

---

## MODEL OF TERMINATION OF TAX CRIMINAL ACTIONS IN BENEFIT PRINCIPLE AND LEGAL JUSTICE

Pujiyono Suwadi<sup>1\*</sup>, Rabani Meryanto Halawa<sup>1</sup>, Isharyanto<sup>1</sup>, Bambang Sugeng Rukmono<sup>2</sup>, Andina Puri Elok M<sup>1</sup>

<sup>1</sup>Universitas Sebelas Maret.

<sup>2</sup>General Attorney Republic Indonesia.

Email<sup>1</sup>: [pujifhuns@staff.uns.ac.id](mailto:pujifhuns@staff.uns.ac.id), <https://orcid.org/0000-0002-5971-2446>, Scopus ID: 57194243483

---

### Abstract

The present study aims at examining judicially the actions of the public prosecutor in terms of stopping the prosecution of tax cases in the interest of increasing state revenues for taxpayers who have paid off the tax payable and the tax penalty payable at the stage of prosecution in the District Court through an approach to principle of expediency and legal justice based on the *ultimum remedium* principle. Furthermore, the principle of opportunity aims to recover losses in state revenues and realize *contante justitie* principle (swift, simple and cost effective). Based on the information and data obtained, taxpayers who have paid off the tax payable and the tax payable fine are still subject to imprisonment and fines by the public prosecutor following the provisions of the Indonesian Attorney General (AG)'s Guidelines concerning Criminal Prosecutions in Criminal Acts in the Taxation Sector even though the case is tax is an administrative penal law offence. This study's method uses doctrinal research with a statutory and conceptual approach. The results of the present study report that there is a reformulation of the tax criminal justice system, which regulates the mechanism, qualifications and authority to terminate the prosecution of tax cases in the interest of state revenues in order to achieve legal goals which are not only for legal certainty but also provide benefits and legal justice for people seeking justice.

**Keywords:** Tax Criminal; Benefit Principle; Legal Justice; Termination of Prosecution.

### A. INTRODUCTION

The phenomenon of the development of taxation paid a serious contribution in the evolution of the state. Personal Income Tax (PPh OP) and corporate (PPh OB) emerged in the 19th century. Resultantly, as a democratic legal state, the provisions of Article 23A of the 1945 Constitution states that the state regulates taxes and other levies that are coercive by law. The constitutional basis for collecting taxes is apparent, and it is the state's sovereignty to run it. Tax collection is intended for carrying out the State's duties in providing general welfare and educating the nation, as set out in the fourth paragraph of the Preamble to the 1945 Constitution. To achieve this objective, Law Number 16 Year 2019 on General Tax Regulations has been prepared by the Government to enable citizens to comply and fulfill their State Revenue and Expenditure Budget every year (Lukito, 2019).

Tax law is a set of regulations that regulate rights and obligations as well as the relationship between taxpayers and the government as tax collectors. Tax law is a public law that regulates the relationship between private individuals or legal entities and the state. Tax law regulates taxation issues that will reduce the cost of producing goods and services to achieve the general welfare. However, in line with the government's target to carry out national development at this time, it is often found that tax crimes that cause losses to state revenues are carried out by tax officials/officers (Fiskus), taxpayers, the private sector or other parties who help or participate commit tax crimes. That is true what Harold J. Berman stated: "Law is one of the deepest concerns of all civilized men everywhere", namely, the law is the most profound problem for civilized humans everywhere (Sinaga, 2017).

According to the provisions of Art. 6 Para. 1 letter (b) of the Criminal Procedure Code, and certain Civil Servants (CS) within the Director General (DG) of Taxes are authorized to investigate the taxation sector for criminal acts. The concerned authority to investigate PPNS at the DG of Taxes is reaffirmed in Art. 44 Para. 1 of the General Taxation Regulation, which expresses that the criminal acts considered to be investigated in

the taxation section may be allowed by the relevant CS Officials under the jurisdiction of DG of Taxes with the permission of the special authority as criminal investigator (Purwanto, 1006).

According to Art. 44 Para. 2 of the General Regulations of Taxation in relation with Art. 41 of Government Regulation No. 74 of 2011 on Procedures for the Fulfillment of Tax Obligations and Implementation of Tax Rights, and the Investigation Implementation Guidebook, tax investigators have the following authority:

- a. Receive, seek, gather and examine information or reports pertaining to tax crime;
- b. investigate, seek and gather information on individuals/entities pertaining to the justification of the actions taken to tax crimes
- c. Requesting information and evidence from the Tax Object or Entity related to tax crimes;
- d. Examine records, books and other relevant documents related to tax crimes;
- e. Conduct searches to get evidence of records, books and other documents as well as seize the evidence.
- f. Request experts (language, electronics, forensics) to assist in tax crime investigations;
- g. Ordering to halt and/or prohibiting people from leaving the premises during the inspection and verifying the identity of a person, object, or carrying document;
- h. Photographing anyone in relation to a tax crime;
- i. Summoning people to obtain their declarations and be examined as accused or eyewitnesses;
- j. Cease the investigation;
- k. Requesting assistance from Law Enforcement Officials;
- l. Take other necessary actions for the smooth investigation of tax crimes by the provisions.

