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Comparison of Digital Tax in Indonesia and Singapore on Tax Criminal Law Enforcement: A Review of the Ultimum Remedium Principle

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Abstract

In the journey towards digital transformation, the tax sector has come under the spotlight. Digital tax, through the Core Tax Administration System (CTAS) has emerged as a key pillar in this transformation effort, promising unprecedented efficiency in tax administration. However, behind this promise of efficiency, there are pressing questions about legal fairness, especially in the context of tax criminal law enforcement, and to what extent we can compete with Singapore's Digital Tax. This research aims to explore the profound implications of CTAS digitization on tax criminal law enforcement, with a particular focus on the Ultimum Remedium principle, when compared to Singapore. This principle emphasizes that criminal law enforcement should be the last resort after all alternative remedies have been explored. Using a normative approach, this research will explore how the digitization of CTAS affects tax law enforcement practices, identifying the challenges, opportunities, and impacts that arise. Through in-depth interviews with legal experts, tax practitioners, and tax authority representatives, data will be analyzed to understand the extent to which the Ultimum Remedium principle remains relevant in the digital era. The hope is that this research will not only provide new insights into the dynamics of the relationship between technology and law, but will also provide a foundation for policymakers to maintain the right balance between administrative efficiency and legal fairness compared to Singapore in the context of tax law enforcement in the digital era.

Keywords

Core Tax Administration System, Ultimum Remedium, Tax Crime

Introduction

1. Background

With the development of technology, massive information, it is inevitable that we all have to follow the changing social and cultural technological transformations and if we do not adapt then we cannot compete with Singapore or with other countries, including with economic fiscal policy in general, and taxation in particular, therefore we are required to improve the tax digitalization system so that we will be able to become an independent country in carrying out economic development, meaning that we do not rely on foreign debt, but are sufficiently fulfilled from the proceeds of tax revenue to taxpayers in our country. Therefore Indonesia conducts massive tax reform digitally by using the Digitalization of the Core Tax System (CoreTax) is needed to support Tax Compliance¹.

Digitalization of the tax administration system is a key pillar in maintaining a country's financial stability. With the digitization of taxation, the Core Tax Administration System (CTAS) is at the core and enables countries to manage and monitor tax collection more efficiently and effectively. CTAS enables the government to ensure taxpayer compliance, minimize tax leakages, and optimize tax revenues that are considered vital for the provision of public services and economic development.

Criminal law enforcement in the context of taxation has an important role in ensuring that tax rules and regulations are strictly adhered to. Criminal taxation aims to provide fair sanctions and provide a stimulus for taxpayers to comply with their obligations in a correct and timely manner. The legal basis of tax criminal law enforcement is the principle of "Ultimum Remedium" which means that criminal law enforcement must be the final step after various efforts to resolve tax violations have been carried out. This principle indicates that before using criminal sanctions, the state must ensure that lighter or alter-native legal actions have been pursued first.

The Singapore Government, on the other hand, is well aware of the reciprocal influence between tax laws and technology, and has made many amendments to its tax laws to respond to technological developments over the years, across various tax types. The use of tax incentives to encourage technology development and adoption in Singapore has also been in place since the early years of Singapore's history. While many of Singapore's tax law changes are driven by

¹ Minister of Finance Regulation No. 197/PMK.03/2007 Article 1 explains that what is meant by taxpayers with certain criteria, hereinafter referred to as compliant taxpayers, are taxpayers who meet the following requirements: On time in submitting Tax Return; Has no tax arrears for all types of taxes, except tax arrears that have obtained permission to install or postpone tax payments; Financial Statements audited by a Public Accountant or government financial supervision institution with an un-qualified opinion for 3 (three) consecutive years; and Has never been convicted of a criminal offense in the field of taxation based on a court decision that has permanent legal force within the last 5 (five) years.

domestic factors, Singapore's status as a country with a small domestic market and a very open economy also means that on many occasions, its actions are largely a response to global developments. This is particularly evident in the area of international taxation, where major reforms to the international taxation system have recently been undertaken.

Currently, the legal basis for law enforcement on taxpayer non-compliance is Articles 38, 39, 43, 44 of Law Number 7 of 2021, Harmonization of Tax Regulations, in my opinion a vague norm that causes vagueness of norm, where this becomes a normative legal issue in this study. So that from the description above, it will raise legal problems about what is *Ultimum Remedium* in the Tax Criminal Context? And how the *Ultimum Remedium* principle can be interpreted and applied in the context of tax criminal law enforcement, and whether our country's taxation can compete with Singapore in order to attract investors. In addition, are there cases where criminal sanctions are seen as not in line with this principle. With the implementation of the digitalization of the Core Tax Administration System (CTAS) and the enforcement of tax criminal law based on the *ultimum remedium*, I will conduct an analysis based on the philosophical point of view, including the point of view of ontology, epistemology, and axiology.

Ontology refers to understanding the nature and reality of entities such as data, technology, and legal entities in that context. By understanding ontology from this perspective, we can explore the issues that arise in the application of technology in law and administration. The relevant aspect of epistemology is the extent to which technology influences knowledge: Digitization of CTAS introduces new technology into the tax law enforcement process. Epistemology will explore how the use of these technologies affects the way we acquire, understand and verify data and knowledge. It also includes consideration of how technology can facilitate or limit access to knowledge and information. Furthermore, the axiological aspect highlights the moral and ethical values involved in the use of these technologies. Some relevant axiological considerations are as follows:

First, the Balance Between Efficiency and Fairness: Axiology also highlights the importance of striking a balance between efficiency in tax administration and fairness in law enforcement. While the digitization of CTAS can improve efficiency in tax data collection and analysis, it is necessary to ensure that there is no sacrifice to the principles of fairness and balance of power; second, Justice: Axiology highlights the importance of fairness in tax law enforcement. In this regard, the use of CTAS should ensure that all taxpayers are equal. This includes ensuring that there is no abuse of power in the collection and use of tax data; third, Transparency and Accountability: It is important for CTAS systems to have an adequate level of transparency, so that legal decisions and tax enforcement actions can be understood and accessed by all parties

involved. Accountability is also an important value for which the use of CTAS can be held accountable in the event of ethical or legal violations.

With the CTAS, legal certainty will be supported, which means that the law or regulation once enacted can be implemented with certainty by the government. Legal certainty requires firmness in legal regulations and consistency in law enforcement by its apparatus. This means that every individual has the right to demand a fair application of the law and any violation of the law must be dealt with appropriate sanctions, (Magnis-Suseno, 1988: 79)². Meanwhile, tax law enforcement in Indonesia (see figure: 1) can be described as follows:

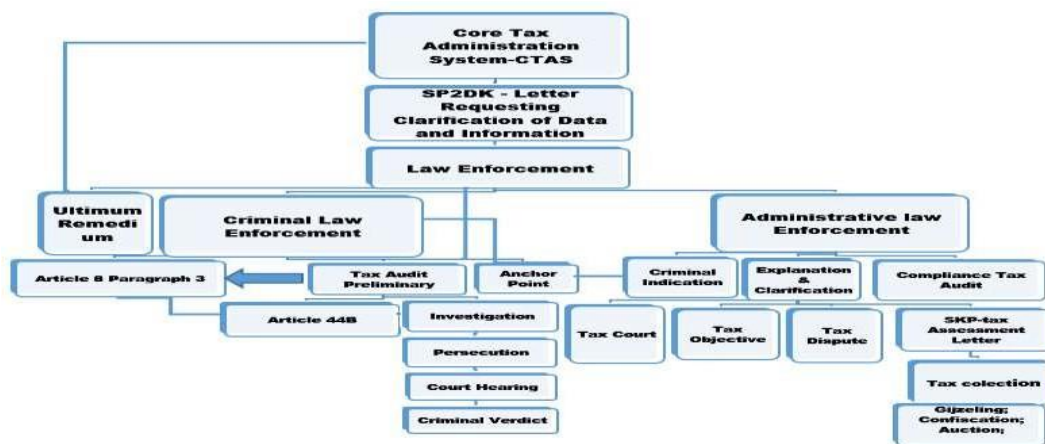


Figure 1. Tax Law Enforcement in Indonesia

2. Problem formulation

The problems in this research are: How is the Comparison of Tax Law Digitalization between Indonesia and Singapore; How the implementation of Core Tax Administration System (CTAS) Digitalization can be optimized to strengthen tax criminal law enforcement by considering the Ultimum Remedium principle; How is the Taxpayer's Responsibility through the Ultimum Remedium principle for Tax Crimes in the Context of the Use of CTAS.

3. Theoretical Foundation

3.1 Digitalization of Taxation in Singapore

Therefore, international pressure is mounting to reach a global agreement that reflects the principle of value creation in the context of the digital economy. So to address this challenge, many countries are working with the OECD to come up with a global consensus approach on the

² Magnis-Suseno, Franz, (1988), Power & Morals, Publisher: Kanisius, 1988 Yogyakarta.

taxation of the digital economy. This process involves negotiations between OECD member countries to reach agreement on common principles that will govern the taxation of the digital economy in a fair and consistent manner across the world. The aim is to avoid the proliferation of unilateral DST and create a framework that can be widely accepted by all parties involved. Such a global agreement is expected to reduce trade tensions and create legal certainty for multinational companies operating in multiple jurisdictions.

3.1.1 Singapore Legal System

The legal system used by Singapore is a mixture of Common Law and Code Law, with a strong influence from the English legal system. As such, it is often referred to as a "mixed legal system".

Which is a relic of the English legal system. This is mainly due to the colonial period under British rule. However, its legal system also includes aspects of customary law, Islamic law, and Hindu law. Singapore's legal system covers three main domains: contract law, civil law, and criminal law.

The Supreme Court of Singapore is the highest body in the judicial hierarchy, and the Singapore Civil and Criminal Codes form the backbone of its legal system. Singapore also has strict regulations regarding criminal law, including the death penalty for serious crimes such as drug trafficking.

3.1.2 International Tax and the Digital Economy

The digital economy has resulted in changes to business models that challenge the fundamental assumptions on which international tax law is based. The general objective of international taxation is to equitably allocate taxing rights between jurisdictions and the guiding principle is that profits should be taxed in the jurisdiction where economic activity occurs and where value is generated (the "*value creation principle*")³. Prior to the emergence of the digital economy, existing regulations relating to transportation, income characterization and data taxation could generally be said to have been designed in line with the *value creation principle*⁴.

However, as digitalization changes traditional business models, these rules are increasingly out of line with the principle of value creation. With respect to *nexus*, existing regulations place a heavy emphasis on physical presence in a jurisdiction, thus failing to recognize the fact that the digital economy has enabled many businesses to operate remotely, without the need for

³ OECD, Action 1: Final Report 2015 - Addressing the Tax Challenges of the Digital Economy (OECD) (2015), paragraph 249. There is some debate as to what exactly "value creation" means and the principle is not without its critics.

⁴ Although this system is far from perfect, the BEPS Project is needed.

infrastructure in the market jurisdiction⁵. Regarding the characterization of the *nexus*⁶, new revenues, business models and products create uncertainty as to the proper characterization of the payment, even though many of these products serve a similar function, albeit with different delivery methods⁷.

In addition, as data grows in importance, there is a growing need to develop a fair and coherent taxation framework. It can be difficult to identify where economic activities occur and value is created along the data value chain, leading to problems in determining the appropriate allocation of taxable income⁸.

3.1.3 Income Tax and the Digital Economy

While the concept of "source" is broader than that of Permanent Establishment (PE), some of the issues that arise in the context of inter-national tax law and digitization also apply here. Physical presence in Singapore is not necessary to consider business income as "sourced" in Singapore, but certainly the determination of "source" of income may be affected when more production, marketing and distribution functions are performed remotely, from outside Singapore, using digital technology. Singapore's approach to adapting income tax to the digital economy has largely been to provide guidance on how existing taxation principles can be applied to digital economy business activities, rather than creating specific legislation to address such cases⁹.

3.1.4 GST Digital (Good and Service Tax)

In Singapore, GST is generally applied to two types of situations. First, the GST is applied to sales of goods and services made in Singapore by parties registered as tax collectors¹⁰. Under Section 8(2) of the Act, *the*¹¹ tax object is an individual who is registered for GST and has reached

⁵ OECD, Action 1: Final Report 2015 - Addressing the Tax Challenges of the Digital Economy (OECD) (2015), paragraph 378.

⁶ In the context of international taxation, "nexus" refers to the connection or relationship between a company or individual and a particular jurisdiction that gives rise to tax liability in that jurisdiction. Nexus is typically used to determine whether an entity has sufficient nexus or presence in a particular country or region that the tax subject must comply with tax regulations there. For example, the presence of a branch office, product sales, or other significant activities can create nexus and trigger tax liability in that jurisdiction.

⁷ OECD, Action 1: Final Report 2015 - Addressing the Tax Challenges of the Digital Economy (OECD) (2015), paragraph 380.

⁸ OECD, Action 1: Final Report 2015 - Addressing the Tax Challenges of the Digital Economy (OECD) (2015), paragraph 379.

⁹ For more on this, see Vincent Ooi, "Adapting Taxation for the Digital Economy in Singapore" (2021) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3775396. See also Inland Revenue Authority of Singapore ("IRAS"), IRAS e-Tax Guide: "Income Tax Guide on E-Commerce" (published on August 18, 2021). 2015

¹⁰ Francesco Cannas, "What Singapore Can Learn from the New Trend of VAT/GST Taxation on B2C Digital Supply Worldwide" (2016) *International VAT Monitor* 320, 320.

¹¹ Goods and Services Tax Act (Cap. 117A, Rev. Ed. 2005) ("GSTA"), Section 8(2).

a taxable annual income of SGD 1 million¹². *Secondly*, GST is also levied on all imports of goods into Singapore, regardless of whether the importer is a tax collector or not¹³.

In contrast, Section 14(1) of the Goods and Services Tax Act (GSTA) provides that buyers importing services into Singapore must account for GST in their accounting. However, after the GSTA was enacted in 1993, the reverse levy provision no longer applies. This created a gap in this tax regulation, as while local supplies of goods and services as well as imported goods are subject to GST under Section 7 of the Act, imported services are not.

3.1.5 Stamp Duty and the Digital Economy

The historical focus of stamp duty on physical instruments has shown its strain over time as transaction documents have become increasingly digitized and new ways of transmitting such documents have developed. Key questions that have been raised in recent years relate to whether there is a distinction between physical instruments and electronic instruments for the purposes of stamp duty liability, and whether receiving an instrument by electronic means should have the same effect as physically receiving the same document.¹⁴ Singapore's general approach has been to seek to achieve neutrality in terms of physical and electronic instruments, so that the tax consequences should be the same in both cases. To achieve this, the Stamp Duties (Amendment) Act 2018 (No. 37 of 2018) was passed to introduce sections 59 to 60H of the SDA (Stamp Duties Act), which extends the scope of the SDA to cover electronic instruments.

