Application of Ultimum Remedium Principle in Tax Criminal Law

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Abstract. Tax law is part of administrative law which has a coercive nature, so that law enforcement is accompanied by criminal sanctions. However, the main purpose of tax law is to obtain tax revenue, so that punishment in the form of confinement or imprisonment is not the main goal. Criminal sanctions are the last resort that becomes the ultimate weapon or ultimum remedium, so that administrative sanctions take precedence in the settlement of tax law. In Law Number 6 of 1983 concerning General Provisions and Tax Procedures as Amended Multiple times, the most recent by Law Number 11 of 2020 (UU KUP), the principle of ultimum remedium is applied to the offense of negligence, where the threat of fines and imprisonment is alternative. However, for intentional offenses, the threat of fines and imprisonment is cumulative, so it can be categorized as primum remedium. Therefore, it is necessary to examine the stages or conditions of how the ultimum remedium can be applied in tax law.

Keywords: Tax Law; Ultimum Remedium

1 Introduction

In the fields of government assistance, security, protection, and insight of life, taxes are increasingly becoming the backbone for the financing of state administration because taxes are one of the instruments of the state in completing its commitments to shield the interests of its kin as expressed in the Preamble of the 1945 Constitution (UUD 1945) passage Fourth, which states: " to secure every one individuals of Indonesia and all the autonomy and the land that has been battled for, and to work on open government assistance, to instruct the existence of individuals and to partake toward the foundation of a world request dependent on opportunity, unending harmony, and civil rights." Furthermore, Article 23A of the body of the 1945 Constitution peruses "All charges and different tolls for the necessities of the condition of a mandatory sort will be managed by law".

The tax authority is the implementation of tax jurisdiction as an attribute of the sovereignty of the state of people and objects within its jurisdiction [1]. Because of its coercive nature, although it is part of administrative law, tax law also applies criminal sanctions to violators. The criminal sanctions are applied as a continuation of administrative supervision over the implementation of the self-assessment system adopted by Indonesian tax law. The self-assessment system is carried out utilizing taxpayers calculating, paying, and reporting their

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taxes, with the goal that the public authority, for this situation, the Directorate General of Taxes (DGT), is only carrying out administration, consultation, and supervision, both administrative and criminal guidance. There are two tax functions in the country's economy, namely the budgetary (finance) and regular-end (regulation) functions [2]. The budgetary function and the regular-end tax function always go hand in hand, but the provisions of the tax legislation are more directed towards the purpose of collecting state revenues to achieve the target of state revenues as mandated in the State Revenue and Expenditure Budget (APBN).

When a criminal offense occurs, there are two settlement models, namely administrative settlement or criminal law. In practice, sometimes, there are differences of opinion in determining which settlement mechanism will be used. It happens because no article explicitly regulates the application of the ultimum remedium, so its application is highly dependent on various factors and can lead to uncertainty. Considering that tax law is a public law whose primary purpose is to obtain revenue for state finances, the priority is also on aspects of state financial interests so that the main settlement is carried out based on state administrative law.

Such a settlement places criminal law, not as the main choice, so criminal law is the last alternative (ultimum remedium). However, there are times when resolution through criminal law is necessary, particularly to protect the tax system from intentional offenses (dolus) that can result in systemic damage.

Research Question

a. Does the tax payment criminal law regulate the ultimum remedium?
b. How is the ultimum remedium applied in tax law?

2 Theoretical Foundation

Barda Nawawi Arif contends that there are two essential things in criminal law strategy utilizing criminal law instruments. The first is the thing that activities ought to be made into criminal demonstrations, and the second, what approvals ought to apply for violators.[3] Criminal law has cruel sanctions compared to other laws so it must be remembered that as a means of social control, the function of criminal law is subsidiary, meaning that criminal law should only be implemented when other efforts outside of criminal law cannot cope and are inadequate [4]. The function of criminal law is subsidiary in nature is also often referred to as the ultimum remedium or as the last drug, namely as a new drug to be used when other drugs outside of criminal law cannot be effectively used [4].