(1) The provisions of Article 44B of the General Regulations of Taxation explain that the Attorney General, in the interest of the state revenue, may stop the process of investigating criminal acts related to the taxation section at the request of the finance minister within six months of the date of the request in addition to the authority already mentioned.

(2) One exception to this rule is that the investigation into criminal tax offenses cannot be closed under subsection (1) unless the taxpayer has paid all taxes due—whether they were paid in full or in part—along with the fine that is equal to four times the tax amount and was imposed by the administration.

In the explanation of Art. 44B of the General Regulations of Taxation, the AG of the Republic of Indonesia may terminate the process of investigation of tax crimes until it has been shifted to court. However, the tax law does not regulate the authority to terminate prosecution for the sake of state revenue once the case is delegated and enters the realm of prosecution in the District Court trial, so that the public, particularly the defendant (Taxpayer) who has been accused of committing a tax crime, has a paradigm of injustice and legal certainty at the stage of prosecution in the District Court for taxpayers who have paid off taxes owed and tax penalties owed equitably (Mudzakkir, 2011).

Gustav Radbruch asserts that there are three theories of legal objectives: legal justice, legal expediency, and legal certainty. In order to use this theory, it is required to adhere to the premise of the primacy of three fundamental values that serve as the law's objective. In fact, justice, expediency and certainty frequently conflict, and vice versa. If there is a conflict among the three fundamental values of legal purpose, a principle must be compromised (Dwisvimiari, 2011).

First, the method for discontinuing the prosecution of tax cases during the prosecution stage has not been established by the General Regulations of Taxation. The settlement of tax crime cases for defendants (Taxpayers) who have paid off taxes owing and tax penalties payable during the prosecution stage at the District Court trial presents a number of difficulties for public prosecutors. Second, in order to implement the concepts of rapid, simple, and affordable justice, the Indonesian Prosecutor's Office Law does not fully authorize public prosecutors to cease pursuing tax cases in the benefit of state income (Contante Justitie Principle). Third, the minimum and maximum administrative penalties for tax crimes must be governed by the General Regulations of Taxation.

Based on case data obtained from the Program Preparation, Report and Assessment section at the Secretariat of the Deputy AG for Special Crimes, from 2015 to 2021, data were obtained regarding the termination of tax case investigations in the interest of state revenues following the provisions of Article 44B. In the General Regulations of Taxation, 19 (nineteen) cases were stopped by the investigation for the sake of state revenue by the AG because the suspect (Taxpayer) had returned the tax payable, and the tax penalty was Rp. 651.725.177.435,- (six hundred fifty-one billion seven hundred twenty-five million one hundred seventy-seven thousand four hundred and thirty-five rupiah).

Additionally, data from the Program Preparation, Report and Assessment section at the Secretariat of the Deputy AG for Special Crimes for the years 2019 and 2020 revealed that there were Taxpayers (defendants) who had returned the tax due and the tax payable penalty during the prosecution stage at the District Court trial, specifically there are 3 (three) cases that have returned the tax payable and the payable tax penalty of Rp. 25,042,283,916- (twenty- Treasury Reserve).

Then in 2022, data and information were obtained that there was 1 (one) case where the suspect (Taxpayer) had returned the tax payable and the tax penalty payable at the prosecution stage at the West Jakarta District Attorney amounting to Rp. 1,760,084,230, - (one billion seven hundred sixty million eighty-four thousand two hundred and thirty rupiah). However, the settlement of this case is still waiting for a decision from Criminal Section in General Attorney Special to determine the next legal step, whether or not this case can be terminated for reasons of state revenue (Vide Article 44B of the General Regulations of Taxation ) or terminated by a peaceful delicate mechanism (schikking) as prescribed in Art 35 Paragraph (1) letter 1 of Law Number 16 of 2004 as amended by Law Number 11 of 2021 on the Indonesian AG's Office, hereinafter referred to as the Indonesian AG's Law because of the sound of the law contained in Article 44B of the General Regulations of Taxation, namely the AG may stop the investigation of tax cases in the interest of state revenues at the request of the Minister of Finance before being transferred to the court while this case has entered the prosecution stage at the District Attorney's Office and is no longer the authority of the Minister of Finance and there is no norm in the General Regulations of Taxation which regulates the termination of case prosecution. In order to reach state revenue, at the stage of prosecution at the District Attorney and the District Court, the peace fines mechanism (schikking), which has just been regulated and ratified in the revision of the RI Law on the Prosecutor's Office, does not yet have implementation guidelines, creating a legal vacuum (rechtsvacuum).

Given this phenomenon, the author thinks it is essential to raise legal issues, specifically: first, why does the public prosecutor pursue criminal charges in District Court against taxpayers who have paid off taxes owed and tax penalties due at the prosecution stage despite the fact that the tax case involves administrative penal law; and second, how effective is the termination model? For taxpayers who have already paid the tax owing and the tax penalty due, tax matters are tried in District Court at the prosecution stage in line with the paradigm of legal justice and expediency in order to realize the notion of comparative justice.

## **B. RESEARCH METHODS**

This present study is normative legal research. This study employs a statutory and conceptual approach. In this study, researchers used data retrieval techniques in the form of document studies. This research uses the legal material analysis technique with deductive logic. According to normative Research, quoting the opinion of Philipus M. Hadjon (Pujiyono, P., Waluyo, B., & Manthovani, R. 2020), the deduction method starts with the submission of the major premise (general statement), then puts forward the minor premise (specific statement) of the two premises, and then draws a conclusion.

