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Corporate Criminal Liability in Indonesian Tax Crimes: A Study of the Gap Between Legal Norms and Enforcement Practices

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Abstract: This research is motivated by the limited application of corporate criminal liability in tax crimes in Indonesia, despite the clear existence of legal provisions governing such liability. This condition reveals a significant gap between legal norms and enforcement practices, where criminal sanctions are more frequently imposed on individual executives rather than on corporations as legal entities. The purpose of this study is to analyze the factors that hinder the implementation of corporate criminal prosecution in tax crimes and to examine the role of the new Indonesian Criminal Code as a momentum for criminal law reform. The research employs a normative juridical method by reviewing relevant legislation, legal doctrines, academic literature, and judicial decisions. The findings indicate that the main obstacles to imposing criminal liability on corporations do not stem from the absence of legal basis but from the dominance of administrative approaches in the General Taxation Provisions and Procedures Law, doctrinal barriers arising from classical criminal law principles such as *nulla poena sine culpa*, and the reluctance of law enforcement officials to treat corporations as the principal perpetrators of tax crimes. The study concludes that the effectiveness of corporate criminal prosecution depends largely on political will, paradigm shifts among law enforcement institutions, and judicial consistency in applying substantive justice. Furthermore, the research emphasizes the need for clear technical guidelines and strong institutional coordination, with the new Criminal Code serving as a strategic opportunity to strengthen deterrence, ensure fiscal justice, and enhance the integrity of Indonesia's tax law enforcement system.

Keywords: corporate criminal liability, tax crime, Indonesian Criminal Code, criminal law principles, law enforcement

INTRODUCTION

The tax sector in Indonesia plays a strategic and vital role in supporting the national economy and development. The tax sector contributes over 70 percent of routine government revenue (Ministry of Finance, 2013). This significant contribution makes the integrity of the tax system a primary prerequisite for the country's fiscal stability. Therefore, any action that

reduces state tax revenues, including tax crimes, not only results in significant financial losses but also has the potential to disrupt national economic stability.

With the development of the modern economic system, corporations play a crucial role in economic and tax activities. However, as legal entities, corporations also open up opportunities for abuse, including tax crimes. Practices such as financial statement manipulation, the use of fictitious tax invoices, and fraudulent restitution claims are often conducted using corporate organizational structures (Dewa & Tanudjaja, 2024). Ironically, even though violations are committed in the name of or through corporate structures, criminal prosecution for tax crimes is almost always directed at individual managers, while the corporate entity itself is rarely subject to criminal prosecution.

Legally, the basis for criminalizing corporations is already well established. The General Provisions and Tax Procedures Law (UU KUP), through Articles 38, 39, and 39A, has opened the door to criminalizing corporations. These articles state that criminal sanctions apply to "every person." The phrase "every person" is broadly interpreted to include corporate taxpayers, as corporations hold rights and obligations in the tax sector. The Supreme Court reinforced this interpretation through Supreme Court Circular Letter (SEMA) No. 4 of 2021, which affirms that "Every person in the Law on General Provisions and Tax Procedures is defined as both individuals and corporations. Individuals and corporations may be held accountable for tax crimes." Therefore, legally, there is no legal obstacle to making corporations subject to tax crimes. However, in practice, law enforcement still tends to emphasize sanctions against individual managers, rather than corporations as legal entities.

The enactment of the New Criminal Code (KUHP) through Law Number 1 of 2023 brings new hope. The New Criminal Code explicitly regulates corporations as subjects of criminal law and provides for a wider range of sanctions, including confiscation of profits, freezing of businesses, revocation of permits, and even dissolution. The provision is expected to strengthen the role of criminal law in prosecuting corporations committing tax crimes (Maris, A.W., 2024).

The limited criminalization of corporations for tax crimes creates a gap between legal norms and the reality of implementation. When entities that profit from crimes are not prosecuted, the deterrent effect of criminal law is weakened. Individual management can be easily replaced, while the financial profits obtained from the crimes remain with the entity (Isa et al., 2025).

Based on these conditions, academic and practical issues arise regarding why the criminalization of corporations for tax crimes remains so minimal, despite a clear legal basis. To answer this question, this study uses the theoretical approach of corporate criminal liability, the principles of criminal law, and relevant legal doctrines.