Van Bemmelen contends that what recognizes criminal law from other legitimate fields is that criminal law sanctions are the deliberate danger of affliction and frequently the inconvenience of torment, which is completed regardless of whether there are no survivors of wrongdoing. Such contrasts are the justification for considering criminal law as the ultimum remedium, in particular the last work to work on human conduct, explicitly hoodlums, just as giving mental tension with the goal that others don't perpetrate wrongdoings. The utilization of criminal law quite far is restricted in light of the fact that the assents are languishing. As such, its utilization is completed in case other legitimate assents are presently not sufficient [5].

The term ultimum remedium, as indicated by Prof. Dr. Wirjono Prodjodikoro S.H., is that standards or rules in the field of sacred law and state managerial law should initially be reacted to with regulatory authorizations, just as examples in the extent of common law should initially be reacted to with common assents. Be that as it may, provided that these managerial

and common assents are not adequate to accomplish the objective of fixing the social equilibrium, then, at that point, criminal approvals will likewise be held as the (last) or ultimum remedium [6].

The ultimum remedium will also be in direct contact with the purpose of punishment, which consists of specific prevention objectives and general prevention. General prevention aims so that people, in general, do not violate or do prohibited acts. Meanwhile, specific prevention aims to prevent criminals (dader) from repeating unlawful acts. The purpose of punishment is only so that the offender does not harm society and to frighten others not to do so. According to Beccaria, the most important thing is the impact on society. The belief is that it is impossible to escape from the punishment that should be received, as well as the loss of profits generated by the crime. However, Becaria reminded that any violence that goes beyond the limits is unnecessary because it means despotism [7].

Furthermore, if criminal law is used, the reaction to criminal law must be commensurate or proportional to what was done by the perpetrator of the crime. Against criminal acts, fair feedback must be increased [8]. In using criminal law, Nigel Walker put forward several limiting principles (the limiting principles) on the use of criminal law, namely: 1. denials ought not be remembered for the criminal law for the sole motivation behind guaranteeing that breaks of them are chatted with retributive discipline; 2. the criminal law ought not be utilized to punish conduct which safe; 3. the criminal law ought not be utilized to accomplish a reason which can be accomplished as adequately at less expense in misery; 4. the criminal law ought not be utilized assuming the damage done by the punishment is more prominent than the mischief done by the offense; 5. the criminal law ought not be utilized for convincing individuals to act in their own wellbeing; 6. the criminal law ought exclude preclusions which don't have solid public help; 7. a restriction ought not be remembered for the criminal law in the event that it is unenforceable [9].

Other than that Herbert L. Packer also proposed several criteria for the use of criminal law as a means of crime prevention, especially regarding what actions should be regulated by criminal law, namely: 1. the lead is promin; 2. ent in the vast majority's perspective on socially compromising conduct, and isn't overlooked by any huge fragment of society; 3. exposing it to the criminal approval isn't conflicting with the objectives of discipline; 4. stifling it won't hinder socially positive lead; 5. it very well might be managed through fair and nondiscriminatory authorization. 6. controlling it through the criminal cycle won't open that interaction to extreme subjective or quantitative strains; 7. there are no sensible options in contrast to the criminal approval for managing it [10].

In reality, criminal sanctions and administrative sanctions cannot be clearly distinguished so that they carry specific consequences as follows. First, according to G. Drupsteen and C.J. Kleijs Wijnnobel, the principle of priority cannot be enforced, in the sense of prioritizing law enforcement efforts through administrative law over law enforcement efforts through criminal law. Van der Bunt has shown that the nature of criminal law as an ultimum remedium has various meanings [11]. However, despite the effectiveness of sanctions and the element of imposing suffering, administrative sanctions can still be clearly distinguished from criminal sanctions. Apart from that, practical considerations also need to be taken into account, for example, the capacity/capacity of environmental law enforcement. In this regard, the limited ability/capacity to conduct investigations and prosecutions means that prioritization must be determined. According to Drupsteen and Wijnnobel, in this case, the ultimum remedium, should not be placed in the last order. Factors that determine priority setting are, among others, the seriousness of the crime, the nature/character of the crime, and the possibility of law enforcement by the government or the prosecutor's office [11].

