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# LEGAL ANALYSIS ON DELIBERATE TAX EVASION IN INDONESIA

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**Abstract:** This study aims to analyze the crime of deliberately not paying taxes that have been withheld or collected (Tax Evasion) in Indonesia. This study uses normative legal research with a statutory approach (statute approach) and a case approach (statute approach). In this study, legal materials were analyzed qualitatively with steps, namely (1) identifying legal facts and eliminating irrelevant matters; (2) collecting legal and non-legal materials; (3) conducting a review of legal issues; (4) drawing conclusions and providing prescriptions.
The results of the study show that First, the general description includes the indictment, demands, witness statements, and expert statements. Second, in the analysis of facts, there are differences between public prosecutors and legal advisors specifically in calculating losses to state revenues, and thirdly, in the juridical analysis, there are differences in the application of legislation where the application of administrative penal law and ultimum remedium is not yet achieved
**Keywords: Legal Analysis, Deliberate, Tax Evasion*.***

## INTRODUCTION

The 1945 Constitution upholds rights and obligations, one of which is participation in state financing and national development through taxation. Several regulations have been made since 1925 concerning the corporate tax ordinance, the wealth tax ordinance (1932), and the income tax ordinance (1944) until the issuance of Law no. 7 of 2021 concerning the Harmonization of Tax Regulations. Tax reform is important because it increases state revenues and produces tax ratios in various fields. (Hofir et al., 2021) The taxation system in Indonesia has attempted to support national economic recovery (Fauzi, 2022) by providing incentives and increasing economic growth based on the spirit of mutual cooperation (Purwowidhu, 2022).

The presence of harmonization of tax regulations as a consolidated fiscal policy measure with a focus on improving the budget deficit and increasing the tax ratio (tax ratio), including implementing policies to improve tax revenue performance, tax administration reform, increasing the tax base, creating a tax system that prioritizes the principles of justice and legal certainty, as well as increasing voluntary taxpayer compliance.

In order to increase the tax ratio (tax ratio), the Government has made various efforts, including tax reform that focuses on organization, human resources, data-based information technology, business processes, and tax regulations. This is implemented among others by improving the service function, implementing the Tax Amnesty program, implementing the Automatic Exchange of Financial Account Information scheme, strengthening effectiveness, extensification function, and law enforcement. In addition, the policy on increasing VAT rates aims to increase economic growth and integrate citizen's ID (NIK) as tax ID (NPWP) into SIN for improving tax administration, improving tax regulations, and efforts to increase the base of tax revenues. (Mufidah, 2022)

The sunset policy effort in 2008 through the abolition of tax administration sanctions in the form of interest for taxpayers who met certain requirements has become a factor in achieving revenue. (Hofir et al., 2021). On the other hand, in taxation, there are administrative sanctions and criminal sanctions, which are two different things. If administrative sanctions have been applied and it turns out that these provisions are still being violated, then criminal sanctions will be applied. (Mochtar & Hiariej, 2021) Thus, criminal sanctions function as an ultimum remidium, that is, criminal sanctions are the last means to affirm the law when other legal instruments can no longer enforce the rule of law. (Remmelink, 2003)

Setting Criminal Acts in the field of Taxation using

criminal rules in the third amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures jo. Law No. 16 of 2009 jo. Law No. 11 of 2020 concerning Job Creation. In Makassar, there have been 3 (three) criminal cases in the field of taxation from 2020 to 2022. Meanwhile, there is a decision Number 410/Pid.Sus/2022/PN Mksr., with the condition of deliberately not paying taxes that have been withheld or collected (also known as invoice embezzlement), which has been subject to criminal sanctions, not

administrative sanctions. In this decision, the defendant was given a prison sentence of 6 months, different from the other cases which were 8 months and 1.8 years.