Academically, this research is expected to contribute to the development of literature on corporate criminal liability in the context of Indonesian tax law, a field that has been relatively limited in scope (Mardani, 2019). The novelty of this research lies in its comprehensive analysis of the gap between legal norms and their implementation, highlighting the role of legal reform through the new Criminal Code. Thus, this research not only contributes to strengthening academic discourse on corporate criminal law but also offers practical implications for efforts to strengthen the national tax system.

METHOD

This research employs a normative juridical method, namely legal research that focuses on the analysis of positive legal norms, legal principles, and legal doctrines applicable in the Indonesian legal system (Soekanto & Mamudji, 2020). The research includes primary legal materials in the form of the Law on General Provisions and Tax Procedures (UU KUP), Supreme Court Circular Letter Number 4 of 2021, and the New Criminal Code (KUHP),

namely Law Number 1 of 2023. In addition, secondary legal materials are used in the form of court decisions, academic literature, and previous research results from both national and international sources.

The main instrument in this research is the analysis of legal documents (document study) using three legal approaches: the statute approach, the case approach, and the conceptual approach. These three approaches are used to examine the consistency of the application of legal norms and their relevance to the principle of corporate criminal liability in tax crimes.

Data collection was conducted through a literature review by searching, reading, and analyzing relevant laws and regulations, court decisions, and scientific literature. The research stages included identifying legal materials, categorizing and organizing data, analyzing legal norms and doctrines, and drawing conclusions based on the analysis.

Data analysis was conducted qualitatively using descriptive-analytical methods, interpreting legal norms, examining criminal law principles and theories, and comparing the application of law in judicial practice. Data validity was maintained through cross-checking of primary and secondary legal materials and academic doctrines to ensure the validity and reliability of the research results.

The limitations of this research lie in the limited empirical data available in the field, as it focuses on the normative and doctrinal aspects of law. However, the methodological approach used allows for the replication of this research by other researchers following the same stages and analytical framework.

RESULTS AND DISCUSSION

The discussion on corporate criminal liability in tax crimes begins with the understanding that the existence of corporations as subjects of criminal law in the Indonesian legal system is no longer a theoretical debate. The main problem lies not in recognizing corporations as legal subjects, but rather in how these norms are translated into law enforcement practices, particularly in the context of providing evidence and the courage of law enforcement officials to identify corporations as the primary perpetrators of tax crimes. In other words, the primary challenge lies not in the normative text, but in the practical and structural dimensions of law enforcement.

Characteristics of Administration in the KUP Law

The General Provisions and Tax Procedures Law (UU KUP), as amended several times, regulates tax crimes through Articles 38, 39, and 39A. These provisions outline actions that are subject to criminal sanctions, such as failing to submit a Tax Return, providing false information, or other actions that result in state losses.

Although the Law on General Provisions and Tax Procedures (UU KUP) contains provisions for tax crimes, the approach used in the Law is more administrative than criminal. The is evident in Article 7 of the Law on General Provisions and Tax Procedures (UU KUP), which stipulates administrative fines for late submission of Tax Returns (SPT); Article 8 paragraphs (2) and (3) of the Law on General Provisions and Tax Procedures (UU KUP), which provide taxpayers with the opportunity to correct their Tax Returns with the imposition of interest penalties; and Article 9 paragraph (2a) of the Law on General Provisions and Tax Procedures, which imposes interest on late tax payments.

This administrative character is further strengthened by Article 44B of the Law on General Provisions and Tax Procedures, which authorizes the Minister of Finance to terminate investigations into tax crimes if the taxpayer pays the state losses and administrative penalties. This provision demonstrates that the primary paradigm of the KUP Law emphasizes the recovery of state losses (the fiscal restorative aspect) over criminal

penalties. Data from the 2024 Directorate General of Taxes Performance Report shows that 86 (eighty-six) tax crime case files have been declared complete (P-21), and 26 (twenty-six) investigation files have been discontinued based on Article 44B of the KUP Law (DGT, 2025).

This administrative approach is also influenced by the self-assessment system, in which taxpayers are given full trust to calculate, pay, and report their tax obligations. Therefore, violations of tax obligations are more often considered a form of administrative non-compliance that can be corrected through corrections and administrative sanctions, rather than crimes that must be punished.

From a legal effectiveness perspective, the administrative approach in the KUP Law aims to maintain the stability of state revenues and encourage voluntary compliance. However, in the context of systematic corporate crime that causes significant losses to the state, this approach becomes inadequate. The lack of firmness in criminalizing corporations weakens the deterrent effect and opens up opportunities for corporations to repeat similar violations (Wijaya & Boediningsih, 2025).