Second, the consequence of the relative difference between administrative sanctions and criminal sanctions is that in the imposition of the two sanctions simultaneously, the principle of ne bis in idem, then, is no longer so easy to ignore or deviate by pointing to the differences in the scope of the two kinds of sanctions. It has to be looked at on a case-by-case basis. However, we cannot state that the possibility of carrying out coercive measures besides imposing criminal court decisions will be closed. The first method aims to eliminate the consequences of environmental damage, for example through orders to get rid of illegally disposed waste. The second way, adding additional suffering through the imposition of a fine or imprisonment. According to the prevailing view, the prohibition of ne bis in idem does not relate to the imposition of criminal sanctions and administrative sanctions simultaneously for the same crime. This principle applies to criminal prosecution for the second time in the same case. On the other hand, the settlement of a case through the imposition of administrative sanctions will not prevent criminal prosecution of the same case [11].

Similarly, Muladi stated that the utilization of administrative justice and criminal law would not be ne bis in idem, but that it should be done after considering the level of guilt of the perpetrator and the severity of the damage to the environment due to the crime committed. Herein lies the importance of the role of civil servant investigators (PPNS) [12]. However, according to Drupsteen and Wijnnobel, this view must be made inaccurate and a distinction based on the nature of the administrative sanctions. If this sanction is not reparative, but retributive, that is, in the sense that the sanction is punishing and inflicting suffering, then the possibility of imposing this punishment together with criminal sanctions should be closed [13]. Third, the consequence of the relative difference between administrative sanctions and criminal sanctions is that the period of case settlement and the suggestion that judges by taking into account the general principles of good governance can assess the suitability/balance between the actions committed (the criminal acts) and the sanctions to be imposed on the perpetrator [13].

However, some have a different opinion, where Alvi Syahrin argues that the ultimum remedium can be ruled out if the crime committed is a violation of subjective rights and the interests of the wider community [14]. Indeed, even in the Netherlands, the assessment that the use of criminal law is the ultimum remedium has been deserted on the grounds that it has made a debate between regulatory authorities and the public investigator regarding when to utilize the ultimum remedium (criminal law) [15].

3 Results and Discussion

3.1 Tax Criminal Law that regulates the Ultimum Remedium

When self-assessment is misused by taxpayers to evade and even evade taxes that lead to tax crimes, to overcome these irregularities, the tax authorities are also given the authority to supervise and enforce administrative law and criminal law enforcement. Although as part of administrative law, tax law is strengthened by criminal rules, which cover both criminal and sentencing matters besides the provisions on tax criminal procedural law. Commitments that are considered extreme are undermined with criminal assents[16]. Be that as it may, the lawful settlement of expense violations can likewise be settled through regulatory or ultimum remedium channels. The substance of the ultimum remedium is to utilize criminal law if all else fails, considering the severity and excesses caused by criminal law. The formulation of criminal sanctions in Article 38 of the KUP Law with an alternative 'or' clause representing

the ultimum remedium principle, while Article 39 and 39A sanctions with an 'and' clause are cumulative and a min-max clause (indefinite sentence) representing the primum remedium group (criminalization as an action of the first law enforcement).

Charge is an obligatory commitment to the state is claimed by an individual or substance that is coercive under the law, with no immediate remuneration and is utilized however much as could reasonably be expected for the success of individuals [17]. With this tax definition, it is implied that the character of the KUP Law is more likely to fulfill a budgetary function, namely as a collector of state revenues. Therefore, the application of the criminal sanctions with physical and financial impacts in the KUP Law is intended to effectively pressure taxpayers to comply with their tax obligations, not to criminalize them that disrupts the flow of revenue and the state economy. Therefore, its punishment is a last resort (last resort, ultimum remedium) to increase compliance after all administrative efforts have been ineffective.

a) Offenses in Tax Criminal Law

Tax crimes are unlawful acts, which can be grouped into three types of offenses, namely negligence (culpa/violation) and intentional (dolus/crime), and attempted (poging). The subject of tax criminal law consists of taxpayers, non-taxpayers, tax authorities, and other related third parties. Article 43 passage (1) of the KUP Law specifies that as well as being submitted by citizens (plagen or dader), tax crimes may involve participants (deelderming) such as representatives, attorneys or workers of citizens or different gatherings who request them to do as such (doen plager or mididader), who took part in submitting (medeplegen or mededader), pushed (uitlokker), or assisted in committing tax crimes (medeplichtige), this was intended to hold the perpetrators accountable [18].