## C. DISCUSSION

### 1. Factors Caused by the Public Prosecutor Prosecuting Taxpayers Who Have Paid Taxes Payable and Tax Fines Payable at the Prosecution Stage in the District Court, which is the Domain of Administrative Penal Law.

The public noted that state revenue from the taxation sector had leaked about 23% (twenty-three per cent) due to the tax mafia. The potential for tax revenue should be more than Rp. 700 trillion per year. Eradication of the markus of taxation is the main priority that must be carried out by the government, considering its impact on state revenue which is the principal capital in financing development (Huda and Hernoko, 2017). Tax collection can be forced if it first gets approval from the people (through the Indonesian Parliament). This is in line with Article 23, Paragraph (2) of the 1945 Constitution: "All taxes for the use of the state treasury are based on the law". Even in developed countries, there are arguments regarding taxes, such as the UK saying "No Taxation Without Representation" and the United States saying "Taxation Without Representation is Robbery" (Ippolito and Lozano, 2020).

Juridically, crime in the field of taxation shows that this crime is the substance of tax law because it violates the rules of tax law. Sociologically, tax crime has shown an actual situation in society as a form of activity for tax officials, taxpayers, tax officials or other parties. Meanwhile, philosophically it implies that there have been changes in values in society when a taxing activity is carried out as a form of participation in the nation and state. Before the enforcement of criminal tax law, it was also known as administrative law enforcement (*handhaving van het bestuursrecht*), which was part of the *bestuuren* or government authority (Raskolnikov, 2006). For this reason, before entering into criminal law enforcement, it is necessary first to discuss the framework of administrative law enforcement in the field of taxation so that the boundaries between the two can be seen.

According to P.de Haan, administrative penal law applies administrative sanctions. Administrative law enforcement is one of the most widely used law enforcement in the tax sector. This is understandable because administrative sanctions are often applied to perpetrators of violations who are considered relatively light (Kastlunger et al., 2013). For example, when a taxpayer forgets to pay taxes on time. This kind of thing can be understood to a certain extent because everyone has different concerns, including fulfilling their tax obligations. Similarly, when someone forgets to fill out and return the proper SPT.

Administrative law enforcement is relatively more accessible because the procedure is not too complicated and straightforward and aimed at perpetrators of violations, both taxpayers and government officials who carry out their duties in the tax field, so that the focus is on improving the behaviour of the subject. Administrative law enforcement is carried out by government officials in the tax sector, not through judges. In administrative law enforcement, law enforcement procedures are carried out directly without going through judicial procedures. Therefore, an instrument is needed that allows law enforcement officers to carry out their duties easily without significant obstacles. The instrument can be in the form of more explicit provisions and detailed and definite procedures (Stølsvik, 2019).

Suppose administrative law enforcement has been implemented, but the Taxpayer does not pay off the tax payable and the tax penalty. In this case, the following action is the settlement of tax cases through a criminal policy approach (Penal Policy) because it is based on legal arguments (Legal Reasoning) that criminal tax law is the oldest and most specific law. Which is used when all other approaches cannot be used, but this law retains its persuasive nature. If the violator is willing to pay the tax payable and the tax penalty in the middle of the legal process, then the legal process must be stopped (Chiarini and Marzano, 2019). For instance, before the case is transferred to the court at the investigation stage, the taxpayer has paid off the tax payable, and the tax penalty is due. Then at the request of the Minister of Finance of the Republic of Indonesia, the AG terminates the case investigation by the provisions of Article 44B of the General Regulations of Taxation. Whereas the penal policy that investigators and public prosecutors can apply to taxpayers who do not pay taxes owed is the application of articles of suspicion and indictments that violate the provisions of Article 38 of the General Regulations of Taxation, which regulates negligence (*culpa*) related to the Annual Tax Letter (SPT) associated with Article 13A of the General Regulations of Taxation with a provision for a fine equal to at least one (one) time the amount of tax due that is unpaid or underpaid and at most two (two) times that amount, or for a term of imprisonment lasting at least three (three) months or at most one (one) year.

Investigators and public prosecutors can also trap taxpayers with the provisions of Article 39 of the General Regulations of Taxation relating to intentional acts (*dolus*) in the form of actions that do not submit or submit

an incorrect or complete Tax Return (SPT), Taxpayer Identification Number (NPWP), Taxable Entrepreneur Number (NPKP), examination, bookkeeping, and tax deposit with *impriso*.

That the Taxpayer who has paid off the tax payable and the tax penalty payable at the prosecution stage (the case is complete and submitted to the Public Prosecutor at the District Attorney) can be terminated by a *schikking* mechanism by the provisions of Article 35 Paragraph (1) Letter l of the Law on the Prosecutor of the Republic of Indonesia. However, this provision has not been implemented because until now there is no guideline for implementing regulations. Meanwhile, taxpayers who have paid off the tax payable and the tax penalty payable after the case file has been transferred to the court (examination at a court hearing) there is not a single norm that regulates it in the General Regulations of Taxation, the Prosecutor Law and the Criminal Procedure Code, even in the Indonesian AG's Guidelines Number 2 of 2019 on Criminal Prosecutions in Criminal Acts in the Taxation Sector, the defendant (taxpayer) who has paid 100% (one hundred percent) is still required to be imprisoned and fined by the public prosecutor even though the criminal charges are light so that the policy is very contrary to the theory of natural rights as taxpayers as the opinion of John Locke who should be respected and protected by the public prosecutor as well as Jeremy Bentham's Utility Theory, which in the author's opinion should the prosecution of this case be terminated on the grounds that it is in the interest of state revenue because the state has received quite lucrative benefits in the form of payment of taxes owed and fines. A tax payable is 4 (four) times greater than the principal tax debt (Huda and Hernoko, 2017).