3.1.6 Tax Certainty Process Improvement

Specific processes intended to enhance tax certainty through effective dispute prevention and resolution mechanisms have been described in the guidance document¹⁵. The process is divided into two main categories: dispute prevention and dispute resolution. In terms of dispute prevention, the guidance document proposes the development of a standardized. Number of Self-assessment returns and documentation packages, as well as centralized archiving, validation, and exchange of information¹⁶. A panel mechanism will also be implemented for tax administrations and multinational companies to agree on: 1) the tax base; 2) the results of applying the formula; and 3) other features of the new taxation rights¹⁷. Regarding dispute resolution, the blueprint proposes a binding and mandatory dispute resolution mechanism, both for Amount A¹⁸

¹² Goods and Services Tax Act (Cap. 117A, Rev. Ed. 2005), First Schedule.

¹³ Francesco Cannas, "What Singapore Can Learn from the New Trend of B2C VAT/GST Taxation Digital Supply Around the World" (2016) International VAT Monitor 320, 320

¹⁴ This is an area with specific facts that have been discussed in more detail in Vincent Ooi, "Adapting Taxation for the Digital Economy in Singapore" (2021) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3775396

¹⁵ OECD, Tax Challenges Arising from Digitalization Pillar One Blueprint Report (12 Oct 2020), Chapter 9.

¹⁶ OECD, Tax Challenges Arising from Digitalization Report Blueprint Pillar One (12 Oct 2020), 177-178.

¹⁷ OECD, Tax Challenges Arising from Digitalization Report on Pillar One Blueprint (12 Oct 2020), 16.

¹⁸ OECD, Tax Challenges Arising from Digitalization Pillar One Blueprint Report (12 Oct 2020), 186-197.

and beyond¹⁹. In the latter case, this will be based on the existing Mutual Agreement Procedure ("MAP"), which will be further refined²⁰.

3.2 Indonesia's Tax Digitization

3.2.1 Core Tax Administration System-Core Tax Administration System

The Core Tax Administration System (CTAS) in Indonesia is the core tax administration system implemented by the Directorate General of Taxes (DGT) in Indonesia to manage tax processes and taxpayer compliance. The system is designed to support various aspects of tax administration, including tax collection, processing, and monitoring. CTAS covers a wide range of functions, including taxpayer data collection, tax payment management, tax refund processing, and tax compliance reporting. By using information technology and automation systems, CTAS aims to improve efficiency, transparency, and accuracy in tax administration. It also enables the DGT to monitor and supervise taxpayer compliance more effectively.

Core Tax Administration System is an information technology system that provides integrated support for the implementation of DGT duties, including business process automation. This means business process automation, such as processing notification letters, tax documents, tax payments, audit and collection support, taxpayer registration, and taxpayer accounting functions. The implementation of the Core Tax Administration System has been regulated in Presidential Regulation (Perpres) No. 40/2018.

The regulation contains the development of the Core Tax System which is one part of the renewal of the tax administration system. Meanwhile, the legal basis is Law Number 7 of 2021 concerning Harmonization of Tax Regulations which takes effect in January 2022 which is the basis for making the Core Tax Administration System (SIAP) or commonly referred to as the Core Tax Administration System (CTAS). In addition, the regulation also describes various information about the tax administration system, such as how the Core Tax System is intended to help carry out tax administration procedures and governance. This is of course carried out in accordance with the provisions of the applicable laws and regulations.

3.2.2 Harmonization of Core Tax Administration System (CTAS); Ultimum Remedium; Criminal Taxation.

The Indonesian government is well aware of the mutual influence between tax laws and technology, and has made many amendments to its tax laws to respond to technological developments over the years, across various tax types. The use of tax incentives to encourage technology development and adoption in Indonesia has also been in place for several years. While many

¹⁹ OECD, Tax Challenges Arising from Digitalization Report Blueprint Pillar One (12 Oct 2020), 197-204.

²⁰ OECD, Tax Challenges Arising from Digitalization Pillar One Blueprint Report (12 Oct 2020), 197-204.

of Indonesia's tax law changes are driven by domestic factors, Indonesia's status as a country with a large domestic market and a very open economy also means that on many occasions, its actions are largely a response to global developments. This is particularly evident in the area of international taxation, where major reforms to the international tax system have recently been undertaken.

Tax law and technology have a reciprocal relationship, and developments in one area tend to impact the other. Technological developments often result in new business models, potentially changing the tax base and affecting revenue collection. This encourages jurisdictions to change their tax laws and policies to adapt to these changes and better capture revenue²¹. On the other hand, tax law is widely recognized as a regulatory tool that can be used to influence behavior and activities, especially in its scope and pace. Technology development and adoption²².

Thus, the relationship between the Core Tax Administration System (CTAS), Ultimum Remedium, and tax crime is related to the way in which the core tax administration system (CTAS) interacts with tax criminal law enforcement by considering the Ultimum Remedium principle. So if the relationship between the three variables is narrated as follows:

When the government through the Directorate General of Taxes (DGT) implements the Core Tax Administration System (CTAS), which is a sophisticated tax administration system designed to monitor and process tax data with high efficiency. CTAS enables automatic collection of tax information, minimizes errors, and accelerates the tax audit process of compliant and non-compliant taxpayers. From the results of the audit process, non-compliant taxpayers will be appealed through a letter of request and explanation of data and or information (SP2DK), and if an error is found, the taxpayer is appealed to correct the tax return, and if it is not done, counseling will be carried out, and if it is still ignored, it will then proceed to the inspection process, or preliminary evidence, investigation and then finally to the Court to conduct an evidence test for the fiscus dispute with the taxpayer. However, before the verdict, the taxpayer can exercise his right to disclose the untruth based on article 8 paragraph 3 and article 44b of law no 7 of 2021 concerning harmonization of tax regulations. Both articles are the ultimum remedium where the law is the last step. It can be concluded that the meaning of the ultimum remedium is the disclosure of untruths based on article 8 paragraph 3 and based on article 44b, which says for the benefit of state revenue, at the request of the Minister of Finance, the Attorney General may stop the

²¹ Arthur Cockfield, "Tax Law and Technological Change" in Roger Brownsword, Eloise Scotford and Karen Yeung, *The Oxford Handbook of Law, Regulation and Technology* (2017) (OUP), 546-568, 563.

²² Arthur Cockfield, "Tax Law and Technological Change" in Roger Brownsword, Eloise Scotford and Karen Yeung, *The Oxford Handbook of Law, Regulation and Technology* (2017) (OUP), 546-568, 563.

investigation of criminal acts in the field of taxation for a maximum period of 6 (six) months from the date of the request letter, where legal steps are the last.