## MAIN PROBLEM

The main problem discussed in this research is regarding the ideals of the existence of harmonization of tax regulations, several policies, and efforts and compared with the implementation of criminal acts in the field of taxation in the Makassar city area, this research tries to explore case number 410/Pid.Sus/2022/PN Mksr as a legal issue, through the title Analysis of the Crime of Deliberately Not Depositing Taxes That Have Been Withheld or Collected. In conclusion, this research is expected to be able to contribute to the discourse on Criminal Acts in the field of Taxation in Indonesia, especially in Makassar where there is still a lack of stakeholders as an effort to tackle crime.

## METHOD OF RESEARCH

This study uses normative legal research with a statute approach and a statute approach (Marzuki, Legal Research, 2017). The legal materials used are in the form of statutes, court decisions, legal journals and other official legal publications as well as comparisons with pledoi, examination minutes and other files. (Prasetya, 2020) In research, legal material is analyzed qualitatively with steps, namely (1) identifying legal facts and eliminating irrelevant matters to determine what is to be resolved; (2) collecting legal and non-legal materials; (3) conduct a study of legal issues based on the materials that have been collected; (4) draw conclusions

in the form of arguments that answer legal issues and provide prescriptions. (Marzuki, Legal Research, 2017)

## RESEARCH RESULT AND DISCUSSION

In this study, the authors analyze the decision PDS-01/P.4.10/Ft.1/03/2022 to be able to show the tax evasion conditions that occurred in Indonesia. Where the cases referred to are as follows:

The defendant named Ir. H. Safwan Syam as Director of CV. Gift of Earth based on the Deed of Establishment (Partyani, 2019) CV. Karunia Pertiwi No.5 dated January 5, 1995 by Notary Yovitarea, SH., Deed of Amendment No.:27 dated January 29, 2001 by Notary Yovitarea, SH., Deed of Amendment No.:03 dated December 4, 2010 by Andi Yasmin Arfah, SH. , M.Kn, Deed of Amendment No.: 04 December 9 2010 by Andi Yasmin Arfah, SH., M.Kn, around January 2015 to December 2015 or at least some time still in 2015, located at CV. Earth's Gift, Jln. South Tamalanrea II BTP Blok M No.:69 RT.006 RW.002., Tamalanrea, Makassar City. As for now, it is located on Jln. Perintis Kemerdekaan 18 No.17., Bontoramba, Tamalanrea, Makassar City, South Sulawesi Province or at least in another place that is still included in the jurisdiction of the Makassar District Court which has the authority to examine and adjudicate this case, has committed an act of intentionally not depositing taxes that have been deducted or collected, namely Value Added Tax (VAT) for the period January 2015 to December

2015 which can cause losses to State revenues.

The case was born as a result of the Defendant's actions which were alleged to have caused a loss of state revenue for VAT for the period January - December 2015 of Rp. 566,225,603,- (five hundred sixty-six million two hundred twenty-five thousand six hundred three rupiah) or at least around that amount. Therefore, in the first indictment, the actions of the Defendant are punishable under Article 39 Paragraph (1) letter i of Law No. 6 of 1983 concerning General Provisions and Tax Procedures as amended several times, most recently by Law no. 16 of 2009 concerning the fourth amendment to Law no. 6 of 1983 concerning General Provisions and Tax Procedures (abbreviated KUP Law) jo. Article 44B Law no. 11 of 2020 concerning Job Creation (abbreviated as UUCK). In addition, it was also stated in the second indictment that he had committed an act of deliberately submitting a tax return and/or statement whose contents were incorrect or incomplete, namely VAT for the period January - December 2015 which caused losses to state revenues as referred to in Article 39 paragraph (1) letter d UU KUP jo. Article 44B UUCK.

The Public Prosecutor in the prosecution believes that the Defendant is proven to have committed a Criminal Act as in the first charge by violating Article 39 Paragraph (1) letter i UU KUP jo. Article 44B of the CK Law, and demands that the Defendant is sentenced to imprisonment for 2 (two) years and stipulates that the Defendant shall pay court fees of Rp. 5,000 (Five thousand Rupiah).