According to Bentham's earlier statement, the positive and negative effects of the legislation must be compared to the positive and negative results of its actual execution. A new legal rule may be deemed beneficial if its implementation results in goodness, maximum enjoyment, and minimal suffering. Furthermore, applying *vice versa* is deemed damaging if it results in unjust losses and penalties and simply increases misery. Scholars assert that this benefit hypothesis serves as the economic foundation for legal reasoning (Slattery, 2014). The fundamental tenet of this philosophy concerns the intent and assessment of the legislation. According to this view, the goal of the law is to increase human welfare, and the legal system is judged according to how successfully the law is being put into practice. Regulations guiding the creation of state welfare are included in the statute (Houben and Snyers, 2018).

Like economics, the legal system is also about rational behaviour. The law wants to influence behaviour through sanctions, such as imprisonment or restitution. The coercive aspect of the law assumes that people are aware of the consequences. Furthermore, these microeconomic concepts are applied to legal issues, including drafting laws and regulations. Economics Analysis of Law is the application of economic principles as rational choices to the analysis of legal issues. This theory is derived from utilitarianism, which prioritizes the principle of utility (Posner, 1986). It was created by philosopher Jeremy Bentham (1748-1832) and John Stuart Mill (1773-1873). (1806-873).

In light of the legal and economic analysis theory discussed above, it is highly pertinent and advantageous not to sue the defendant (Taxpayer) who has paid off the tax due and the tax penalty due if it is implemented in terms of ending the prosecution of tax cases in the interest of state revenues during court proceedings. This is based on the principle of opportunity because the return is extremely effective and efficient for handling tax crime cases. As a result, cases are handled quicker, simpler, and more affordably without going through a drawn-out litigation mechanism in the District Court, which of course requires a lot of energy and time long enough for the public prosecutor to prove the defendant's guilt and attempt to immediately execute a court decree (Benk et al., 2015).

According to Radbruch, as cited by Jonlar Purba, justice must be regarded as an element of legal concepts (Budiono et al., 2022). The second factor is finality and certainty. The law and justice are two sides of the same coin. If justice is described as substance and law as structure, then the value of justice is the substance that must fill the structure of law. Moreover, the law is a form that must safeguard the value of justice. Justice is normative for law because it is a transcendental requirement underlying every law that deserves respect (Saidi, 2013). The legal science doctrine "*Fiat justitia, ruat coelum*" reveals legal justice (let justice be carried out, even though the sky will fall). Therefore, every public prosecutor is expected to provide lawful justice for Taxpayers (suspects/defendants) who have paid the tax and tax penalty by implementing a non-punitive policy in the form of *deponering* action, namely the termination of the prosecution of tax cases in the interest of state revenue (Waluyo, 2018).

When examined in terms of the philosophy of tax law, the settlement of tax cases prioritizes non-penal policies rather than penal policies, which are the last resort (*ultimum remedium*) if all administrative sanctions have been taken (administrative penal law) (Arifki and Azmi, 2020). This means that the implementation of tax law prioritizes the benefits of collecting taxes for the purposes or interests of the nation and/or state and society as

stipulated in the State Budget (APBN) rather than criminalizing (*primum remedium*) taxpayers (Wirawan, 2021). According to the author, the factors that cause the public prosecutor to prosecute taxpayers who have paid off the tax payable and the tax penalty payable at the stage of prosecution in the District Court are:

- a) According to the Guidelines for the AG of the Republic of Indonesia Number 2 of 2019 on Criminal Claims in Criminal Cases in the Taxation Sector, a defendant (Taxpayer) who has paid 100% of taxes is still subject to imprisonment and a fine by the public prosecutor.
- b) The General Regulations of Taxation has not regulated the mechanism for stopping the prosecution of tax cases in the interest of state revenues at the prosecution stage in court.
- c) The Public Prosecutor does not have the authority to stop the prosecution of tax cases at the prosecution stage at the District Court trial because it is in the interest of state revenue.
- d) The Law of the Prosecutor's Office of the Republic of Indonesia does not clearly and completely regulate the qualifications of cases that can be terminated for reasons of the public interest, even though the public interest includes the interests of state revenues in the tax revenue sector which will later be used for the nation, state and the wider community (public interest).
- e) The cases handled by the public prosecutor are not only general crimes but include economic crimes such as customs, excise and taxation, so an expansion of the meaning of "in the public interest" is needed so that it can be interpreted the same as "in the interest of state revenue" so that the prosecutor the general public can settle tax cases for taxpayers who have paid off taxes owed and tax penalties owed by taking deponing actions based on the principle of opportunity and the principles of obligative justice (principle of legal benefit).