3.2.3 Theory of Legal Objectives

In realizing the purpose of law *Gustav Radbruch*²³ stated that it is necessary to use the principle of priority of the three basic values that are the purpose of law. This is because in reality, legal justice often clashes with benefit and legal certainty and vice versa. Among the three basic values of legal objectives, when there is a collision, something must be sacrificed. For this reason, the principle of priority used by *Gustav Radbruch* must be implemented in the following order: 1) Legal Justice; 2) Legal Benefit; 3) Legal Certainty. *Legal Justice Theory*, Justice is the glue of civilized social life. *The law was created so that each individual member of society and state administrators do something necessary to maintain social ties and achieve the goals of life together or vice versa so as not to take an action that can damage the order of justice; Theory of Benefit*, Utilitarianism Law was first developed by *Jeremi Bentham*²⁴ (1748-1831). The problem faced by *Bentham* at that time was how to assess the good and bad of a social, political, economic and legal policy morally. In other words, how to assess a public policy that has an impact on many people morally; *Legal Certainty Theory*, legal certainty as one of the objectives of law can be said to be part of efforts to realize justice. The real form of legal certainty is the implementation or enforcement of the law against an action regardless of who is doing it. With legal certainty, everyone can predict what will be experienced if they take certain legal actions. Certainty is needed to realize the principle of equality before the law without discrimination.

3.2.4 Ultimum Remedium

Ultimum remedium is a Latin term that means: last resort. Therefore, it is something that is used when all other options have been tried. In practice, the term is often used when talking about criminal law; it should only be used as a last resort.

According to Paul Scholten²⁵ (1954), "*Het recht is er, dock het moet worden gevonden, in de vondst sit het nieuwe*" which means: The law exists, but it must be discovered, in the discovery there is a new (law). From the above understanding, it is known that the term ultimum remedium indicates an effort, medicine or the last means used to overcome a problem or problem faced. Thus, the term is not a specific legal term but a general term that is widely used in law, especially criminal law.

²³ Gustav Radbruch, *Legal Philosophy*, in the *Legal Philosophies of Lask, Radbruch and Dabin*, translated by Kurt Wilk, Massachusetts: Harvard University Press, 1950, as quoted from Ahmadi Miru and Sutarnan Yodo, *Consumer Protection Law*, Jakarta: RajaGrafindo Persada, 2007.

²⁴ Bentham, Jeremy. *Principles of Morals and Legislation*. 1789.

²⁵ Paul Scholten, *The Structure of Legal Science*, Translation B. Arief Sidharta Bandung: Alumni, 2003.

From the understanding stated above, it can be said that *ultimum remedium* as a term or concept, is used in criminal law to show the character of criminal law, namely criminal law must be used, applied or implemented as a last resort to overcome community problems. Especially against acts or actions that harm society, especially criminal offenses. In law, this term is used to refer to the last action or effort taken by the government or legal authorities to resolve or address a problem before taking more drastic measures or limiting the freedom of individuals or parties involved. In general, the *ultimum remedium* principle emphasizes the importance of trying more moderate or limited solutions or measures before taking more extreme measures or punishing with more severe measures.

Materials and Methods

This research method adopts a normative approach with the aim of exploring the impact of CTAS digitization on tax law enforcement practices. This research will identify the challenges and opportunities that arise and the resulting impacts. The novelty of this research lies in analyzing aspects of criminal law enforcement integrated with digital technology based on the *ultimum remedium*, using a comparative analysis approach to digitization tax law between Indonesia and Singapore, which is a new policy of the Directorate General of Taxes. The comparative approach is carried out through comparative legal studies. According to Gutteridge²⁶, comparative law is a method of legal study and research that distinguishes between descriptive legal comparisons, which aim to obtain information, and applied legal comparisons that have specific objectives.

Results and Discussions

1. Comparison of tax law Digitalization of taxation between Indonesia and Lion pura

In Indonesia, Digital Taxation is only at the implementation stage, so there are many changes needed in the tax administration system, especially the synchronization of KTP with NPWP, meaning that every person (citizen) who is an adult and receives income is a tax object. Meanwhile, Indonesia's population level is still relatively low, so this will affect the tax ratio that will be achieved by the government. However, the existence of Tax Digital, through the *Core Tax Administration System* (CTAS) will increase taxpayer compliance, so that it will make it easier for the government to enforce the law. However, the government is required to develop technology continuously, in order to facilitate the introduction of taxpayers to the system used.

²⁶ Peter Mahmud Marzuki, *Legal Research*, Revised Edition. p.172

In practice, this means that the government and law enforcement officials must ensure that the use of CTAS does not disregard or violate the rights of taxpayers. They should ensure that any criminal tax cases pursued using data and information from CTAS have carefully considered whether criminal sanctions are the most appropriate and proportionate option. By integrating CTAS with the *Ultimum Remedium* principle, the government can strike the right balance between tax administration efficiency and fairness in tax criminal law enforcement. This will ensure that strict tax policy and fair law enforcement can go hand in hand, protecting the rights of taxpayers while maintaining the integrity of the country's tax system. While the legal approach is *civil law*.

While Singapore's legal approach is *common law*, the country's current "*Fourth Industrial Revolution*", rapid developments in various closely related fields such as robot dexterity, machine learning, artificial intelligence²⁷, processing power, and sensor capabilities²⁸ means that more and more tasks and jobs are capable of being automated and performed by technology and machines instead of workers. Artificial intelligence is a particularly important development as it potentially enables jobs at the top of the value chain to be automated. The efficiencies gained from the application of automation technology can provide incentives to business owners to replace their human workforce. Currently, most taxation systems around the world tend to derive most of their revenue from taxing workers, while offering incentives for the use of technology and machines²⁹.

This digitization aims to address international taxation issues arising from profit shifting and tax avoidance practices by multinational companies, focusing on aspects related to the digital economy. However, many countries feel that it is not enough to address the taxation challenges faced by the digital economy. Therefore, some countries have started to consider and even implement a special tax called *Digital Services Tax (DST)*. DST is a tax imposed on the revenue generated by large tech companies that operate digitally, regardless of whether or not the company has a physical presence in the country.

The unilateral implementation of the DST by some countries raises concerns about the proliferation³⁰ of protectionist tax policies and potential conflicts between countries. Countries

²⁷ See Chapter three in this book.

²⁸ 108 Vincent Ooi and Glendon Goh, "Automated Taxation and Artificial Intelligence as Employment Policy Tools" (SMU Center for AI & Data Governance Research Paper No. 2019/01), 3.

²⁹ Vincent Ooi and Glendon Goh, "Automated Taxation and Artificial Intelligence as a Labor Tool

³⁰ Proliferation" is the process of rapid and widespread spread or growth of something, such as a nuclear weapon, technology, idea or organism. The term is often used in the context of security, technology or biological issues to refer to the rapid increase in quantity or distribution of a particular thing.

targeted by the DST, especially large US-based techno-logical companies, consider it unfair and fuel trade tensions.

This means that automation is likely to have a large impact on income collection. While society as a whole may benefit from the increased efficiency gained from the widespread adoption of technology and automation, the impact of automation is unevenly distributed, with business owners likely to enjoy the benefits disproportionately, while low-skilled workers are likely to bear the costs disproportionately³¹. Some workers may lose their jobs as they are replaced by automation technology. The social costs arising from the need to support and retrain displaced workers generate negative externalities that create a rationale for the state to intervene and force business owners to pay these costs³². This forms the economic basis for the automation tax.

The Inappropriateness of the Automation Tax in Singapore, while the automation tax may be considered a temporary solution in a society with high structural unemployment, it is not a suitable policy tool in Singapore. With unemployment at an all-time low, ensuring efficiency is maximized is even more important for Singapore to continue to compete globally. There are extensive support schemes designed to help workers upgrade and enhance their skills so that they can secure new jobs³³. Therefore, not only is Singapore not considering any form of automation tax, but the country also continues to provide a plethora of incentives for workers to do so, encouraging businesses to pursue productivity improvements, including through automation³⁴.