Doctrinal Obstacles of Criminal Law Principles

In the application of criminal liability to corporations, several classical criminal law principles pose fundamental challenges:

First, the principle of ultimum remedium, which places criminal sanctions as a last resort, has influenced the legal authorities' perspective on enforcing criminal sanctions for tax violations. This principle aligns with the administrative approach of the KUP Law, which states that criminal sanctions are only used when administrative instruments can no longer address violations (Tirtawati & Pujiyono, 2021). As a result, corporate tax crimes are rarely prosecuted through the criminal process.

Second, the principle of nulla poena sine culpa (no punishment without fault) poses a serious problem. This principle emphasizes that punishment can only be imposed if there is fault (schuld) on the part of the perpetrator. For individuals, fault can be intentional (dolus) or negligent (culpa). In corporations, culpability is more difficult to determine because decisions are collective. Law enforcement officials often struggle to find evidence that directly connects individual malice to corporate policy or culture, especially if the corporation is immense and decentralized (Margareta & Tanudjaja, 2024). This difficulty in proving corporate mens rea makes it safer for law enforcement officials to only prosecute individual managers whose mens rea is easier to prove.

Third, the principle of proportionality, which states that the punishment imposed must be proportionate to the fault and actions of the perpetrator. Imposing severe penalties on corporations is feared to disrupt the economy, and the impact of criminal penalties is felt not only by the corporation itself but also by employees, creditors, or third parties not involved in the crime (Kristian, 2023). These considerations make law enforcement more cautious, even reluctant, in imposing penalties on corporations.

Fourth, the principle of legality *(nullum crimen, nulla poena sine lege*) demands clarity in criminal norms. The term "every person" has indeed been expanded by the explanation of the KUP Law and reaffirmed by SEMA Number 4 of 2021 to include both individuals and legal entities. However, the lack of technical guidelines on how corporations should be prosecuted has led authorities to be more cautious and ultimately prefer to prosecute individuals (Kurniawan & Hapsari, 2022). This situation ultimately gives rise to a violation of the principle of equality before the law, because in practice, corporations often escape criminal prosecution, while individual managers are made scapegoats.

Theory of Corporate Criminal Liability

In modern criminal law doctrine, several theories of corporate criminal liability have developed. Various theories have been put forward to explain how fault *(mens rea)* and criminal acts *(actus reus)* can be attributed to the abstract, inanimate entity of a corporation.

First, the identification theory, or the doctrine of direct criminal liability, for example, considers the actions of directors or managers to be corporate acts (Moeljatno, 2008). In the tax crimes, this theory is essential for proving offenses that require "intentional" (Articles 39 and 39A of the KUP Law). For example, if the president, director or manager instructs the use of fictitious tax invoices, the criminal act and intent are legally identified as corporate acts. This theory is widely used in Indonesian legal practice, although its weakness is its narrow scope, as it only emphasizes top management.

Second, the vicarious liability theory, or the doctrine of vicarious criminal liability, is broader because it allows corporations to be held responsible for the actions/misconduct of their employees as long as they occur within the scope of their employment (Kurniawan & Hapsari, 2022). This theory is relevant in the tax context because it often involves the manipulation of financial reports or filing fictitious restitution claims by employees, but in the name and for the benefit of corporations. Therefore, these individual errors can be classified as corporate errors.

Furthermore, the strict liability theory, or the doctrine of strict criminal liability under the law, stipulates that under certain circumstances, proof of the element of fault (mens rea) is not required if the law explicitly states that an action constitutes a crime. This theory facilitates the prosecution of corporations that commit systematic administrative violations, such as failing to submit tax returns or submitting false data, without proving individual malice. The application of this theory is considered effective in the context of the KUP Law, which emphasizes formal compliance with reporting obligations (Isa et al., 2025).

As a correction or response to the limitations/weaknesses of identification theory, aggregation theory was developed. This theory holds that corporate errors are the cumulative result of the actions, knowledge, and negligence of a number of individuals within the organization (Arief, 2016). In other words, it is not necessary for a single individual to possess all the elements of wrongdoing; it is sufficient for various elements of wrongdoing, spread among employees, managers, and administrators, to collectively constitute corporate wrongdoing. In tax practice, tax manipulation schemes often involve more than one actor. When these actions are combined, they constitute overall corporate wrongdoing.