Therefore, the public prosecutor is the central office of law enforcement in terms of resolving tax crime cases that have not been regulated in the General Regulations of Taxation, namely regarding the termination of the prosecution of tax cases because, in the interest of state revenue at the stage of prosecution of examinations in court, it is hoped that they will dare to seek and find the law for the sake of justice and welfare for people seeking justice by making and issuing regulations governing the mechanism and criteria for stopping the prosecution of tax cases in the interest of state revenues.

## **2. Model of Termination of Prosecution of Tax Cases for Taxpayers Who Have Paid Payable Taxes and Tax Penalties Payable At the Prosecution Stage at the District Court in the Paradigm of the Principles of Benefit and Legal Justice in order to Realize the Contante Justitie Principle.**

The task of locating the law and interpreting it has broadened to encompass additional legal authorities, the prosecutor being one of them. It no longer only falls within the jurisdiction of the court. Prosecutors' ability to conduct legal research and interpretations is authorized by the provisions of Article 8 paragraph (4) of the Law on the Prosecutor's Office of the Republic of Indonesia, which gives prosecutors the same legal standing as judges under Article 5 Paragraph (1) of the Law on Judicial Power (Badriyah, 2011). The criminal law discovery system, in the author's opinion, is connected to the presence of a legal void (*rechtsvacuum*) about the conclusion of the prosecution of tax cases for the defendant (Taxpayer) who has paid up the tax owing and the tax penalty due at the stage of examination in court. In order to prevent injustice and legal confusion, the prosecutor is granted the power to interpret and determine the law. (Idham, 1985).

Thus, the prosecutor must be able to explore the human values that live in society, namely the values of expediency, justice and legal certainty for taxpayers who have paid tax obligations and tax penalties so that the settlement of tax cases through non-penal policies is not only found in the investigation stage but justice, certainty and legal benefits can also be found at the stage of prosecution and examination in court (Pradityo, 2016).

In connection with the interpretation and discovery of the law above, the question arises: What is the object of legal interpretation for prosecutors in settling tax cases for defendants (taxpayers) who pay off taxes owed and tax penalties payable? According to the author, the object is a system of stopping the prosecution of tax cases in the interest of state revenues in the form of deponing actions based on the principles of opportunity, expediency and legal justice that can be applied in terms of non-litigation settlement of tax cases (Manan, 2013, Ahmad, S. D. 2019). So that this system needs to be explored by the prosecutor to be interpreted as well

as finding the law so that it can be applied at the stage of prosecuting the examination at the District Court trial for the defendant (Taxpayer) who has paid off the tax payable and the tax penalty payable.

Therefore, the prosecutor in carrying out his duties and authorities in terms of interpreting and finding the law in order to always maintain the honour and dignity of his profession by the noble values of Tri Krama Adyaksa, namely (Saragih and Sahlepi, 2019):

- 1) *Satya is loyalty that stems from a sense of honesty to God Almighty, oneself, one's family, and fellow human beings.*
- 2) *Adhi is perfection in duty, and the main element is having a sense of responsibility to God Almighty, family, and fellow human beings.*
- 3) *Wicaksana is wise in speech and behaviour, especially in applying power and authority.*

That incomplete and unclear laws and regulations must be found by explaining, interpreting, or completing the laws and regulations. Find the law, and there are several methods of finding law by carrying out the method of interpretation or interpretation as follows:

- 1) Grammatical Interpretation, namely the meaning of statutory provisions which are interpreted by elaborating them according to common everyday language.
- 2) Systematic or Logical Interpretation is the interpretation of statutory provisions by relating them to other laws, regulations, or the legal system.
- 3) Historical Interpretation is the interpretation of the meaning of the law according to its occurrence by examining the history of the legislation. Historical interpretation also includes the history of law.
- 4) Teleological or Sociological Interpretation. This interpretation interprets the law according to the legislator's purpose rather than the sound of the words of the law. Teleological interpretation must also *take into account the context of actual social reality.*

According to Sudikno Mertokusumo, from the findings of the law with various interpretation methods above, interpretations can still be distinguished as follows (Badriyah, 2011) :

- 1) Restrictive interpretation is to explain a statutory provision by limiting its scope, in the sense of narrowing the meaning of regulation by starting with its meaning according to language. Included in this restrictive interpretation are grammatical interpretations and systematic interpretations.
- 2) Extensive Interpretation is going beyond the limits of understanding something according to grammatical interpretation. Included in this extensive interpretation are historical interpretations and teleological interpretations.
- 3) Comparative Interpretation is an interpretation by comparing the provisions of laws in various countries, especially for laws arising from international agreements.
- 4) Anticipatory Interpretation or Futuristic Interpretation is an interpretation using regulations that do not yet have effective force because they are still in the draft law.

Suppose the prosecutor uses the above method of legal discovery and interpretation to resolve tax cases for the defendant (taxpayer) who has paid the tax payable and tax penalty payable in the pre-trial stage in court. In that case, the correct legal interpretation used is systematic or logical. The regulatory object that will be interpreted is the application of the suspension of the admissibility of tax cases in the interest of state revenue on the basis of the principles of opportunity, advantage and legal justice (Ningrum, Ispiyarso & Pujiyono, 2016, Riyanta, 2019).