The facts of the trial which had been submitted by the Public Prosecutor were considered by the Legal Counsel to not be able to prove the criminal acts committed by the Defendant as stated in the indictment or in the indictment. The Legal Counsel outlined the DGT Regional Office letter dated 08 September 2021 to the Defendant to provide information as Director regarding taxes that had been deducted or collected in 2015, which type of tax meant was Value Added Tax (VAT) for the period January to December 2015

The DGT Regional Office has implemented an administrative sanction of 100%, so that the calculation of the tax paid by Defendant to the state treasury, only the tax base has not been accompanied by a fine. Letter of notification of commencement of investigation number S-2/SPDP/TSK/WPJ.15/2021 dated 03 November 2021, DGT Office Investigators determined the suspect with the allegation of deliberately not depositing tax that had been withheld or collected and/or deliberately submitting a notification letter whose contents incorrect or incomplete, so that it can cause losses to state revenues as referred to in Article 39 paragraph (1) letter i and/or letter d of Law Number 6 of 1983 concerning General Provisions on Tax Procedures as amended several times, most recently by Law Law Number 11 of 2020 concerning Job Creation

The difference in the application of the rules regarding the accused's alleged actions in the Public Prosecutor's indictment made the Legal Counsel assume that there had been a mistake. The substance of the general provisions for tax procedures

up to Job Creation has regulated and limited administrative provisions and criminal provisions. However, the accused has been classified under criminal provisions.

In order to prove the indictment, it is necessary to reconcile the evidence, witness statements, expert statements, letters, and statements of the accused which are also supported by the evidence presented at trial. In the facts of the trial, it was revealed that the loss of state revenue amounted to Rp. 566,225,603,- (five hundred sixty-six million two hundred twenty-five thousand six hundred three rupiah). This was due to the actions of the defendant for VAT for the period January - December 2015, which was sourced from expert calculations using a series of calculations regulated in administrative provisions and used as a basis for the consequences of criminal acts committed by the defendant.

In the indictment, the Public Prosecutor acknowledged that Defendant had made VAT payments that had been deposited by CV. Gift of Mother Earth to the state treasury account for the January-December 2015 tax period of IDR 1,132,251,207 (one billion one hundred thirty-two million two hundred fifty-one thousand two hundred and seven rupiahs), but Defendant has only made a deposit for the tax base only, so there is still leave a fine that must be deposited, this is contrary to the elements contained in Article 39 paragraph (1) letter i Law Number 6 of 1983 Concerning General Provisions for Tax Procedures as amended several times, most recently by Law Number 11 of 2020 about Job Creation.

Article 39 paragraph (1) letter i as in the indictment reads:

"Every person intentionally does not deposit taxes that have been deducted or collected so that they can cause losses to state revenues"

Taxes that have been deducted or collected as referred to in Article 39 paragraph (1) letter i are the Tax Principal. The expert's calculation forms the basis of the Public Prosecutor's indictment and calculates the value of state losses using the tax deposit calculation method that has been carried out through ½ for the principal tax and ½ for the principal tax sanction. So it still causes state losses of IDR 566,125,604 (Five Hundred Sixty-Six Million One Hundred Twenty-Five Thousand Six Hundred Four Rupiah).

The defendant can be said not to have complied with Article 39 paragraph (1) letter i in the indictment if the tax that has been collected has been deposited into the state treasury and the calculation of state losses due to underpayment. Expert Andri Hendra said that there is no provision or legal basis that can be explained regarding the transfer of payment of ½ sanctions and ½ of the underpaid tax principal. The legal basis for Article 8 paragraph (3) of the KUP Law only explains fines/sanctions, not dividing VAT payments into ½ (half) the fines/sanctions and ½ (half) payment of tax payable, from VAT worth IDR 1,132,251,207 to VAT worth IDR. 566,125,604.

