Criminal Procedure Code. However, the KUP Law has a mechanism to recover state revenue losses due to criminal acts in the field of taxation for the issuance of TBTS tax invoices as stipulated in Article 13 paragraph (5) and Article 15 Paragraph (4) of the KUP Law which authorizes the Directorate General of Taxes to issue an Underpaid Tax Assessment Letter and/or Additional

Tax Assessment Letter plus administrative sanctions in the event that the taxpayer after 5 (five) years is convicted of committing a criminal act in the field of taxation or other criminal acts that can cause losses to state revenue based on a court decision that has permanent legal force. Although it aims to recover state revenue losses, this provision does not provide a sense of justice and legal certainty. It is because although law enforcement on the issuance of TBTS tax invoices has been resolved through the criminal law enforcement process as the *ultimum remedium*, in reality, the problem of the criminal act of issuing tax invoices has not been resolved and taxpayers can be burdened to pay taxes along with administrative sanctions in the form of interest.²¹

After the enactment of UU HPP, the provisions of Article 13 paragraph (5) and Article 15 paragraph (4) of UU KUP became invalid because they were revoked. The Income Tax Law regulates explicitly the enforcement of fines, which stipulates that convicts must pay the fines, which cannot be replaced by imprisonment. It cannot be replaced by imprisonment. The HPP Law also authorizes the execution prosecutor to confiscate and auction the convict's property if, 1 (one) month after the verdict is legally binding, the convict does not pay the fine. If the convict's property is insufficient to pay the fine, the convict will be imprisoned.

Enacting the HPP Law will allow at least two mechanisms to resolve criminal fines against perpetrators of TBTS tax invoice issuance. The first mechanism considers evidence in the form of property owned by the perpetrator that has been confiscated during the investigation, which is then seized by the state and calculated as a deduction for the imposed fine. The second mechanism is execution confiscation, namely by the prosecutor confiscating and auctioning the convicted person's assets to be used to pay the fine.

The first mechanism is conducted since the handling of the case is still in the investigation process. By the provisions of Article 44 paragraph (1) letter j of the Anti-Corruption Law, investigators are authorized to conduct confiscation to recover losses to state revenues, which can be carried out against movable or immovable goods, including bank accounts, receivables, and securities belonging to taxpayers, tax insurers, and/or other parties who have been determined as suspects. Evidence confiscated during the investigation can be submitted for the state to confiscate and calculated as payment of the fine imposed on the convict. It is different from the confiscation regulated in KUHAP, which aims for evidentiary purposes only, so that efforts to recover losses to state revenue are limited to goods used to commit criminal acts or goods to prepare criminal acts or goods obtained or as a result of criminal acts.²²

The second mechanism is conducted after a criminal fine is imposed on the perpetrator of TBTS tax invoice issuance, in which the prosecutor is authorized to confiscate

²¹ A. Sakti R.S. Rakia and Wahab Aznul Hidayat, "Aspek Feminist Legal Theory Dalam Peraturan Perundang-Undangan Di Indonesia," *Amsir Law Journal* 4, no. 1 (2022): 69–88, <https://doi.org/10.36746/alj.v4i1.104>.

²² Hasriyanti. Wahab Aznul Hidayat, "Forensic Accounting Strategies in Detecting and Investigating Corruption Crime," *JUSTISI* 7, no. 1 (2019): 1–7, <https://doi.org/https://doi.org/10.33506/js.v5i1.537>.

and auction the convicted person's property. The HPP Law and its implementing regulations do not explain how the mechanism for implementing coercive measures that the prosecutor can take out to confiscate and auction the convicted person's property for the payment of the fine. However, in practice, this forced effort is known as execution confiscation.

The implementation of execution confiscation, namely confiscation, and auction by the prosecutor for the forced fulfillment of criminal fines in the case of the criminal act of issuing TBTS tax invoices, is carried out based on the provisions of Article 30A of Law Number 11 of 2021 on amendments to Law Number 16 of 2004 on the Prosecutor's Office of the Republic of Indonesia. The Attorney General's Office has the authority to recover assets resulting from criminal acts, namely through tracing, seizing, and returning assets obtained from criminal acts and other assets to the state, victims, or those entitled as stipulated in the Regulation of the Attorney General of the Republic of Indonesia Number 7 of 2020 concerning the Second Amendment to the Regulation of the Attorney General Number PER-027/A/JA/10/2014 on Guidelines for Asset Recovery. However, this guideline does not yet regulate the execution mechanism for confiscating the property of convicted persons carried out by prosecutors by seizing assets to pay criminal fines.

