JGSP
Jurnal Greenation Sosial dan Politik
+62 81210467572 https://greenationpublisher.org/JGSP greenation.info@gmail.com

DOI: https://doi.org/10.38035/jgsp.v3i4

The Principle of Legality in Corporate Criminal Liability for Tax Crimes: A Case Study of Court Decisions

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Abstract: The development of corporate crime is commensurate with the increasing role of corporations. In Indonesia, tax crimes are regulated under the Law on General Provisions and Tax Procedures (UU Ketentuan Umum dan Tata Cara Perpajakan - UU KUP). A fundamental problem arises because the UU KUP does not explicitly, clearly, and strictly regulate corporations as subjects of criminal law, only using the phrase "every person". This issue contradicts the principle of legality in criminal law. This study aims to determine the implementation of the theory of corporate criminal liability and its regulation in tax crimes based on the UU KUP. The research utilizes a normative juridical method, employing statutory, analytical, and case approaches. The results show that the implementation of corporate criminal liability is applied inconsistently and faces legality issues concerning both the legal subject and the sanctions. The case studies of court decisions indicate that Judges perform *rechtsvinding* by interpreting the phrase every person to include legal entities, even though the formulation of the UU KUP is acknowledged as unclear and not detailed. Furthermore, the cumulative sanctions in the UU KUP (imprisonment and fines) legally cannot be applied to corporations. Judges deviate from the cumulative system by only imposing fines. In conclusion, the implementation of corporate criminal liability in tax crimes is applied inconsistently. UU KUP is not explicitly, clearly, and strictly regulated the legal subject and specific sanctions for corporations, thus creating legality issues because it violates the principles of lex scripta, lex certa, and lex stricta.

Keyword: Principle of Legality, Corporate Criminal Liability, Tax Crimes.

INTRODUCTION

Economic development in Indonesia over the past few decades has positioned corporations as crucial actors in the national economy. (Wartono, 2024) The role of corporations is not limited to production and trade activities but also encompasses a wide range of activities that have the potential to give rise to complex tax obligations. Along with the increase in corporate economic activity, the phenomenon of tax violations committed by legal entities has also emerged, both intentionally and through administrative negligence.

(Suhada, 2022) This situation demonstrates that corporations are not only economic entities but also potential perpetrators of tax crimes. This phenomenon poses a serious challenge for law enforcement officials, as violations committed by corporations are often more complex than those committed by individuals, both in terms of evidence and accountability mechanisms. (Rohi, 2022)

Tax crimes involving corporations take various forms, ranging from income tax evasion (Article 39 of the KUP Law) to falsification of tax documents (Article 39A of the KUP Law). Corporations committing tax crimes can cause significant state losses, as their economic capacity is much greater than that of individuals. Furthermore, the multi-party organizational structure of corporations makes determining criminal responsibility difficult. (Aji, 2024) Many cases demonstrate that tax evasion practices are carried out by exploiting legal loopholes, the complexity of financial reports, and the shifting of responsibility between company officials, making law enforcement against corporations complicated and inconsistent. (Tanudjaja, 2024)

The social and economic impacts of tax crimes committed by corporations are quite significant. Socially, corporate tax violations create injustice, as the tax burden, which should be shared, is instead placed on the general public. Economically, the loss of potential tax revenue reduces the state's ability to finance development and public services. Meanwhile, from a legal perspective, unclear regulations regarding corporate legal subjects create legal uncertainty and inconsistencies in court decisions. (Dharmasetya, 2023) This raises an urgent need to review the legal framework governing corporate criminal liability to ensure it aligns with the principles of legality *(lex scripta, lex certa, lex stricta)*.