1) *Delik Kealpaan* (culpa)
   Taxation offenses that include negligence are regulated in articles 38 and 41 paragraph (1) of the KUP Law. Article 38 of the KUP Law, which determines any person who due to his forgetfulness:
   a. Did not deliver the Notification Letter; or
   b. Present a Letter of Notification, yet the substance are inaccurate or fragmented or append data whose substance are erroneous to make a misfortune state income, fined something like 1 (one) times the measure of expense owed neglected or came up short on, and a limit of 2 (two) times the measure of assessment owed that isn't or come up short on, or condemned to detainment for at least 3 (90 days) or a limit of 1 (one) year.

   Article 41 passage (1) of the KUP Law: "An authority who because of carelessness doesn't satisfy the commitment to keep the issues secret as alluded to in Article 34 will be dependent upon a most extreme detainment of 1 (one) year and a greatest fine of Rp. 25,000,000.00 (25 million rupiah)."
2) Deliberate Offense (Dolus)
   Tax crimes which include intentional acts committed by taxpayers are mentioned in Article 39 of the KUP Law, which stipulates that every person intentionally:
   a. Doesn't enroll to be given a Taxpayer Identification Number or doesn't report his business to be affirmed as a Taxable Entrepreneur;
   b. Abuse or use without right the Taxpayer Identification Number or Taxable Entrepreneur Confirmation;
   c. Doesn't present a Notification Letter;
   d. Present a Notification Letter nor data whose substance are bogus or deficient;

e. Refuse to examine as referred to in Article 29;
f. Show books, records, or different reports that are bogus or adulterated as though they were valid or not address the genuine circumstance;
g. Not keeping books or records in Indonesia, not appearing or not loaning books, records, or different reports;
h. Doesn't keep books, records, or reports that structure the reason for accounting or recording and different archives including the aftereffects of information handling from electronically oversaw books or online application programs in Indonesia as alluded to in Article 28 passage (11); or
i. Not store burdens that have been kept or gathered so it can make a misfortune state income, will be rebuffed with detainment for at least 6 (six) months and a limit of 6 (six) a long time and a fine of no less than 2 (two) times the measure of assessment payable which isn't or come up short on and a limit of 4 (four) times the measure of neglected or came up short on charge payable.

Then the intentional act of a taxpayer is also regulated in Article 39A of the KUP Law, that anyone who intentionally:

a. issue nor use charge solicitations, verification of assessment assortment, confirmation of duty keeping, nor evidence of expense installment that are not founded on genuine exchanges; or
b. issues a duty receipt yet has not been affirmed as a Taxable Entrepreneur will be rebuffed with detainment for at least 2 (two) a long time and a limit of 6 (six) a long time and a fine of something like 2 (two) times the measure of expense in the assessment receipt, confirmation of duty assortment, verification of keeping charges, nor confirmation of assessment installment and a limit of 6 (six) times the measure of assessment in the assessment receipt, verification of expense assortment, verification of assessment keeping, nor proof of duty installment.

Article 41 passage (2) of the KUP Law: "An authority who deliberately doesn't satisfy his commitments or somebody who makes the authority's commitments not be satisfied as alluded to in Article 34 will be rebuffed with detainment for a limit of 2 (two) a long time and a fine of a limit of Rp. 50,000,000.00 (fifty million rupiah)."

Article 41A: Any individual who is obliged to give the data or proof mentioned as alluded to in Article 35 however deliberately doesn't give data or proof, or gives data or proof that isn't accurate, will be rebuffed with detainment for a limit of 1 (one) year and a fine of a limit of IDR 25,000,000.00 (25 million rupiahs).

Article 41B: Anyone who purposefully discourages or muddles the examination of a criminal demonstration in the tax collection area will be condemned to a greatest detainment of 3 (three) a long time and a most extreme fine of Rp. 75,000,000.00 (75 million rupiah).