Therefore, according to the author, in order to resolve the tax case, the public prosecutor should carry out a systematic or logical interpretation by looking for a systematic or logical similarity in meaning between "public interest" and the phrase "interest in state revenue" which can be found in the provisions of Article 1 point 3 Law Number 6 of 2020 concerning the State Revenue and Expenditure Budget for Fiscal Year 2022 which explains that "Tax Revenues are all state revenues consisting of Domestic Tax Revenue and International Trade Tax Revenue". State revenues from taxation are used for the benefit of the nation and state

and/or the interests of the community at large through State Revenue and Expenditure Budget (APBN) planning so that the prosecutor can solve the case exercising its discretion. based on the principle of opportunity to exercise a non-criminal policy in the form of suspending the prosecution of tax cases in the interest of state revenue.

According to the author, the public prosecutor's consideration of using a systematic or logical interpretation is not only oriented to legal certainty but rather to the benefits of law and legal justice, which refers to the legal system or fundamental values according to Gustav Radbruch as legal ideals whose elements consist of legal justice (Gerechtigkeit), legal certainty (Rechtssicherheit) and legal expediency (Zweckmassigkeit) so that this is what guides humans in legal life. This is in line with the opinion of Thomas Aquinas in *Summa Theologiae* I-II, 90. Art.4, where the law has four essential elements, namely (Wulandari et al., 2022): a. Law as an order of reason, b. Laws are made for the common good, c. The law must be enacted, d. The authorities promulgate laws.

According to the author, the policy of the public prosecutor's office to block tax cases in the interest of state revenues is based on the principle of expediency referred to in article 35, paragraph 1, letter b, of the law on the public prosecutor's office. Indonesia. The meaning of "public interest" has the same meaning as "interest of state revenue" because state money obtained from payment of taxes payable and tax penalties payable is used for the public interest, which in this case is used for the welfare of the wider community.

In comparison, the prosecutor in the Netherlands has the power to stop the prosecution, even though there is sufficient evidence and witnesses, whenever he thinks that the prosecution will only harm the public interest, the government or individuals. Such action is known as cessation of prosecution for policy reasons, given that, for example, the crime is mediocre, the perpetrator is very old, and the victim has been compensated (Amara and Khlif, 2018). Based on the principle of opportunity in the Netherlands above, which has brought the principle to Indonesia, the public prosecutor can carry out a historical interpretation that applying the principle of opportunity is discretionary because the crime is ordinary and the victim has been paid compensation.

Therefore, according to the author, the public prosecutor can resolve tax crime cases that have paid off taxes owed and tax penalties payable through discretion based on the principle of opportunity by carrying out extensive interpretations by expanding the meaning of "ordinary crimes" to "criminal offences of administration". Administrative Penal Law) and the meaning of "the victim has been compensated" is interpreted as "the state as the party that receives the recovery of losses in state revenue". So that the tax case can be stopped prosecuting because it is in the interest of state revenue based on the principles of opportunity, expediency and legal justice. That in order to fulfil the provisions of the element, "The AG is obliged to pay attention to suggestions and opinions from state power agencies that have a relationship with the matter" as explained in Article 35 Paragraph (1) letter b of the Law on the Prosecutor's Office of the Republic of Indonesia, according to the author, the public prosecutor can interpret it by interpreting extensively by expanding the meaning into "the public prosecutor applies to the termination of the prosecution of tax cases from the panel of judges examining the case".

Thus, the author claims that the theory of the operation of law may be used to study the design and development of a model for ceasing the treatment of tax cases in the interest of state income in the paradigm of the concept of legal expediency and fairness. legislation in effect). According to the author, the General Regulations of Taxation and the Indonesian Prosecutor's Law, which regulates the mechanism and criteria for stopping prosecutions based on the principle of opportunity that prioritizes the principle of expediency and legal justice as well as the principle of contante justice, need to be significantly amended to address the termination of prosecution of tax cases in the interest of the state at the stage of examination at the District Court.

Along with the aforementioned adjustments to the law's content, it is also important to alter its organization, particularly the authorities who have the authority to halt tax litigation in the sake of state income. That is to say, prosecutors in the regions are given the most latitude possible to implement the principle of opportunity to stop prosecuting tax cases in the interest of state revenues if, in his opinion, doing so will not advance or uphold the public interest. This means that the AG does not have exclusive authority over the principle of opportunity. Government or private person.

If the legal framework and substance have been updated, the government's next step should be to disseminate and publish the tax law with the assistance of law enforcement organizations in order to raise public awareness of the need to pay taxes honestly, on time, and with proper reporting so that the community's contributions can be used for tax-related purposes. Support all government spending on development and welfare programs



for the Indonesian people. The author also contends that the paradigm of the principle of expediency and legal justice, applied through the penal mediation method with an approach to the principle of expediency and legal justice that applies the Plea Bargaining System mechanism based on the ultimum remedium principle, the principle of contante jus, is the model for ceasing the prosecution of tax cases in the interest of state revenue at the stage of examination at the District Court trial.