Practically, the prosecutor as the executor uses the guidelines for confiscating and executing additional compensation in corruption crimes as stipulated in the Circular Letter of the Attorney General of the Republic of Indonesia Number: B-116/A/JA/07/2015 dated July 31, 2015, concerning the Rescue of State Financial Losses in the Handling and Solving of Corruption Cases.

The HPP Law does not explain the conditions if the auction results or payment of fines paid by the convicted person do not meet the acceptable amount imposed on the convicted person. The provisions of Article 44C of the HPP Law only regulate the confiscation and auction of the convict's property for the payment of fines. However, it does not regulate how the value is insufficient for the fine imposed on the convict.²³

The provision of execution confiscation in the HPP Law follows the principle of expediency of law enforcement of tax crimes, namely as an effort to recover state revenue losses due to the criminal act of issuing TBTS tax invoices. Execution confiscation is a solution if, during the investigation, there is no confiscation of the convict's property or the confiscation of the convict's property carried out by the convict is insufficient to pay the imposed fine. However, it is necessary to make provisions to implement confiscation of execution as a legal umbrella in coercive efforts that prosecutors can implement as a fulfillment of fines imposed on perpetrators of criminal acts of issuance of TBTS tax invoices. It provides a sense of legal certainty, justice and expediency in its implementation.

The enforcement of imprisonment as a substitute for fines cannot be granted remission. It is as stipulated in Article 6 of the Regulation of the Minister of Law and Human

²³ Wahab Aznul Hidayat, "Penerapan Diversi Dalam Sistem Peradilan Pidana Anak," *Justisi* 5, no. 2 (2019): 84–96, <https://doi.org/10.33506/js.v5i2.543>.

Rights of the Republic of Indonesia Number 2022 on the Second Amendment to the Regulation of the Minister of Law and Human Rights Number 3 of 2018 on terms and procedures for granting remission, assimilation, leave to visit family, parole, leave ahead of release, and conditional leave. By this provision, the perpetrator of the issuance of TBTS tax invoices must serve imprisonment following the verdict without getting remission. Substitute imprisonment can only be reduced if a payment of fines is imposed on the perpetrator. It is undoubtedly expected to encourage the perpetrators of the criminal act of issuing TBTS tax invoices to fulfil their obligations to pay the fines imposed on them voluntarily, which impacts the optimal recovery of state revenue losses arising from the issuance of TBTS tax invoices.

Based on the description above, enforcing fines in the criminal offence of issuing TBTS tax invoices with more than one perpetrator cannot be borne jointly. Each perpetrator has their obligations regarding the fine imposed. It is because the imposition of the fine is imperative, i.e. the convict is not allowed to choose whether he/she will pay the fine or serve the substitute imprisonment, considering that if within 1 (one) month after the verdict is read, the convict does not pay the fine, his/her property can be confiscated by the prosecutor. The confiscation and auction will impact the calculation of imprisonment in lieu of a fine if there is still a shortage of punishment imposed on the convict. Therefore, in the enforcement of fines, it must be clear regarding the percentage of fines applied to each perpetrator if there is more than one perpetrator in the TBTS tax invoice issuance case. Legal rules regarding the mechanism for the implementation of fines, confiscation of execution and calculation of substitute imprisonment must be formed as a basis for the implementation of fines in handling the criminal act of issuing TBTS tax invoices with more than one perpetrator in order to provide legal certainty, justice and expediency.

4. CONCLUSION

This study concludes that enforcing criminal fines for issuing tax invoices without being based on actual transactions (TBTS) involving more than one perpetrator has not been applied equally and consistently. This inconsistency can be seen in the different ways of calculating and imposing fines on the perpetrators, both in the distribution of responsibility for state losses and the enforcement of additional administrative sanctions. It is due to the absence of specific rules governing the mechanism for applying fines for TBTS crimes with more than one perpetrator, even though the Harmonization of Tax Regulations (HPP) Law regulates the importance of proportional recovery of state losses. The study also emphasizes the necessity for a more integrated approach to ensure that the legal objectives of justice, expediency, and legal certainty can be effectively achieved.

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