Article 41C:

a. Any individual who purposefully doesn't satisfy the commitments as alluded to in Article 35A passage (1) will be condemned to a most extreme detainment of 1 (one) year or a greatest fine of Rp. 1,000,000,000.00 (one billion rupiah).
b. Any individual who deliberately causes the non-satisfaction of the commitments of authorities and different gatherings as alluded to in Article 35A section (1) will be rebuffed with detainment for a limit of 10 (ten) months or a fine of a limit of Rp.800,000,000.00 (800,000,000 rupiahs).
c. Any individual who deliberately doesn't give the information and data mentioned by the Director General of Taxes as alluded to in Article 35A section (2) will be rebuffed with detainment for a limit of 10 (ten) months or a fine of a limit of Rp.800,000,000.00

(800,000,000 rupiah).

d. Any individual who purposefully abuses tax assessment information and data in order to make misfortunes the state will be dependent upon a greatest detainment of 1 (one) year or a most extreme fine of Rp. 500,000,000.00 (500,000,000 rupiah).

3) Trial offense (poging)

Notwithstanding carelessness and purposeful, charge wrongdoing additionally incorporates a preliminary go about as controlled in Article 39 section (3) of the KUP Law where "Each and every individual who directs an endeavor to carry out a criminal demonstration misuses or uses without right the Taxpayer Identification Number or the Confirmation of a Taxable Entrepreneur as alluded to in Article in passage (1) letter b, or presenting a Tax Return nor data whose substance are inaccurate or fragmented, as alluded to in section (1) letter d, with regards to applying for compensation or performing charge pay or tax break, will be dependent upon a criminal assent. detainment for at least 6 (six) months and a limit of 2 (two) a long time and a fine of no less than 2 (two) times the measure of compensation being applied for nor pay or crediting made and a limit of 4 (four) times the measure of compensation being applied for nor pay or crediting made".

b) Legal Basis for Application of the Ultimum Remedium in Tax Criminal Law

No article explicitly states the ultimum remedium, so its application is highly dependent on various factors and can lead to uncertainty. Also, not all tax crimes can be applied to ultimum remedium. Although prioritizing the aspect of returning state losses, the termination of the investigation is not carried out for all tax crimes. For criminal acts whose subjects are not taxpayers, such as violations of Articles 41, 41A, and 41B and Article 41C, an ultimum remedium cannot be applied, because these crimes do not directly result in unpaid or underpaid tax debts or which should not be returned. However, the legal basis for prioritizing administrative law for the settlement of tax crimes can be found in Article 8 (3), 8 paragraph (4) of the KUP Law, and Article 44B of the Tax Regulation Harmonization Bill (RUU HPP) which was approved by the DPR in 2021.

In view of article 8 passage (4) of the KUP Law, assuming the citizen unveils in a different report in regards to the wrong filling of the Tax Return (SPt), depending on the prerequisite that the Director-General of Taxes has not presented a notice letter of the review results, it can adequately forestall the primer proof review from being done, which is the start of the use of criminal law. Albeit not unequivocally managed, from the definition of Article 8 section (4) of the KUP Law, the sorts of duty wrongdoings that can get the ultimum remedium are restricted to the violations alluded to in Article 38 letter b and Article 39 passage (1) letter d of the KUP Law, in particular deliberate or careless offenses for not presenting a Notification Letter or presenting a Notification Letter, however its substance are inaccurate or inadequate or joining data whose substance are erroneous.

Article 8 (3) UU KUP constitutes voluntary disclosure with criminal decriminalization with the intentional or negligent offense for not submitting a Notification Letter or submitting a Notification Letter, but the contents are unreliable or incomplete or attaching information whose contents are incorrect. The types of tax crimes that can get an ultimum remedium are also limited to the violations referred to in Article 38 and Article 39 paragraph (1) letters c and d of the KUP Law. The provisions of Article 44B of the HPP Bill are deponering of criminal prosecution, which tends to apply the principle of the ultimum remedium of tax crime. The types of tax crimes that can get an ultimum remedium on Article 44B of the KUP Law are

broader, namely the crimes referred to in Article 38 and Article 39 and Article 39A of the KUP Law, with differences in the number of administrative sanctions.

Article 44B paragraph (2) of the HPP Bill stated that "Termination of the investigation of criminal acts in the field of taxation as referred to in paragraph (1) shall only be carried out after the Taxpayer or suspect has paid:

a. misfortune on state income as alluded to in Article 38 or more authoritative authorizations as a fine of 1 (once) the measure of misfortune on state income;
b. misfortune on state income as alluded to in Article 39 or more regulatory approvals as a fine of 3 (three) times the complete misfortune on state income; or
c. the measure of assessment in the expense receipt, confirmation of duty assortment, verification of expense keeping, nor proof of expense installment as alluded to in Article 39A in addition to managerial assents as a fine of 4 (four) times the measure of duty in the assessment receipt, evidence of assessment assortment, confirmation of expense keeping, nor verification of assessment installment".