The General Provisions and Tax Procedures Law (UU KUP), as the legal basis for taxation in Indonesia, regulates various provisions regarding tax obligations, administrative sanctions, and criminal sanctions. In tax crimes, the KUP Law stipulates that any person who intentionally fails to fulfill tax obligations is subject to criminal penalties (Article 39 of the KUP Law: a maximum imprisonment of 6 years and/or a maximum fine of twice the amount of unpaid or underpaid tax). However, the KUP Law uses the term "every person" without explicitly mentioning corporations or legal entities as criminal subjects, creating ambiguity in its application to companies. (Putra, 2022)

The legal subject in the KUP Law, referred to as "every person," has important implications for the application of corporate criminal liability. In theory, a legal entity can be considered a separate entity from the individuals who manage it, so corporate criminal liability requires additional interpretation by judges. Many court decisions demonstrate that judges engage in *rechtsvinding*, interpreting the phrase "every person" to include corporations, even though the KUP Law does not explicitly stipulate this. (Mamole, 2024) This interpretation aims to uphold the principle of justice, but it also creates legal uncertainty because it is not supported by explicit statutory provisions.

Another issue that arises regarding legal sanctions in the KUP Law is the application of cumulative sanctions in the form of imprisonment and fines (Article 39 of the KUP Law). Legally, imprisonment cannot be imposed on corporations as legal entities, as it only applies to individuals. As a result, judges usually only impose fines on corporations, meaning the cumulative sanction system in the KUP Law cannot be applied consistently. This situation creates inconsistencies in law enforcement and raises legal issues, as the KUP Law does not clearly, firmly, and specifically regulate legal subjects and sanctions for corporations, thereby violating the principles of legality (lex scripta, lex certa, lex stricta). (Profianto, 2025)

The principle of legality is one of the main foundations of criminal law, emphasizing that no act can be punished unless clearly regulated by law (nullum crimen sine lege). This principle is detailed in three principles: lex scripta (the law must be written), lex certa (the law must be clear), and lex stricta (the law must be firm and not open to multiple interpretations). (Irham, 2023) In the context of tax crimes, the principle of legality requires that every subject subject to criminal sanctions have certainty regarding prohibited behavior and its legal consequences. Without this certainty, law enforcement can be arbitrary, and the rights of legal subjects become vulnerable to violation. (Virginia, 2021) Therefore, the application of the principle of legality is not merely a matter of legal formality but also an instrument for upholding justice and legal certainty.

The importance of the principle of legality becomes even more apparent when associated with corporations as legal subjects. Legal entities have different characteristics from individuals, as their existence as separate entities makes criminal liability complex. If the legal subject of corporations is not explicitly regulated in law, the application of criminal law becomes ambiguous. In the General Provisions and Tax Procedures Law (UU KUP), for example, the term "every person" is used without explicitly mentioning legal entities, raising the question of whether corporations can be directly subject to criminal liability. This ambiguity potentially violates the lex certa principle because corporations and their officials lack legal certainty regarding their legal status as perpetrators of tax crimes. (Barus, 2023)

This problem is clearly evident in court practice. Many corporate tax case decisions demonstrate inconsistencies in the application of corporate criminal liability. Some judges interpret the phrase "every person" in the KUP Law to include corporations, while others emphasize that the provision applies only to individuals. This inconsistency demonstrates that the absence of explicit regulations on the legal subject of corporations creates legal uncertainty. This situation also reflects the challenge in upholding the principle of legality, as judges must fill legal gaps through interpretation, rather than applying clear provisions. (Daud, 2024)

The phenomenon of *rechtsvinding*, where judges search for or adapt the law to cases not explicitly regulated, frequently occurs in corporate tax cases. (Julina, 2020) Judges often interpret the KUP Law to include corporations, thus allowing criminal liability. While this interpretation aims to uphold justice, this practice creates legal uncertainty because it contradicts the principle of lex scripta, which emphasizes that criminal law must be written and explicit. In other words, the courts indirectly "change" the law through their decisions, which should be the domain of legislation, not the judiciary.

Furthermore, the application of cumulative criminal sanctions, consisting of imprisonment and fines as stipulated in Article 39 of the KUP Law, faces significant obstacles when applied to corporations. Legally, legal entities cannot be imprisoned, so judges only impose fines. This situation creates practical problems, as the cumulative sanctions system stipulated in the law cannot be consistently applied to corporations. As a result, there is a difference in treatment between individuals and corporations, potentially giving rise to injustice and doubts about legal certainty. Thus, the issues of legality and the application of court practices in corporate tax cases are interrelated. The ambiguity of the legal subject matter in the General Provisions and Tax Procedures Law forces judges to interpret it, resulting in inconsistencies and deviations from the statutory sanction system. This emphasizes the urgency of regulatory revision or the creation of explicit legal provisions regarding corporate criminal liability. Enforcing the principles of legality, clarity of legal subject matter, and appropriate sanctions is key to ensuring legal certainty, reducing arbitrary practices, and increasing the effectiveness of tax law enforcement in Indonesia.