The basis for dividing the payment of the tax principal which is divided into ½ principal and ½ fine is an act that has no legal basis because it does not refer to derivative regulations, namely the Regulation of the Minister of Finance but is only based on Official Notes. Meanwhile, the intended official memorandum also did not explain the

legal basis regarding the division of Defendant's principal payment minus ½ fine.

Making policies that are not based on a provision of laws and regulations or regulations that are under it is a form of arbitrariness that cannot be qualified as a policy. Objections due to a policy must have a legal basis or provisions that are normative. So that it has clarity and legal certainty and does not cause different perceptions so that it does not result in multiple interpretations of a policy.

Isra Muhita as a witness to the charge is an employee of the defendant in the finance department at PT. Karunia Pertiwi Multikontruksi is responsible for managing tax invoices, making tax payments, and preparing company financial reports. As for the Defendant's order to the witness, namely to make a deposit of VAT tax which, when accumulated payments have been made, amounted to Rp. 1,132,251,207. Meanwhile, witness Fitriadi was also a witness to the charge, an employee of the defendant in the finance department at PT. Karunia Pertiwi Multi construction, who knows the defendant has deposited taxes worth more than one billion.

Expert testimony Hartono, Legal Counsel objected to the absence of provisions or legal basis regarding the transfer of payment of ½ sanctions and ½ of the underpaid tax principal. The legal basis of Article 8 paragraph (3) of the UU KUP article only explains fines/sanctions, not dividing VAT payments into ½ (half) of fines/sanctions and ½ (half) of payable tax. So that it is considered to have left the VAT principal of Rp. 566,125,604.

Legal advisers have objected because a policy must have a legal basis or provisions that are normative in nature so that they have legal clarity and certainty and do not give rise to different perceptions so as not to result in multiple interpretations of a policy. This is also not adapted to the motto reach the unreachable, touch the untouchable, where Joko Widodo provides four types of Taxpayer Development Year incentives (TPWP), namely the elimination of administrative sanctions for interest collection; elimination of sanctions for late reporting, correction of SPT and late deposit; reduction of Final PPh rates for revaluation of fixed assets; and reduction of administrative sanctions on SKP, PBB and or STP (Hofir et al., 2021). In addition, without taking into account the concept of ultimum remedium, the public prosecutor's indictment also does not pay attention to the DGT's active role since 1983 to carry out administrative control of tax collection through the application of administrative sanctions.

The criminal justice process is a trial process that is very different from other trial processes because a criminal trial process must be able to measure the extent of the fault (schuld) contained in a defendant in the alleged criminal act charged without the slightest doubt in the examining panel of judges something about it. Then based on this, it can also be measured and asked how much criminal responsibility can be attached to a defendant.

To see a crime (delict) cannot stand alone because its meaning will only emerge if there is a process of criminal accountability, meaning that every person who commits a crime does not automatically have to be convicted or sentenced themselves, because in order to be sentenced a punishment or

punishment against a person, then in that person there must be an element of being criminally responsible which can be requested or imposed on him in accordance with the elements of the act as confirmed in applicable law.

Based on the facts revealed in the trial, please allow us to convey this which is also our defense of the Defendant. So next we will describe and analyze the elements of Article 39 Paragraph (1) letter i and letter d of Law Number: 6 of 1983 concerning General Provisions and Tax Procedures as amended several times, most recently by Law Number: 16 of 2009 jo. Article 44B Law Number: 11 of 2020 Concerning Job Creation, which is linked from the facts of the trial and analysis of facts and juridical analysis in each element of the article with reference to the charges demanded by the Public Prosecutor against the Defendant,

Furthermore, according to the Guidelines for the Implementation of Tasks and Administration (Book II, revised edition printed 4 of 2003, page 209) of the Supreme Court of the Republic of Indonesia and the Ruling of the Supreme Court of the Republic of Indonesia Number: 1398 K/Pid/1994 dated 30 June 1995, the terminology is synonymous with the word "whosoever ” as anyone who must be made a Defendant or every person as a legal subject (supporters of rights and obligations) who can be held accountable for all their actions.