Finally, corporate culture theory emphasizes that an organizational culture that encourages or permits violations can form the basis for corporate liability. This theory is the most progressive and focuses on the organizational system itself, not just individuals. The theory argues that corporations are responsible if criminal acts occur due to internal cultures, policies, or procedures that explicitly encourage, ignore, or even reward illegal behavior or non-compliance. This culture or system is the basis for corporate wrongdoing. In the context of tax practice, if a company develops an internal strategy/culture to minimize its tax liabilities by violating the law, then this culture can form the basis for criminal prosecution. Thus, corporate wrongdoing is not solely measured by individual actions, but rather by the system and values established by the company itself (Dewa & Tanudjaja, 2024).

These five theories demonstrate that, under modern doctrine, there is no longer a legal justification for avoiding corporate criminalization. However, while these theories have provided a strong foundation, their availability in the academic realm has not been fully internalized in the practice of tax law enforcement in Indonesia. Paradigm reform and consistency in enforcement are still needed.

Jurisprudence and Innovation

In practice, most tax crime cases punish individual managers without imposing criminal penalties on the corporation. It is apparent in several court decisions. In Sampit District Court Decision No. 56/Pid.Sus/2021/PN.Spt, the director of PT. Shireen Jaya was convicted for using fictitious tax invoices, but the corporation was not named a defendant. A similar pattern was seen in the Supreme Court (MA) Cassation Decision No. 1519 K/PID/2012 dated June 13, 2013, where the manager was convicted, while the company remained evaded.

However, despite the tendency to punish individuals, Indonesian legal history has recorded important precedents demonstrating the absence of legal barriers to criminalizing corporations. A notable example is the Asian Agri Group case (Supreme Court Decision No. 2239 K/Pid.Sus/2012). In this tax evasion case involving 14 corporations, the Supreme Court explicitly linked the will of the individual managers to the corporate entity. The dominant legal consideration is that actions by management taken for and on behalf of a corporation must be considered intentional (mens rea) by the corporation itself (Sibarani & Rozah, 2016). This Supreme Court decision confirmed the application of the identification doctrine. The legal consequence is the imposition of a substantial fine, in accordance with Article 43 of the KUP Law.

Another precedent in which a corporation was named a defendant is the West Jakarta District Court Decision No. 334/Pid.Sus/2020/PN Jkt.Brt, which found the defendant PT. Gemilang Sukses Garmindo was guilty of committing a tax crime and was imposed a fine on PT Gemilang Sukses Garmindo.

These cases demonstrate that there are no legal obstacles to naming corporations as defendants in tax crimes. However, the number of decisions that only convict management without affecting the corporation is significantly higher than those that impose sanctions on the entity. Unfortunately, recent quantitative empirical data indicating the number of tax crime decisions that only convict management is not yet publicly available.

Thus, although legal norms and jurisprudence have allowed for corporate criminal liability, the practice is still insufficient, and the majority of tax criminal sentences are still directed at individual managers: a condition that indicates a failure to substantively implement the principle of equality before the law.

Opportunities for Reform Through the New Criminal Code (Law No. 1 of 2023)

Criminal law reform through the New Criminal Code provides crucial momentum to address this gap. The New Criminal Code explicitly and in more detail regulates corporations as subjects of criminal acts. This provision emphasizes that corporations can be held criminally responsible directly, not solely through individuals representing them. Furthermore, the New Criminal Code facilitates the proof of corporate wrongdoing by incorporating modern theories such as corporate culture theory and aggregation theory, which allow for the determination of corporate culpability without having to rely entirely on proving malicious intent (mens rea) on the part of individual managers (Setiawan & Said, 2024).

Furthermore, Article 45 of the New Criminal Code emphasizes that corporations can be subject to criminal sanctions if the crime is committed by a person in a functional capacity within the corporation, whether acting on behalf of, for the benefit of, or due to the corporation's negligence (Aryaputra & Triwati, 2024). This provision demonstrates that the functional relationship between the physical perpetrator and the corporation provides a legitimate basis for imposing criminal liability.

The New Criminal Code also implicitly strengthens the functional perpetrator principle, which places the actions of a person working within or for the benefit of a corporation as legal acts of the corporation itself if carried out within the scope of its functions, duties, or authority (Lubis, 2019). This principle establishes the functional relationship between the

physical perpetrator and the corporate entity as the basis for criminal liability, allowing the corporation to be held directly responsible for criminal acts committed by its managers or employees. This principle provides a crucial foundation for strengthening the effectiveness of corporate criminalization in Indonesia, particularly in the tax sector, where violations often occur systematically and are structured within the corporate organizational framework.