The urgency of this research arises from the apparent gap between criminal law theory, the provisions of the General Provisions and Tax Procedures Law (UU KUP), and court practice in handling tax crimes involving corporations. Theoretically, the principle of legality demands legal certainty regarding who can be subject to criminal sanctions and the types of sanctions that can be applied. However, the KUP Law only uses the term "every person" without explicitly regulating legal entities as criminal subjects, thus creating ambiguity in judicial practice. On the other hand, court decisions demonstrate the phenomenon of *rechtsvinding*, where judges interpret vague provisions to include corporations, while simultaneously facing obstacles in applying cumulative sanctions that cannot be imposed on legal entities. This gap indicates the need for in-depth studies to analyze the implementation of corporate criminal liability, identify legal issues, and provide recommendations for regulatory improvements so that the KUP Law can be clearer, firmer, and more consistent in enforcing the law. This research is expected to contribute to strengthening the principles of legality, legal certainty, and justice in enforcing tax law for corporations, while also providing a basis for policymakers to develop regulations that are more effective and responsive to the complexity of tax crimes by legal entities.

METHOD

This paper uses a normative juridical method to emphasize law as applicable norms and regulations, with a focus on the statutory and conceptual approaches. The statutory approach is carried out by analyzing relevant legal provisions, particularly the General Provisions and Tax Procedures Law (UU KUP) and its implementing regulations, while the conceptual approach is used to examine criminal law theory, the principle of legality (lex scripta, lex certa, lex stricta), and the concept of corporate criminal liability. The research data sources consist of primary data, in the form of statutory provisions, and secondary data, including legal literature, journals, scientific articles, and court decisions related to corporate tax crimes. The data collection technique is carried out through library research through documentation, records, and analysis of legal texts. Furthermore, the data analysis technique uses a qualitative approach, in the form of descriptive-analytical, which examines the relevance, consistency, and application of the principle of legality in the KUP Law and court practices, so that problems, ambiguities, and constructive legal recommendations can be identified.

RESULTS AND DISCUSSION

Application of the Principle of Legality in Corporate Criminal Liability for Taxes

The principle of legality is a fundamental principle in criminal law, asserting that no act can be punished without a clear legal regulation governing it *(nullum crimen sine lege).* This principle emphasizes that every act subject to criminal sanctions must be based on valid written law, thereby preventing arbitrary law enforcement. In the context of criminal tax law, the principle of legality serves to provide legal certainty for all legal subjects, both individuals and corporations, regarding tax obligations and the criminal consequences of violations. (Rusdiana, 2022) Without this certainty, the application of the law can be ambiguous and lead to injustice, as perpetrators lack a clear reference to what is prohibited and the sanctions that can be applied.

The principle of legality has three interrelated derivative rules: *lex scripta, lex certa*, and *lex stricta*. *Lex scripta* emphasizes that criminal law must be written and accessible to the public; *lex certa* requires that legal norms be clear so that legal subjects specifically understand prohibited behavior; and *lex stricta* emphasizes that the law must be firm, not open to multiple interpretations, and applied according to the provisions without any expansion or narrowing by judges. (Iskandar, 293-305) These three principles aim to guarantee legal certainty, prevent abuse of power, and ensure that every person or entity convicted of a crime understands the legal basis for the sanctions imposed. In tax law, the application of these principles is crucial given the complexity of corporate activities and the potential for significant state losses resulting from tax violations.