3.2 Application of the Ultimum Remedium in Tax Law

Ahmad Sofian argues that “the ultimum remedium lies in the context of punishment, not in the context of law enforcement so that the authority to use it rests with the judge, not the police or prosecutors. This principle is in the material criminal law, but its enforcement is in the courts. In contrast to the principle of legality regulated in Article 1 paragraph (1) of the Criminal Code, the ultimum remedium is not regulated in the Criminal Code, so this principle has a broader interpretation and is very flexible in its use. The judge's legal considerations are important in the application of this principle for the defendant in court, whether the defendant is given criminal sanctions or other sanctions that are more relevant in the criminal act that is prosecuted before the court" [19].

However, this opinion is within the framework of a general criminal. In the internal discussion of criminal law regarding the ultimum remedium, Prof. Topo Santoso, SH, MH, Ph.D. argues: “My assumption from the start was that this ultimum remedium has a principle that is amid morals and law, the second is that the ultimum remedium is the rule of every authoritative interaction. So how to deny criminalization or arrangement, then, at that point, the ultimum remedium turns into the benchmark, not when we authorize the law assuming the law as of now exists, the article as of now exists then the police or investigators surely can't utilize this rule” [20].

However, this tax criminal law is a special criminal law that has various deviations from general criminal law. Therefore, tax law is lex specialis, so that as long as it is related to taxes, whether formal, material, administrative or criminal, tax laws and regulations apply. In fact, according to Prof. Eddy Hiariedj the assessment criminal law meets the standards as a deliberate lex specialis on the grounds that the location is novel, specifically citizens and expense officials [21]. Therefore, the application of the ultimum remedium provisions in tax law is not always the same as the general criminal provisions, where the ultimum remedium is carried out at the law enforcement stage.

In tax criminal law, the authority to apply the ultimum remedium is carried out at the examination stage, preliminary evidence examination, and investigation stage. In tax law, it is not regulated to apply the ultimum remedium in court. At the point when the criminal case has been moved to the court, and the respondent has paid his expense commitments, in view of article 44B passage 2(b) of the HPP Bill, the settlement is only a consideration for prosecution

without being accompanied by imprisonment, not a basis for applying administrative law or the ultimum remedium. The application of the ultimum remedium in tax law is carried out on:

a. During the examination (article 8 paragraph (4) of the KUP Law).
b. When examining preliminary evidence (article 8 paragraph (3) of the KUP Law).
c. During the investigation (Article 44B of the KUP Law).

Based on research on the Tax Regulation Harmonization Bill (RUU HPP) which has been approved by the DPR, the disclosure of untruths carried out at the audit stage by taxpayers is based on Article 8 paragraph (4) of the HPP Bill: "Although the General Director of Taxes has conducted an audit, on condition The General Director of Taxes has not submitted the notification letter of the audit result, the Taxpayer with his awareness can disclose in a separate report the incorrect filling of the Tax Return that has been submitted following the actual situation, and the audit process will continue."

Based on research on the Tax Regulation Harmonization Bill (RUU HPP) which has been approved by the DPR, the disclosure of untruths carried out at the audit stage by taxpayers is based on Article 8 paragraph (4) of the HPP Bill: "Although the General Director of Taxes has conducted an audit, on condition The General Director of Taxes has not submitted the notification letter of the audit result, the Taxpayer with his awareness can disclose in a separate report the incorrect filling of the Tax Return that has been submitted following the actual situation, and the audit process will continue" [22]. Thus, in the use of article 8 paragraph (4) regarding the disclosure of untruth by the taxpayer before the issuance of the notification of the audit result, even though the audit result proves that the exposure of the untruth filling of the tax return by the taxpayer is not following the actual situation, the tax assessment letter is issued following with the concrete position plus administrative sanctions under Article 13 of the KUP Law [23]. So no more criminal sanctions are applied.