In the indictment and the Public Prosecutor's charge sheet, the Defendant's identity check was confirmed at the first trial by the Defendant, so that there was no error in persona. However, these elements do not stand alone, so to determine the capacity or can be seen as a perpetrator of a crime, the other elements must be proven first.

The second element, namely deliberately not paying taxes that have been collected or withheld. In criminal law theory, there are three gradations of intentional dolus/opzet (Marpaung, 2014), namely:

(1) Deliberately as an intention (opzet als oogmerk), where the actions committed and the consequences that occur are indeed the goals of the perpetrators.

(2) Deliberately as conscious of certainty/intentionally as conscious of necessity (opzet bij zekerheids-bewustzijn), where the result that occurs is not the result that is the goal, but to achieve an effect that is really intended, the other action must indeed be carried out so that in the case of This action produces 2 (two) consequences, namely: The first effect is the result that the actor wants and the second effect is the result that the actor doesn't want but must occur so that the first effect (the desired effect) actually occurs

(3) Deliberately as aware of the possibility/intentionally as conditionally aware (dolus eventualis/voorwadelijk opzet/opzet bij mogelijkheids bewustzijn), where by carrying out an act, the perpetrator is aware of the possibility of another consequence that is actually unwanted, but awareness of the possibility of that other consequence occurring does not make the perpetrator cancel his intention and it turns out that the unintended consequences actually occur. In other words, the perpetrator never thought about the possibility of consequences prohibited by law.

The Public Prosecutor stated the expert testimony of Muhammad Jafar

Saidi presented by the Defendant, on page 76 of his indictment, but the expert's statement was incomplete. The incompleteness points to the expert's statement that the Public Prosecutor did not include Article 8 Paragraph 3 of the KUP Law as a form of the emergence of tax debt and its administrative sanctions as in the first indictment. The public prosecutor in his indictment only included Article 39 paragraph (1) letter i of Law no. 6 of 1983 KUP as last amended by Law no. 16 of 2009 Jo. Article 44 b Law no. 11 of 2020 concerning Job Creation. This shows that the indictment does not comply with the provisions of Article 143 paragraph (2) letter b of the Criminal Procedure Code. Thus the indictment can be said to be null and void based on Article 143 paragraph (3) of the Criminal Procedure Code (M. Yahya Harahap, 2014).

The style of administrative law and administrative criminal acts (which are criminalized) is closely related to the use of general criminal law or special criminal law against criminal acts in the field of taxation which are inappropriate and can lead to legal and justice problems. Therefore, general criminal acts or special crimes relating to the occurrence of tax crimes are independent. Except that in the future, there will be changes that criminal acts in the field of taxation are general crimes that are criminal or independent (independent crimes) as well as crimes contained in the Criminal Code. (Mudzakkir, 2011)

The expert's calculation contained in the indictment, calculating the value of state losses using the tax deposit calculation method is calculated as ½ for the principal tax and ½ for the principal tax sanction which can be interpreted as the tax payment that has been carried out by the Defendant has been transferred to the book. Then the calculation method violated the provisions referred to in Article 25 paragraph (3) of the Minister of Finance No. 18/PMK.03/2021.

Constitutional Court Decision Number 91/PUU-XVII/2020 has reviewed Law No. 11 of 2020 as a law that is conditionally unconstitutional in the sense that it remains in force. However, it does not have a binding legal force so if it is related to Article 1 paragraph (1) of the Criminal Code, the defendant must be released by law.