There are at least three different points along the value chain where data is potentially taxable: 1) *when the data is collected*; 2) *when it is transferred*; and 3) *when it is used to generate revenue*. Of these three points, the current inter-national tax system focuses heavily on the third, where taxes are generally levied on business profits generated through the application of data to goods or services. Under the current system, there is some room for taxation of the second point, but unfortunately there is insufficient data for taxation of the first point. *Here is what it means to be potentially taxed*:

- a. **Tax at the time of Data Collection:** Taxing at the point of data collection is a fairly new and complex concept. Some countries have started to consider this method, mainly through taxes or license fees levied on companies that collect user data. However, a key challenge is to objectively determine the value of data and ensure that such taxation does not stifle innovation and economic growth in the digital

³¹ Vincent Ooi and Glendon Goh, "Automated Taxation and Artificial Intelligence as a Labor Tool

³² Vincent Ooi and Glendon Goh, "Automated Taxation and Artificial Intelligence as a Labor Tool

³³ See SkillsFuture Singapore and Workforce Singapore initiatives<<https://www.ssgwsg.gov.sg/individuals/programmes-initiatives.html>> accessed on January 29, 2021.

³⁴ As seen from the Research and Development tax incentives listed above

sector.

- b. **Tax at the time of Data Movement:** Data movement involves the transfer of data between entities, often across national borders. Taxes on data movement are a more difficult area to implement due to the cross-border nature of the activity. However, some countries have proposed taxes or transaction fees on cross-border data transfers in an effort to capture revenue from increasingly globalized digital activities.
- c. **Tax on the Use of Data to Generate Revenue:** This is an approach that has been more commonly applied in the current taxation system. Taxes are levied on profits generated by companies from the use of data to provide goods or services to customers. This includes revenue from online advertising, digital product sales, or subscription-based services that use user data to increase the value of their offerings.

2. Digitalization of the Core Tax Administration System (CTAS) in strengthening law enforcement by considering the *Ultimum Remedium* principle

The digitization of the Core Tax Administration System (CTAS) has become the main focus of efforts to strengthen law enforcement in the field of taxation. However, in the implementation process, it is necessary to consider the legal principles underlying the action, including the principle of *Ultimum Remedium*, which is a legal principle stating that government intervention in individual human rights should be the last step after all other alternatives have been tested and deemed inadequate. The implementation of CTAS digitization aims to improve efficiency and effectiveness in tax collection as well as increase transparency and accountability in the tax system. However, in implementing this system, the *Ultimum Remedium* principle needs to be carefully integrated.

Therefore, firstly, it is important to emphasize that CTAS digitization should be the last step in enforcement efforts. Before using this technology, other alternatives to resolve tax offenses should be explored, such as warnings, more traditional law enforcement, or rehabilitative approaches. Second, CTAS digitization should be implemented with the principles of fairness and proportionality. This means that the use of this technology should not automatically lead to harsh measures, but should be tailored to the needs and context of individual cases. Third, in strengthening law enforcement through CTAS digitization, the protection of individual rights must remain a top priority. This includes the protection of personal data, the right to privacy, and other civil liberties that may be affected by the use of such technology.

Finally, transparency and accountability in the use of CTAS digitization should also be considered. Taxpayers or potential taxpayers should be able to access a handbook on how this technology is used, as well as the mechanisms available to respond to disagreements or

complaints regarding its use. While CTAS provides great benefits in improving the efficiency of tax administration, its use also has a significant impact on the enforcement of criminal tax laws. In cases where there are indications of fraud or serious violations of tax law, CTAS serves as an important tool in identifying potential violations and strengthening evidence. However, amidst the effectiveness of CTAS, the *Ultimum Remedium* principle is also a key factor. This principle emphasizes that criminal sanctions should be the last resort or the last option taken, after other efforts to resolve tax law violations have been exhausted. Therefore, although CTAS provides speed and accuracy in tax law enforcement, the decision to impose criminal sanctions must always consider the principle. By considering the *Ultimum Remedium* principle in CTAS digitization, strengthening law enforcement can be achieved without compromising individual rights and principles of justice in the process. This will help create a more efficient, transparent, and reliable tax system for all parties involved.

2.1 Law Enforcement Process

In this chapter I will explain the taxpayer Law Enforcement process, with the implementation of the Core Tax Administration System (CTAS) Digitalization, as follows: Finding irregularities in the data, which have not been reported by the taxpayer, the findings are then analyzed, after which the tax authorities will send a letter requesting clarification of data and or information (SP2DK) to the taxpayer. If the letter of data request and clarification is responded to by the taxpayer, the taxpayer can make corrections to the Periodic or Annual SPT in accordance with the data found and ends with the making of minutes and SP3. However, if the data clarification is ignored by the taxpayer, the tax authorities will increase its status by conducting counseling invitations, and if it remains unresponsive, an audit will be carried out.

The purpose of the examination of taxpayers is to test compliance with taxpayers. Because through this examination, it will be known that the taxpayer's violation includes tax administrative law or an element of tax crime. Not criminal taxation occurs when there is an element of harm to state finances, this element occurs when there is abuse of tax invoices by conducting transactions that are not actual transactions or commonly referred to as (TBTS).

Criminal tax law enforcement is basically carried out against taxpayers who do not comply with applicable tax legislation, but basically law enforcement goes through several stages, namely as follows: Examination of Evidence / Investigation; Investigation; Prosecution; Trial, at this stage a settlement effort can be made by means of a legal approach in Article 44B of the UUHPP, provided that before the trial decision. In order to terminate the investigation as referred to in Article 44B of the KUP Law, this investigation will be terminated if the payment is made.

In the context of criminal tax law enforcement between Indonesia and Singapore, the differences in the enforcement process mainly lie in the approach and application of technology in the digital tax system, as well as how the *ultimum remedium* principle is applied. Here are the main differences:

a. Law Enforcement Approach

Singapore: Preventive and Proactive,³⁵ Singapore focuses more on a preventive approach in tax law enforcement. The government uses advanced technologies, such as data analytics and artificial intelligence (AI), to detect and prevent potential violations before they occur; **Ultimum Remedium:** The *ultimum remedium* principle is very strictly applied in Singapore, where criminal sanctions are only used as a measure of last resort. Before reaching the criminal stage, taxpayers are given the opportunity for remediation or resolution through administrative channels.

Indonesia: Reactive and Curative,³⁶ Tax criminal law enforcement in Indonesia is more reactive. Many cases of law enforcement are only carried out after tax violations are detected or reported, and often lead to criminal prosecution without going through the administrative settlement process first; **Ultimum Remedium:** Although Indonesia also recognizes *ultimum remedium* in principle, in practice, criminal sanctions are often used earlier in the law enforcement process, especially in major cases. This can be caused by the limitations in supervision and early prevention of the Indonesian tax system. Meanwhile, the stages of tax criminal law enforcement in Indonesia begin with the existence of preliminary evidence (see figure: 2), investigation and then verdict through the court.

³⁵ "In Singapore, the *ultimum remedium* principle is rigorously applied, with criminal sanctions being the last resort after all administrative remedies have been exhausted."

³⁶ Susanti, A., & Raharjo, A., Criminal Law Enforcement in Indonesian Taxation: Challenges and Developments, *Indonesian Law Review*, 2022, 112.