- a) After the prosecutor has transferred the indictment and the case files to the court, the prosecutor can negotiate with the defendant (taxpayer) and the lawyer to find out whether the defendant admits and repents of his actions (Guilt Bargaining System).
- b) Let's say the taxpayer, who is the defendant, acknowledges guilt based on his knowledge and views. In this instance, the public prosecutor suggests that the defendant (taxpayer) either promptly return the tax and penalty that must be paid via the public treasury or provide the public prosecutor products worth the same as the tax and penalty that must be paid. auctioned by the Public Prosecutor or other documents in the form of an order from the defendant mandating that the value of his seized assets during the preliminary phase match the amount of tax and penalty payments that must be made and will be sold at auction by the Public Prosecutor
- c) Assume that the defendant satisfies the criteria listed in letter b) above and provides the public prosecutor with documentation of the tax payment or possession of the assets. In this situation, the prosecutor would ask the panel of judges hearing and ruling on the case to stop prosecuting tax cases in the interest of state revenues.
- d) The prosecutor will draft and submit a Letter of Decision on Cessation of Prosecution in the Interests of State Revenue (SKP4 DKPN) for the district head's signature if the panel of judges decides to dismiss the case. Attorney providing copies of the letter to the Republic of Indonesia's Minister of Finance, as well as to investigators, courts, defendants, and attorneys. Similarly, the Public Prosecutor's Office and the Chief Prosecutor's Office will report and report on the discretion to gradually suspend the prosecution of tax cases in the interest of state revenues, the Chief Prosecutor's Office, the Deputy AG Specializing in Crimes and the AG of the Republic of Indonesia.
- e) Let's say the jury decides against ending the tax case's treatment. In such a situation, the prosecutor may, in accordance with his discretionary authority, ask the District Chief to request permission from the AG of the Republic of Indonesia to gradually terminate the prosecution of tax cases in the interest of state revenues. Deputy AG for Special Crimes (Jampidsus), Attorney General (Kajari), Chief of Higher Prosecutor's Office (Kajati), and AG of the Republic of Indonesia by attaching evidence of payment of overdue taxes and overdue tax penalties or proof of asset possession.
- f) Let's say that, in the interest of state income, the AG of the Republic of Indonesia granted permission to halt the prosecution of tax cases. When this occurs, the public prosecutor promptly drafts and sends a Decision Letter on Termination of Prosecution of Tax Cases in the Interest of State Revenue (SKP4 DKPN), which must be signed by the district attorney's chief, along with a copy of the letter to the minister. The Head of the District Attorney (Kajari), Head of the High Prosecutor's Office (Kajati), Junior AG for Special Crimes (Kajari), Jampidsus), and investigators, judges, defendants, and legal counsel report the implementation of the termination of the tax case prosecution to the AG of the Republic of Indonesia in stages by attaching SKP4 DKPN.
- g) Suppose that the settlement of the tax to be paid and the tax penalty to be paid is on the initiative of the defendant (taxpayer) by attaching to the Public Prosecutor the proof of the payment of the taxes or of the custody of the assets. In this case, the Public Prosecutor must submit to the panel of judges that examines and judges the case, an application for stipulation to cease the admissibility of tax cases in the interest of State revenues. Furthermore, the public prosecutor implements the requirements of points d, e and f above.
- h) In this case, the Public Prosecutor must submit to the panel of judges that examines and judges the case, an application for stipulation to cease the admissibility of tax cases in the interest of State revenues.
- i) If the defendant (taxpayer) only pays the tax payable and the tax penalty payable is 0% to 25%, or 25% to 50%, or 50% to 75% and/or 75% to 100%, then the claimant. The general public completes the prosecution of the tax case based on the penal policy by the Guidelines for the AG related to Republic of Indonesia Number 2 of 2019 concerning Guidelines for Criminal Prosecution of Tax Crimes.

#### **D. CONCLUSION**

The model for ceasing the process of prosecution of tax cases in the interest of the state revenue at the stage of examination in court in the paradigm of the principle of legal justice and expediency through the penal mediation method with an approach to the principle of legal justice and expediency that applies the Plea Bargaining System mechanism which is based on the principle of ultimum remedium, the principle of contante

justitie (for instance, principle of fast, simple and low cost trial) and the principle of opportunity, among which can be done by: Termination of prosecution of tax cases point a to point f above only applies to defendants (taxpayers) who have paid off taxes and tax penalties owed 100% (one hundred percent) and if the defendant (taxpayer) only pays the tax payable and the tax penalty payable is 0% to 25%, or 25% to 50%, or 50% to 75% and/or 75% to 100% then the public prosecutor complete the prosecution of the tax case based on the penal policy in accordance with the Ped Oman the AG of the Republic of Indonesia Number 2 of 2019 concerning Guidelines for Criminal Prosecutions in Tax Crimes.

Termination of prosecution of tax cases points a through f only applies to defendants (taxpayers) who have paid off all taxes and tax penalties owed, and if the defendant (taxpayer) only pays the tax payable and the tax penalty payable is 0% to 25%, or 25% to 50%, or 50% to 75% and/or 75% to 100%, then the public prosecutor completes the prosecution of the tax case based on the penal policy in accordance with Guidelines for Criminal Prosecution of Tax Crimes, Number 2 of 2019.