The function of the legality principle in criminal tax law also encompasses aspects of justice and preventing abuse of power. With clear provisions, law enforcement officials cannot take action against corporations arbitrarily, as all criminal acts must refer to applicable laws. This principal safeguards corporations from being subject to criminal charges based on subjective interpretations or extensive judicial decisions. Furthermore, the legal certainty provided by the legality principle also encourages corporations to comply with tax regulations, as the criminal risks and legal consequences are clear and predictable. (Samudra, 2025)

The General Provisions and Tax Procedures Law (UU KUP) regulate tax obligations and criminal sanctions for violators. Article 1, paragraph (1) of the KUP Law states that every person with tax obligations is obliged to fulfill their obligations in accordance with statutory provisions. Furthermore, Article 39 of the KUP Law stipulates that any person who intentionally fails to report or pay taxes may be subject to a maximum imprisonment of six years and/or a maximum fine of twice the amount of unpaid or underpaid tax. However, the KUP Law uses the term "every person" without explicitly mentioning legal entities or corporations, raising questions about the application of the principle of legality to corporations. (Irfan, 2021)

An analysis of the term "every person" in the KUP Law reveals ambiguity in its scope. Theoretically, some legal experts argue that legal entities can be considered legal subjects and, therefore, subject to indirect criminal prosecution through the actions of their managers or officials. However, because the KUP Law does not explicitly mention corporations, the application of criminal sanctions to legal entities cannot be directly implemented, especially imprisonment, which only applies to individuals. (Romy, 2023) This ambiguity indicates that the principles of lex certa and lex stricta are not fully met, as corporate legal entities lack certainty regarding their legal status and applicable sanctions.

The consequences of this ambiguity regarding legal entities are significant for the application of the principle of legality in tax crimes. This ambiguity can lead to multiple interpretations, inconsistencies in law enforcement, and potential injustice. Corporations involved in tax violations may lack legal certainty regarding who is criminally liable and the types of sanctions that apply.

The General Provisions and Tax Procedures Law (UU KUP) regulate criminal sanctions for violations of tax obligations. Article 39 of the KUP Law states that any person who intentionally fails to report, fails to pay, or fails to remit taxes may be subject to a maximum of six years' imprisonment and/or a maximum fine of twice the amount of unpaid or underpaid tax. This provision indicates that the KUP Law imposes cumulative sanctions in the form of imprisonment and fines. (Apriyandi, 2022) From a legality perspective, any criminal sanctions imposed must be clear, firm, and written, in accordance with the principles of lex scripta, lex certa, and lex stricta, to provide legal certainty for the legal entity subject to the sanctions.

However, the application of imprisonment to corporations raises significant legal issues. Corporations, as legal entities, are not individuals and therefore cannot be subject to imprisonment. It creates a discrepancy between the provisions of the KUP Law and the principles of legality, particularly the principle of lex stricta, which requires sanctions to be applied firmly and consistently. As a result, in practice, imprisonment can only be imposed on individual managers or officials acting on behalf of a corporation, while the corporation itself can only be subject to fines. This situation indicates a legal loophole that has the potential to create inconsistency and uncertainty in the enforcement of criminal tax law.

Fines, as an alternative for corporations, are relatively more in line with the principles of lex certa and lex stricta. Fines, whose amount is set proportionally to the amount of unpaid or underpaid tax, provide certainty regarding the amount of the sanction, so legal entities understand the risks they face if they violate their tax obligations. Thus, the imposition of fines allows for the principle of legality to be maintained in the corporate context, even though imprisonment cannot be directly imposed. However, fines alone do not fully provide the same deterrent effect as imprisonment, so the need to evaluate the effectiveness of criminal sanctions against legal entities remains a crucial issue.

The lack of clarity in regulations regarding corporate legal entities directly impacts legal certainty. Corporations and their officials may face the risk of multiple interpretations regarding who is criminally liable, how sanctions are imposed, and the extent to which the KUP Law applies to legal entities. This ambiguity not only undermines legal certainty for corporations but also makes it difficult for law enforcement officials to consistently apply the provisions of the KUP Law. This uncertainty contradicts the purpose of the principle of legality, which is to ensure justice, certainty, and prevent abuse of power.