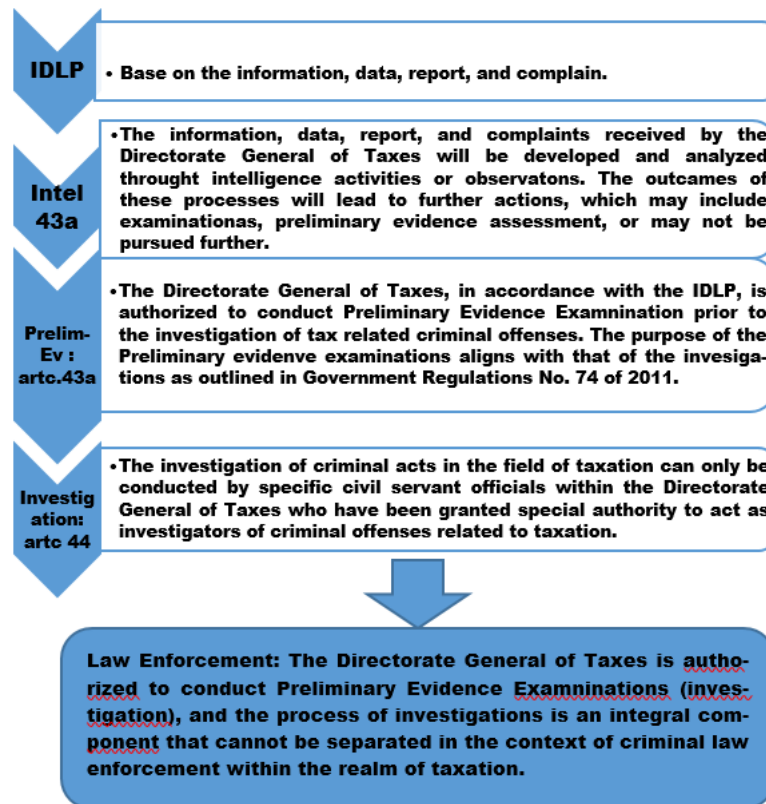


Figure 2. Stages of Preliminary Evidence Implementation

Based on the chart presented, the law enforcement process follows the sequence of implementation starting from preliminary evidence examination to investigation. This process starts with the collection of information, data, reports, and complaints received by the Directorate General of Taxes, which will then be developed and analyzed through intelligence or observation activities. The results of these activities will be followed up with examination, preliminary evidence examination, or not followed up at all. The Directorate General of Taxes, based on the IDLP, has the authority to conduct preliminary evidence examination prior to the investigation of criminal acts in the field of taxation. The purpose of the preliminary evidence examination is in line with the investigation as stipulated in Government Regulation No. 74 Year 2011. Investigation of criminal offenses in the field of taxation can only be conducted by certain civil servants within the Directorate General of Taxes who have been granted special authority as tax criminal investigators.

Follow-up of preliminary evidence basically includes: a) investigation, if there is sufficient preliminary evidence; b) written notification to the taxpayer who

has undergone preliminary evidence examination publicly that no investigation will be conducted, if the disclosure of the untruth of the taxpayer's action is in accordance with the actual circumstances; or c) termination of preliminary evidence examination, if no preliminary evidence of criminal acts in the field of taxation is found. In this context, the absence of preliminary evidence of criminal offenses in the field of taxation may include: a) the potential suspect cannot be identified; b) the only potential suspect has passed away; c) expiration of prosecution; and d) *nebis in idem*.

b. Use of Technology in Law Enforcement

Singapore: Advanced Technology,³⁷ Singapore has integrated advanced technology in its tax administration, including the use of AI and big data analytics to monitor and audit tax transactions. This enables early detection of violations and more efficient enforcement without having to resort directly to criminal sanctions³⁸.

Indonesia: Suboptimal Digitalization,³⁹ While Indonesia has started adopting technology in the tax system, the implementation has not been as optimal as in Singapore. Challenges such as limited technological infrastructure and digital divide still hamper the effectiveness of the system. As a result, the law enforcement process often relies on traditional methods that are slower and potentially less accurate.

c. Implementation and Final Results

Singapore: High Efficiency and Compliance, with a preventive approach and the use of sophisticated technology, Singapore has managed to maintain a high level of tax compliance and minimize the need for criminal intervention.

Indonesia: Higher Criminal Prosecution Rate, Due to a more reactive approach and lack of early prevention, Indonesia tends to use criminal prosecution more often as a law enforcement tool, which sometimes results in an imbalance in the application of the *ultimum remedium* principle.

Thus, it can be concluded that Singapore has been more successful in implementing a digital tax system that supports efficient tax law enforcement, while still adhering to the *ultimum remedium* principle. Meanwhile, Indonesia needs to increase digitalization and restructure its

³⁷ *"The use of advanced analytics and AI in Singapore's tax administration has significantly enhanced the country's ability to detect and prevent tax evasion, aligning with the principle of ultimum remedium."*

³⁸ Inland Revenue Authority of Singapore, Annual Report 2022, 45

³⁹ *"Despite ongoing efforts, Indonesia's tax digitalization is still hampered by infrastructure challenges, resulting in less effective enforcement and reliance on traditional methods."*

law enforcement approach to better support prevention and early monitoring, and minimize the use of criminal sanctions except as a last resort.

2.2 Characteristics of *Primum remedium* and *Ultimum remedium*

Some of the main characteristics that tax criminal law in the KUP Law is a *primum remedium* rather than an *ultimum remedium* are (Hiariej, 2021):

Criminal sanctions in the KUP Law are *cumulative*, except for Article 38 which is *alternative*. In Article 39 Paragraph (1), Article 39A and Article 43, *imprisonment sanctions cannot be substituted with fines*, but are threatened to be imposed both at once, marked by the use of the conjunction "and"; The use of *an interdeter-mined sentence stelsel*, which has been determined in detail the minimum and maximum penalties as the characteristics of the *primum remedium*.

In the *ultimum remedium*, *indefinite sentence* should be used, i.e. the maximum punishment is sufficient so that the judge can more freely decide the punishment in accordance with the *idee des recht*, especially justice and benefits; Too broad *discretion of the tax* authorities in formal legal procedures to determine criminal or administrative settlements has the potential to violate the principles of criminal procedure law which must uphold the protection of human rights for perpetrators and aims to protect the human rights of perpetrators from the arbitrariness of the authorities. To protect human rights, criminal procedural law (has principles) must be formulated in *lex scripta* (written in detail), *lex stricta* (firm), *lex certa* (clear) coupled with the official nature of procedural law (Hiariej, 2018);

Article 13A, Article 38 and Article 39 Paragraph (1) letters c and d of the KUP Law which regulate the same substance cannot be *mutatis mutandis* interpreted that the criminal sanctions of the law *a quo* are *ultimum remedium*, but must be interpreted otherwise that administrative sanctions can be enforced together with criminal sanctions by considering the development of tax criminal law which has the character as *primum remedium*. So that administrative sanctions that have been applied do not necessarily eliminate criminal charges, administrative and criminal sanctions can run simultaneously because they are different in competence (Hiariej, 2021);⁴⁰

Article 13 Paragraph (5) of KUP Law Number 28 of 2007 which has been abolished by Law Number 11 of 2021 is an example of how the application of administrative sanctions can run parallel with the application of criminal sanctions, where taxpayers who have been convicted based on a court decision that has permanent legal force, can still be issued a Tax Assessment Letter plus an interest administrative sanction of 48% of the amount of underpaid tax;

⁴⁰ Huijbers, Theo, (1990), *Philosophy of Law*, Publisher: Kanisius, 1990, Yogyakarta.