Feldman said that taxes are achievements owed to the authorities and imposed unilaterally according to the norms set by the authorities themselves, without any return service and solely to cover public expenses. (Saidi, 2007) Mulyo Agung, the national development that is currently taking place continuously and continuously so far aims to prosper the people both materially and spiritually. (Agung, 2007)

The application of criminal sanctions for violations and crimes in the field of taxation should refer to tax laws that provide more severe sanctions than those contained in the Criminal Code or other laws. For example, Article 39 of Law no. 28 of 2007 concerning the third amendment to Law no. 6 of 1983 concerning general provisions and procedures for taxation. (Lamijan, 2014)

According to Djafar Saidi, in terms of regulations, it can be sought or prioritized for settlement in an administrative form because of the principle of ultimum remedium. If the administrative settlement is not completed, then it will enter into a tax crime because it adheres to the

principle of ultimum remedium. So, the settlement of taxation through crime is the final step in the context of enforcing tax law. If Article 39 letter i and letter d are applied to the Job Creation Law, then it will only affect the final deposit of what the defendant made, which is approximately Rp. 100,000,000, - because previously the provisions of the tax law apply which have not been amended by law work copyright.

On the other hand, there is no tax collection letter issued by the Director General of Taxes, either in the form of a tax invoice or tax assessment letter, but the taxpayer still makes payments. This is a form of the defendant's own initiative to pay the tax owed and it should be appreciated. In this case, the Director General of Taxes issues a tax collection letter in advance to collect the amount of tax that was not paid by the defendant which is worth more than 1 billion rupiahs. So, in the absence of a tax invoice, this can be categorized as an administrative violation committed by the tax authorities.

The Job Creation Law came into effect in December 2020, meaning that the deposit made by the taxpayer has seven stages. The last stage is the scope of the Job Creation Law because the rest is in the general provisions of the tax law and is not part of the Job Creation Law. Administrative sanctions will be determined in a court decision due to the application of the Job Creation Law and are effective at the time of promulgation. Therefore, administrative sanctions are subject to the final deposit, namely the deposit at number seven if it is proven.

If Article 8 paragraph (3) of the KUP Law contains administrative sanctions, billing must be done administratively. This is included in the criminal realm, so there are no administrative sanctions. In this case, the court decision will impose administrative sanctions relating to the amount of unpaid taxes. To find out the amount of unpaid tax, you can find out through the last deposit whether it is in the area where the work copyright law applies or not.

Tax payments payable without a billing letter or underpayment determination letter, the tax bill does not exist. However, the taxpayer has deposited the tax payable. The application of the fines or sanctions referred to is placed after the decision if adheres to the Job Creation Law, in that decision, there are administrative sanctions that are aimed at the amount of tax paid within the scope of the Job Creation Law. However, the decision has punished the Defendant.

There have been 7 (seven) tax payments, where the 7th point just entered the territory of the Job Creation Law. Apart from that, it cannot be included in the scope of the Job Creation Law because it cannot be applied retroactively, so the public prosecutor's indictment should use 2 regulations. First, payment stages 1 to 6 use the General Taxation Provisions Law, while number 7 enters the territory of the Job Creation Law, it should be like that and the Job Creation Law cannot apply retroactively to 2018 because it applies when it is promulgated in 2020.

On the other hand, the tax officer should know that taxes have not been deposited into the state treasury, so the tax officer must issue a tax invoice or at least a tax assessment letter. A law has words that apply or not, according to Article 8 paragraph (3) of

the KUP Law. That is what must be enforced before there is tax law, after the Job Creation Law comes into force in 2020, it cannot be applied retroactively because it is against legal norms. Therefore, it is obligatory to include or detail the two regulations used.

Explanation of numbers 1 through 6 pays the principal amount of tax but does not pay 150%. Then, number 7 specifies that 100 million more in 2020. The details may not apply with rates dropping down to 2018.

The application of the Job Creation Law should be in accordance with the type of tax collection letter issued by the tax official. Is it a tax bill or tax assessment letter, or the action of the tax official who only by phone?

Taxable entrepreneur means not on behalf of the corporation, but there is corporate responsibility as Article 8 paragraph (3). The element of paying taxes is subject to an administrative sanction of 150%. So that is what must be paid by the Defendant, if it enters the realm of criminal acts of corruption, then the administrative sanctions in the Tax Law will disappear because of the Job Creation Law, which has 100% sanctions.