## REFERENCES

1. Ahmad, S. D. (2019). LEGAL PROTECTION FOR CREATORS OF CINEMATOGRAPHIC WORKS AGAINST COPYRIGHT INFRINGEMENT THROUGH STREAMING AND FREE DOWNLOAD SITES. *Journal of Legal, Ethical and Regulatory Issues*, 22(3), 1-7.
2. Amara, Ines, and Hichem Khelif, 'Financial Crime, Corruption and Tax Evasion: A Cross-Country Investigation', *Journal of Money Laundering Control*, 21.4 (2018), 545–54 <<https://doi.org/10.1108/JMLC-10-2017-0059>>
3. Arifki, N A, and I F Azmi, 'Penghindaran Pajak Dalam Diskursus Tindak Pidana Pencucian Uang', *Pandecta: Jurnal Penelitian Ilmu Hukum*, 15.2 (2020), 167–77 <<https://doi.org/10.15294/pandecta.v15i2.18667>>
4. Badriyah, Siti Malikhatun, 'Penemuan Hukum (Rechtsvinding) Dan Penciptaan Hukum (Rechtsschepping) Oleh Hakim Untuk Mewujudkan Keadilan', *Masalah-Masalah Hukum*, 40.3 (2011), 384-392–392 <<https://doi.org/10.14710/mmh.40.3.2011.384-392>>
5. Benk, Serkan, Tamer Budak, Serap Püren, and Mete Erdem, 'Perception of Tax Evasion as a Crime in Turkey', *Journal of Money Laundering Control*, 18.1 (2015), 99–111 <<https://doi.org/10.1108/JMLC-04-2014-0012>>
6. BUDIONO, Arief, Yogi PRASETYO, Kelik WARDIONO, Wardah YUSPIN, Khudzaifah DIMYATI, and Dewi IRIANI, 'Legal Conscience And The Pressure Of The Formal Law System', *WISDOM*, 2.22 (2022) <<https://doi.org/10.24234/wisdom.v22i2.790>>
7. Chiarini, Bruno, and Elisabetta Marzano, 'A Strategic Approach for the Crime of Tax Evasion', *Journal of Financial Crime*, 26.2 (2019), 477–87 <<https://doi.org/10.1108/JFC-02-2018-0026>>
8. HOUBEN, Robby, and Alexander SNYERS, *Cryptocurrencies and Blockchain, Legal Context and Implications for Financial Crime, Money Laundering and Tax Evasion, The WealthTech Book* (Brussels: European Parliament, 2018) <<https://doi.org/10.1002/9781119444510.ch38>>
9. Huda, Mokhammad Khoirul, and Agus Yudha Hernoko, 'Tax Amnesties in Indonesia and Other Countries: Opportunities and Challenges', *Asian Social Science*, 13.7 (2017), 52 <<https://doi.org/10.5539/ass.v13n7p52>>
10. Ippolito, André, and Augusto Cezar Garcia Lozano, 'Tax Crime Prediction with Machine Learning: A Case Study in the Municipality of São Paulo', *ICEIS 2020 - Proceedings of the 22nd International Conference on Enterprise Information Systems*, 1.Iceis (2020), 452–59 <<https://doi.org/10.5220/0009564704520459>>
11. Kastlunger, Barbara, Edoardo Lozza, Erich Kirchler, and Alfred Schabmann, 'Powerful Authorities and Trusting Citizens: The Slippery Slope Framework and Tax Compliance in Italy', *Journal of Economic Psychology*, 34 (2013), 36–45 <<https://doi.org/10.1016/j.joep.2012.11.007>>
12. Ningrum, Diajeng Kusuma, Budi Ispiyarso, and . Pujiyono, 'Kebijakan Formulasi Hukum Pidana Di Bidang Perpajakan Sebagai Upaya Peningkatan Penerimaan Negara', *Law Reform*, 12.2 (2016), 209 <<https://doi.org/10.14710/lr.v12i2.15875>>
13. Posner, Richard, *Economic Analysis of Law, Syria Studies* (Boston, Toronto, London: Little, Brown and Company, 1986)
14. Pujiyono, P., Waluyo, B., & Manthovani, R. (2020). Legal threats against the existence of famous brands a study on the dispute of the brand Pierre Cardin in Indonesia. *International Journal of Law and Management*.
15. Riyanta, S. (2020). Corporate Criminal Liability in the Collapse of Bank Century in

- Indonesia. *Humanities and Social Sciences Letters*, 8(1), 1-11.
16. Saidi, Muhammad Djafar, 'TINDAK PIDANA KORUPSI DI BIDANG PERPAJAKAN Muhammad', *Jurnal Hukum Dan Peradilan*, 2.1 (2013) <<https://doi.org/10.25216/jhp.2.1.2013.35-44>>
  17. Saragih, Y M, and M A Sahlepi, 'Kewenangan Penyadapan Dalam Pemberantasan Tindak Pidana Korupsi', *Hukum Pidana Dan Pembangunan Hukum*, 1.2 (2019) <https://doi.org/10.25105/hpph.v1i2.5467>
  18. Suwadi, P., Ayuningtyas, P. W., Septiningrum, S. Y., & Mantovani, R. (2022). Legal comparison of the use of telemedicine between Indonesia and the United States. *International Journal of Human Rights in Healthcare*
  19. Wulandari, Cahya, Esmi Warassih Pujirahayu, Edward Omar Sharif Hiariej, Muhamad Sayuti Hassan, and Juan Anthonio Kambuno, 'Penal Mediation : Criminal Case Settlement Process Based on the Local Customary Wisdom of Dayak Ngaju', *Lex Scientia Law Review*, 6.1 (2022), 69–92 <https://doi.org/10.15294/lesrev.v6i1.54896>