The use of the word "*may*" in Article 44B of the KUP Law is facultative rather than imperative, indicating the nature of the application of tax criminal law as a *primum remedium* (Hiariej, 2018).

3. Criminal Liability through the *Ultimum Remedium* principle in the Context of CTAS Use

The *ultimum remedium* principle is a legal approach that places criminal resolution as the last step in the law enforcement process against tax violations. In the context of using CTAS, taxpayer accountability is reflected through the application of this principle. This means that before criminal action is taken, the government gives the taxpayer the opportunity to correct the mistake or offense that has been committed, usually by paying the outstanding tax debt and administrative fines. In this case, the use of CTAS provides an opportunity for taxpayers to take responsibility for their obligations proportionally, by avoiding criminal consequences if they are willing to correct their mistakes or negligence in paying taxes.

Corporate taxpayer liability in the KUP Law refers to the *doctrine of strict liability*, which in a legal context, refers to the principle that a person or entity can be held liable for an act or action without having to prove the element of fault or malicious intent of the party concerned and *vicarious liability*, which refers to a form of legal responsibility where a person or entity is held liable for acts or omissions committed by others, even though they themselves are not directly involved in the act. This liability is often linked to a special relationship between the liable party and the party who committed the act or omission. These two doctrines do not require a *mens rea* or fault on the part of the perpetrator.

Therefore, the *ultimum remedium* principle in tax crimes in the context of CTAS utilization provides a foundation for fair and effective law enforcement in improving tax compliance while avoiding abuse or excess of law enforcement. And when there is a conflict between two or more provisions in the special criminal law, the tax law is used because it is *lex specialis systematic* and is a derivative of the *principle of lex specialis derogat legi generali*. In addition, the requirement for a special criminal law to be a *systematic lex specialis* is when the address is special and both the material and formal provisions deviate from the Criminal Code and Criminal Procedure Code.

Ultimum Remedium is necessary in tax crimes because it ensures that more drastic legal measures such as criminal prosecution are only used after other measures have been taken and have been unsuccessful in resolving the issue of tax offenses. The following are some of the reasons why the *ultimum remedium* is important in tax crimes: Principles of Justice and Benefit; Encouraging Voluntary Compliance; Protection of Taxpayer Rights; Efficiency of the Legal System. Using punishment as a last resort allows the legal system to focus on cases that truly require

criminal sanctions, while cases that are more appropriately resolved through other measures can be handled more efficiently.

3.1 Criminal Liability of Corporations

Justification for the application of criminal law in the responsibility of criminal acts committed by legal entities (corporations) can be analyzed based on the comprehensive objectives of criminal law and punishment, namely prevention both in general and in particular, protection of society, maintenance of social solidarity, and enforcement of justice⁴¹. One method to prevent, protect, and restore the rights of the community that are deprived due to tax crimes is through criminal institutions that focus on asset recovery.

Meanwhile, the justification for the return of assets related to tax crimes by corporate bodies, according to the author, refers to the view of Purwaning M. Yanuar who links the return of assets with a theory that combines retributive and utilitarian justice, and adds elements of restorative justice⁴². Thus, the imposition of criminal sanctions against perpetrators of tax crimes committed by Corporate Taxpayers is not only preventive and repressive, but also contains restorative aspects, one of which is the return of losses suffered by the state. This integrative criminalization is expected to produce a judge's decision that reflects the dimensions of justice that can be felt by all parties involved, including the perpetrators, the community, victims of criminal acts, and the interests of the state⁴³.

A *legal subject* that can be held accountable is a *legal* subject⁴⁴. In the context of the Indonesian civil law system, legal subjects can be divided into two categories, namely individuals (person) and legal entities (rechtsperson). Both have legal rights and obligations similar to individuals as legal subjects⁴⁵. Based on the explanation of the legal subject, corporations are recognized as legal subjects capable of carrying out legal relationships, so that corporations are included in the category of legal entities (*rechtsperson*).

In the Indonesian Criminal Code (KUHP), legal subjects are identified as individuals, with no recognition of corporate legal subjects, as stipulated in Article 2 which states, "The criminal provisions in Indonesian legislation shall apply to every person who commits a criminal offense in Indonesia." Until now, the Criminal Code has not regulated the legal subject of entities. Therefore, a body cannot be held criminally liable; what can be held liable is the individual or person

⁴¹ I Dewa Made Suartha, 2015, Corporate Criminal Law, Criminal Liability in Indonesian Criminal Law Policy, Setara Press, Malang, pp. 10

⁴² Purwaning M. Yanuar, op.cit, p. 89

⁴³ Lilik Mulyadi, Ideal Model of Asset Recovery for Corruption Offenders, op.cit, p. 183

⁴⁴ Simon Nahak, Op.cit, p. 78.

⁴⁵ Kristian, Corporate Criminal Liability System, PT Rafika Aditama, Bandung, 2016, pp. 2

behind the body. This is in line with the principle of *universality delinquere non potes or societas delinquere non potest*, which emphasizes that a body cannot commit a criminal offense or cannot be subject to criminal sanctions⁴⁶. Regulations regarding the legal subject of a body (corporation) that can be held accountable for its actions are contained in legislation outside the Criminal Code⁴⁷.

3.2 **Ultimum remedium principle in law enforcement**

Tax regulations in Indonesia are governed by Law No. 7 of 2021 concerning Harmonization of Tax Regulations (HPP), which affirms the *ultimum remedium* principle in article 44B. This article states that the termination of investigation can only be done after the taxpayer or suspect has paid off the loss of state revenue along with administrative sanctions in the form of fines. There are several provisions regarding administrative sanctions, among others: a. If there is a loss of state revenue as stipulated in article 38 (failure to submit notification letter), the fine to be paid is one time the amount of the loss of state revenue. b. If there is a loss of state revenue as stipulated in article 38 (failure to submit notification letter), the fine to be paid is one time the amount of the loss of state revenue. If there is a loss of state revenue in accordance with Article 39 (violation of the NPWP, falsification of tax documents, or failure to submit taxes), the fine imposed is three times the amount of the loss of state revenue. c. In this case, if it relates to the amount of tax in the tax invoice, proof of tax collection, proof of tax withholding, and/or proof of tax payment, the fine to be paid is four times the amount of tax. Article 44B of the IHT Law, specifically paragraph 2a, also stipulates that if a criminal case has been submitted to the court, the defendant can still pay off the loss of state revenue along with administrative sanctions. Furthermore, paragraph 2b states that payments made by taxpayers, suspects, or defendants from the investigation stage to the trial stage, if the payment amount has not been fulfilled, can be considered for prosecution without being sentenced to imprisonment.