Furthermore, disclosure of untruths by taxpayers based on article 8 paragraph (3) of the KUP Law is carried out at the investigation stage. The details are as follows: “Even though the preliminary evidence examination has been carried out, the Taxpayer of his own volition can disclose with a written statement the untruth of his actions, namely as follows: doesn't present a Notification Letter; or b. present a Notification Letter whose substance are erroneous or deficient, or connect data whose substance are mistaken as alluded to in Article 38 or Article 39 section (1) letter c and letter d as long as the beginning of the examination has not been informed to the Public Prosecutor through an authority specialist of the State Police of the Republic of Indonesia. Then, at that point, in article 8 passage (3a), it is managed that "Revelation of the falsehood of the go about as alluded to in section (3) is joined by the settlement of the underpayment of the measure of expense owed alongside regulatory authorizations as a fine of (100%) of the measure of came up short on charge."

To terminate the investigation, the taxpayer shall submit a written application to the Minister of Finance with a copy to the General Director of Taxes, which is accompanied by a statement of acknowledgment of guilt and the ability to pay taxes. After receiving the request for termination of the investigation from the taxpayer, the Minister of Finance (Menkeu) then asks the General Director of Taxes (Dirjen Pajak) to conduct research and provide consideration in deciding whether the taxpayer's application can be accepted or should be rejected. If the Minister of Finance approves the taxpayer's application, the Minister of Finance will suggest a request letter to the Attorney General to stop the investigation. However, if not, the Minister of Finance will submit a notification letter to the taxpayer.

If the Attorney General approves the Minister of Finance's request to stop the investigation, the Minister of Finance immediately submits the notification to the General Director of Taxes that instructs the Taxpayer to disburse the settlement guarantee in the form

of an escrow account using a tax deposit. After the Minister of Finance receives the tax payment letter, the Minister of Finance will notify the Attorney General of the settlement as a condition for stopping the investigation. Then the Attorney General issues a Decision on Termination of Investigation (SKP2) no later than a half year from the date of the solicitation letter from the Minister of Finance.

4 Conclusion and Suggestion

4.1 Conclusion

a. Ultimum remedium is a settlement that places criminal law, not as the primary choice, so criminal law is the last alternative. In the event that these managerial and common approvals are not adequate to accomplish the objective of fixing the social equilibrium, then, at that point, criminal assents will likewise be held as the (last) or ultimum remedium. Tax criminal law regulates the ultimum remedium in the article:
    1. Article 8 (3) of the KUP Law, for criminal acts regulated in Article 38 or Article 39 paragraph (1) letter c and letter d of the KUP Law.
    2. Article 8 paragraph (4) of the KUP Law on criminal acts regulated in Article 38 letter b or Article 39 paragraph (1) letter d of the KUP Law.
    3. Article 44B of the HPP Bill on criminal acts regulated in Articles 38, 39, or Article 39A of the KUP Law.
b. The application of the ultimum remedium in general criminal law lies in the context of punishment, not in the context of law enforcement so that the authority to use it rests with the judge, not the police or prosecutors.
    1. However, criminal tax law is a special criminal law that has various deviations from general criminal law, so that as long as it is related to taxes, both formal, material, administrative and criminal, tax laws and regulations apply.
    2. According to Prof. Eddy Hiariedj, the tax criminal law meets the criteria as a systematic lex specialis because its address is unique, namely taxpayers and tax officers. Therefore, the application of the ultimum remedium provisions in tax law is not always the same as the general criminal provisions, where the ultimum remedium is carried out at the law enforcement stage.
3. The application of the ultimum remedium in tax law can be carried out when:
    a. During the examination (article 8 paragraph (4) of the KUP Law).
    b. When examining preliminary evidence (article 8 paragraph (3) of the KUP Law).
    c. During the investigation (Article 44B of the KUP Law).

4.2 Suggestion

With the approval of the HPP Bill by the DPR, the application of the ultimum remedium becomes more expanded, so that it covers the criminal acts regulated in articles 38, 39, and 39A of the KUP Law. However, there are still several articles that have not been regulated to apply the ultimum remedium, namely articles 41, 41A, 41B, and 41C of the KUP Law, taking into account the level of system damage due to the crime and the value of the administrative sanctions that will be applied. Specifically, Article 41 of the KUP Law which complaints offense by a person whose confidentiality is violated, can be applied to mediation.

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