Thus, the New Criminal Code not only recognizes corporations as punishable entities but also provides a clear legal basis for consistently applying the functional perpetrator principle in various cases, including tax violations. This reform represents a crucial step for the Indonesian criminal justice system to uphold tax justice, strengthen corporate accountability, and eliminate legal loopholes that have allowed corporate perpetrators to frequently escape punishment.

Implementation Challenges

Although legal norms exist, jurisprudential precedents have been established, and academic doctrines provide various theories to address the challenges of corporate mens rea, judicial practice in Indonesia still exhibits a tendency to be cautious. Law enforcement officials often choose administrative rather than criminal channels in resolving tax crimes (Putra et al., 2024). This phenomenon demonstrates a clear gap between norms, doctrine, and practice.

Normatively, the Indonesian criminal law framework does recognize corporations as subjects of criminal offenses. However, the greatest challenge lies not in the text of the law or regulations, but rather in the mentality and political courage of law enforcement officials. Law enforcement officials must be willing to move beyond their comfort zone of ultimum remedium and administrative resolutions. They must have the courage to name corporations as the primary defendants in cases proven to be systematic, rather than simply using them as a legal shield that could compromise management (Permata Mariza, 2024).

Furthermore, the implementation of criminal tax liability for corporations will not be effective without technical guidelines explaining the mechanisms for proving corporate wrongdoing that can serve as operational references in the field. These guidelines must integrate theories of corporate criminal liability (aggregation, corporate culture) into investigative and prosecution procedures. Without technical clarity, law enforcement officials will revert to the safest and easiest approach, namely, criminalizing individuals. It is supported by Hakim & Hadrian (2022), who asserted that a fundamental weakness in enforcing criminal penalties against tax corporations is the difficulty in identifying the element of fault (mens rea) in non-human entities, leading law enforcement to shift the burden of punishment to the individual perpetrators.

These two aspects are interrelated and demonstrate that the primary problem lies not only in normative weaknesses but also in the structural and cultural dimensions of corporate criminal law enforcement in the tax sector.

In the tax context, implementation must be accompanied by strengthened cross-institutional cooperation, particularly between the Directorate General of Taxes and the Attorney General's Office. This collaboration can ensure that systematic tax crimes committed by corporations do not end with merely administrative resolution, but can proceed to criminal proceedings if elements of intent and significant state losses are found.

Therefore, strengthening the national tax system is measured not only by the amount of state revenue, but also by the fairness and effectiveness of its law enforcement. If corporations, as the primary perpetrators of tax crimes, continue to escape substantive criminal sanctions, tax criminal law will lose its relevance and credibility as an instrument of social control (Putra et al., 2024)

CONCLUSION

This study concludes that the limited application of criminal liability to corporations in tax crimes in Indonesia is not due to a lack of legal basis, but rather to the dominance of administrative approaches, doctrinal constraints on classical criminal law principles, and the structural hesitation of law enforcement officials to position corporations as the primary perpetrators of tax crimes. Although the General Provisions and Tax Procedures Law (UU KUP) and Supreme Court Circular Letter Number 4 of 2021 explicitly recognize corporations as subjects of criminal law, enforcement practices still focus on individual managers, creating a gap between legal norms and their implementation.

The enactment of the New Criminal Code (KUHP) presents an important opportunity for reform to close this gap. By affirming corporations as subjects of criminal law and adopting modern theories such as corporate culture theory and aggregation theory, the New KUHP expands the basis for proving guilt (mens rea) and emphasizes the functional perpetrator principle as the legitimate basis for corporate criminal liability. These reforms represent a crucial step towards fairer and more effective tax law enforcement.

The findings of this study emphasize the need for operational technical guidelines governing the mechanism for proving corporate wrongdoing, as well as institutional synergy between the Directorate General of Taxes and the Attorney General's Office in handling systematic tax cases. Strengthening the application of criminal penalties to corporations will strengthen the deterrent effect, ensure fiscal justice, and maintain the integrity of the national tax system. Academically, this study contributes to the enrichment of the literature on corporate criminal law in Indonesia, while also emphasizing that effective tax law enforcement requires institutional courage and normative consistency.

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