Furthermore, if the payment made by the taxpayer, suspect, or defendant during the investigation process until the trial does not meet the stipulated amount, then it can be considered as payment of the criminal fine imposed on the taxpayer concerned (paragraph 2c). In this context, the provisions in the EITI Law clearly show that tax regulations in Indonesia regulate the application of the *ultimum remedium* principle. This is in line with the research findings (Muhammad Rizky, 2023) which state that the Law on General Provisions and Tax Procedures (KUP) that has been revised through the Tax Audit Results Law (HPP) has substantially and theoretically strengthened the regulation of the *ultimum remedium* mechanism. The purpose of this

⁴⁶ Lilik Mulyadi, Building an Ideal Model of Justice-Based Criminalization of Corruption Offenders, op.cit, p. 106

⁴⁷ Simon Nahak, Op.cit, p. 83

mechanism is to increase the recovery of state revenue losses and achieve the principle of expediency of KUP. In its regulation, the *ultimum remedium* principle is strengthened by the existence of fines that cannot be replaced by imprisonment. If the fine is not paid, confiscation of the convict's assets will be carried out in accordance with the provisions of Article 44C KUP. This all further strengthens the function of the *ultimum remedium*. The statement is reinforced by the arguments of Rizal et al, 2022 and Naibaho, 2021, as follows:

"The ultimum remedium principle in the context of tax crimes has the main objective to facilitate the acceptance of the sanction relief given, so that taxpayers are encouraged to comply with their obligations and voluntarily complete the payment of tax deficiencies and penalties. Through this principle, if the taxpayer continues to ignore his/her obligations, the last step to be taken is through criminal proceedings. Thus, imprisonment or confinement is not the main goal, but administrative sanctions are the focus in solving tax law problems (Rizal & Fakrulloh, 2022). Roxin in (Naibaho, 2021) asserts that the application of criminal law should only be considered after other efforts such as civil suits, administrative settlements, and non-criminal sanctions have been fruitless. Therefore, criminal law is seen as "the last ratio in social policy".

The *ultimum remedium* principle thus suggests that criminal sanctions should be applied as a last resort, after all lesser or rehabilitative alternatives have been tried and proven ineffective. The application of this principle has existed in the Indonesian criminal law system since the first tax reform in 1983, although it is still implicit. In practice, the application of the *ultimum remedium* principle in criminal law in Indonesia has not been explicitly regulated in legislation, so the limitations of tax administrative law articles and tax criminal law articles are still explained due to discretion. Nonetheless, this concept is recognized as part of the criminal law approach in Indonesia which emphasizes that punishment should be the last resort after carefully considering lighter or rehabilitative alternatives.

Several articles, such as Articles 38, 39, 39A, 40, 41, 41A, 41B, 41C, 43, and Article 43A, define different types of tax offenses as willful tax negligence and evasion. Both individuals and business entities can engage in tax offenses. Criminal liability for individuals is determined based on the wrongdoing, while for companies, the liability provisions are different. Criminal sanctions that can be imposed on offenders include imprisonment and fines, with fines being applied more frequently. Prison sentences are considered as a last resort.

According to Rusdiana (2022), the process of drafting and applying criminal law related to tax violations shows dissatisfaction with several principles, including the principle of *rationality* of the harm caused by the criminal act, the *principle of subsidiarity* which emphasizes that criminal law should be the last step (*ultimum remedium*), and the *principle of proportionality* which

emphasizes the balance between the harm caused and the purpose of punishment. The principle of legality is also a concern, with an emphasis on legal certainty (*lex certa*) and firmness in legal interpretation (*lex stricta*), as well as effectiveness and application in law enforcement. However, one principle that qualifies is the principle of tolerance for the definition of criminal acts.

Conclusion

This research aims to make a significant contribution to the understanding of how CTAS can be optimized to strengthen the tax criminal law enforcement system, while maintaining a balance between fiscal sustainability and individual rights. By exposing these critical aspects, it is hoped that this research can provide practical guidance for policymakers and legal practitioners in considering further improvements and developments to the Core Tax Administration System.

While in the comparative analysis between Tax Digital Indonesia and Singapore on Tax Criminal Law Enforcement with a review of the *ultimum remedium* principle, several important points can be noted:

1. *Development and Implementation Phase:*

Indonesia is in the stage of developing and implementing Digital Tax, while Singapore has advanced in the use of digital technology in tax administration; In addition, it is very important for the government to formulate policies that are effective, fair beneficial, and have legal certainty by integrating digital technology into the existing tax law framework. And there needs to be a clear boundary between administrative law and criminal tax law, as well as a clear determination of articles that fall into the category of *ultimum remedium* (UR) and *primum remedium* (PR). This step aims to reduce the discretionary space that often occurs.

In contrast, Singapore has a mature and well-integrated system, while Indonesia is still experiencing challenges in implementing the system as a whole, due to the fact that tax reform in Singapore has been carried out first, and other factors such as Singapore's small population, education level, making it easier to make policies in taxation.

2. *Law Enforcement Effectiveness:*

Singapore has an advantage in the effectiveness of criminal tax law enforcement thanks to its sophisticated technological infrastructure. An integrated system allows tax authorities to monitor and identify violations more efficiently. On the other hand, Indonesia still faces challenges in effective law enforcement, including in terms of accurate data collection and transaction tracking.

This is reflected in the preliminary evidence stage, which is the phase before a case is upgraded to the investigation stage. If the preliminary evidence of a criminal offense is not collected or not fulfilled, then the case can be dismissed or returned to the realm of administrative law. In the preliminary investigation phase, coercive measures are not permitted by law (Constitutional Court Decision No. 83/PUU-XXI/2023 2024). However, at the investigation stage, coercive measures such as arrest, detention, and confiscation are allowed by law.

3. The *principle of Ultimum Remedium*:

The ultimum remedium principle, which emphasizes the importance of providing taxpayers with the ultimate legal protection, can be seen in both countries. Singapore, with its mature system, can sanction or enforce actions appropriately and effectively after giving taxpayers the opportunity to correct their mistakes. On the other hand, Indonesia needs to pay attention to this aspect in the development and implementation of Tax Digital, to ensure that tax law enforcement is conducted in accordance with the principles of fairness and legal protection for taxpayers.

The implementation of this principle is reflected in the administrative stage, where the facility arrangement still refers to Article 8, paragraphs (1), (1a), (2), (2a), and (2b) of Law No. 7 of 2021, concerning Harmonization of Tax Regulations (UU-HPP). Tax violators are required to pay off unpaid or underpaid taxes, along with interest sanctions in accordance with the provisions stipulated by the Minister of Finance. On the other hand, in the context of a preliminary investigation, tax offenders may be exempted from further legal proceedings if they fulfill the conditions listed in Article 8, paragraph (3) of the HPP Law, with additional penalties determined as follows:

a. 100% of the tax payable for taxpayers who are indicated to have committed a tax crime due to negligence, in accordance with Article 38 of the HPP Law, the fine applies if it is still at the preliminary evidence stage, this also applies to articles 39 (a) & 43 (1);

b. 300% of the tax payable for taxpayers who have been proven to have deliberately committed a tax crime for harming the state at the investigation stage, as stipulated in Article 39, while for articles 39A and 43 (1), an administrative sanction of 400% of the amount of the tax invoice is added. At the investigation stage, sanctions for violators who intentionally commit crimes are aggravated due to the existence of malicious intent (*mens rea*) to avoid tax obligations in Indonesia. The applicable criminal provisions other than Articles 38, 39, 39A, and 43(1) follow the existing provisions in the EFT Law.

4. *Challenges and Recommendations*:

The main challenges faced by Indonesia in adopting Tax Digital include the lack of adequate technology infrastructure, while Singapore is faced with data protection and privacy issues. Recommendations for Indonesia include the expansion of technological infrastructure, enhancement of human resource capacity and expertise, and increased cooperation between public and private institutions. Singapore, meanwhile, needs to continue to improve data security and privacy while maintaining the efficiency of the digital tax system.

As such, this study provides an in-depth understanding of the challenges, potentials, and implications of the use of digital technology in criminal tax law enforcement in Indonesia and Singapore, and provides a basis for relevant policy recommendations.

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