In the a quo case, 100% is only for payments on the 7th point, those 1 to 6 are finished. Except if, for example, the tax burden of charges 1 to 6 is subject to Article 8 paragraph 3 of the tax law, surely he must pay 150%. If the indictment is only a work copyright law, it means that only point 7. Point 7 is only 100% administrative sanction, and 1 to 6 don't exist as it is an administrative sanction in the form of a fine.

Public prosecutors who do not refer to Article 8 paragraph (3) of the Job Creation Law make the existing administrative sanctions of 150% non-existent. The drawback of the tax officer's actions is that there is no invoice issued by the Director General of Taxes. There are 2 (two) forms of tax invoices, there are tax invoices which, for example, if there is still a deficiency, late payment tax assessment letters will be issued. That's the basis of tax collection. In this case nothing. In addition, in the taxpayer's proof letter, there is a statement stating the nominal amount of tax owed (the fine), but in the a quo case, there is none.

The action of the Director General of Taxes in collecting by telephone does not reflect a procedural legal action, billing in such a way is not recognized in the tax law, what is known is billing through tax invoices and overdue tax assessment letters. As for the Job Creation Law which applies to point 7, then a fine is subject to 100%. So, the liability of the Defendant is 100%.

The a quo case should apply tax administration law and not be brought into the realm of tax criminal law. The principle of systematic specificity means that criminal provisions are specific if the legislators intend to enforce these criminal provisions as a criminal provision that is specific or special in nature from the existing special (Adji, 2009).

To be able to find out whether a criminal provision has more specifically regulated behavior that has actually been regulated in another criminal provision so that it can be said to be more specialist in nature, it must be seen from the doctrine of how to view a criminal provision. Knowing a criminal provision is more specific, it can be done by looking at it logically, that is if the criminal provision besides

containing other elements also contains all the elements of a general criminal provision and can also by looking at it. juridically or systematically, that is, seen from the intent and purpose of making the law, whether it is intended to apply the criminal provisions as a special criminal provision. (Ramadiyagus et al., 2018)

Legislation that has an administrative penal law dimension must be applied separately by applying the principle of logical specificity, which means the existence of a law as a legislative policy. This is in accordance with Hans Kelsen's stufenbau theory that laws and regulations which have their own characteristics and dimensions should not be confused with one another. (Ramadiyagus et al., 2018)

In the context of criminal law, there are three dimensions that serve as parameters for a law to qualify as a systematic lex specialis. First, the material criminal provisions in the law deviate from the existing general provisions. secondly, the law regulates formal criminal law which also deviates from the provisions of criminal procedure in general. Third, the address or legal subject in the law is specific. (Eddy O.S. Hiariej, 2015)

The principle of systematic specificity which means that criminal provisions are specific if the legislators intend to enforce these criminal provisions as a criminal provision that is specific or special in nature from the existing special (Adji, 2009). Because of this, the Harmonized Tax Law should include laws within the scope of state administration that have criminal sanctions or are categorized as administrative penal law. In addition, the provisions in the Tax Law adhere to the principle of ultimum remedium.

## CONCLUSION

Based on the discussion above, it can be concluded that the crime of deliberately not depositing taxes that have been withheld or collected (Tax Evasion) has resulted in differences of opinion between the Public Prosecutor and the Legal Counsel. In the review of Decision Number 410/Pid.Sus/2022/PN Mksr, it shows that First, the general description contains charges, demands, witness statements, and expert statements. Second, in the analysis of facts, there are differences between public prosecutors and legal advisors, especially in calculating losses to state revenues, and thirdly, in the juridical analysis, there are differences in the application of legislation, the application of administrative penal law, and ultimum remedium.

Based on the description of these conclusions, it is recommended for the Public Prosecutor to make guidelines for calculating state revenue losses and to make guidelines for separating administrative penal law and ultimum remedium in the Tax Law as a reference for future taxpayers. In addition, the parties must pay attention to government policies related to taxes.

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