The risk of multiple interpretations is further exacerbated when the phrase "every person" in Article 39 of the KUP Law is applied to corporations. Theoretically, interpretation could broaden the meaning of this phrase to include legal entities, but this is not explicitly stated in the law. This ambiguity could lead to conflicting court decisions, thus undermining legal certainty for corporations. This situation also demonstrates that the KUP Law does not fully comply with the principles of lex certa and lex stricta, as the legal subjects and criminal sanctions for corporations are not explicitly regulated.

Court Practices and Challenges in Enforcing Corporate Criminal Liability

In Indonesian tax court practice, there are several decisions implicating corporations as perpetrators of tax crimes. One example is the West Jakarta District Court Decision No. 334/Pid.Sus/2020/PN Jkt.Brt, the second criminal decision against a corporation in the tax sector after the Asian Agri Group case. In this case, PT. Gemilang Sukses Garmindo (PT. GSG) was sentenced to a fine, despite the lack of an explicit determination of corporate culpability. It demonstrates that while corporations can be subject to criminal sanctions, determining corporate culpability in the tax context remains challenging.

Comparison with previous decisions, such as Supreme Court Decision No. 2239 K/PID.SUS/2012, related to the Asian Agri Group tax manipulation case, demonstrates an inconsistency in the application of the law to corporations. In that case, although the corporation committed the violation, criminal sanctions were imposed on individual directors, not the legal entity itself. This lack of clarity reflects a gap in the regulations governing corporate criminal liability in the tax sector.

The impact of this inconsistency and lack of clarity on legal certainty is significant. Corporations and law enforcement officials face difficulties in determining who is responsible and what sanctions are appropriate. It can lead to injustice and reduce the effectiveness of tax law enforcement. Therefore, more explicit and consistent legal formulation is needed to ensure that the principle of legality can be properly upheld in the context of corporate criminal liability.

The phenomenon of legal inference in Indonesian judicial practice occurs when judges seek or "invent" laws to fill gaps or ambiguities in existing regulations. In the context of tax crimes involving corporations, legal inference arises because the General Provisions and Tax Procedures Law (UU KUP) use the term "every person" in Article 1 paragraph (1) and Article 39 of the KUP Law without explicitly mentioning legal entities or corporations. This ambiguity forces judges to interpret the provisions to include corporations, thus allowing criminal sanctions to be applied. Legal inference functions as a mechanism for adapting the law to real-world situations, but at the same time raises questions regarding legal certainty and the principles of legality (lex scripta, lex certa, lex stricta).

Judges in several decisions have interpreted the term "every person" inclusively to include legal entities or corporations. For example, in the West Jakarta District Court Decision Number 334/Pid.Sus/2020/PN Jkt.Brt, the judge imposed a fine on a corporation even though the KUP Law does not explicitly mention legal entities as criminal subjects. This interpretation allows criminal liability to be imposed on corporate entities, not just individual administrators. This strategy demonstrates the judiciary's flexibility in enforcing the law while ensuring that the principle of justice is applied to the state affected by tax crimes.

While legal rulings allow the law to adapt to specific cases, this practice poses risks to legal certainty. Judges' interpretations are case-by-case, so decisions between courts or judges can differ even when facing similar situations. This lack of uniformity creates ambiguity and uncertainty for corporations, law enforcement officials, and the public, who expect consistent legal standards. Therefore, while legal rulings provide a temporary solution, they cannot be used as a substitute for clear and firm regulations from legislators.

Another obstacle that arises in judicial practice is the application of cumulative sanctions stipulated in Article 39 of the KUP Law, namely imprisonment and fines. Legally, legal entities or corporations cannot be subject to imprisonment, making the application of cumulative sanctions impossible. In cases involving corporations, judges generally only impose fines as sanctions. While fines can be used as a law enforcement tool, the absence of imprisonment as a threat to legal entities can reduce the deterrent effect, especially for large corporations with significant financial capacity.

The solution implemented by judges to overcome this obstacle demonstrates judicial adaptation to regulatory limitations. By only imposing fines on corporations, judges still uphold the principle of legality to the extent possible, even though the cumulative sanction provisions in the KUP Law cannot be fully implemented. This practice also highlights the importance of more explicit legal formulation regarding the subjects of corporate law and the types of sanctions that can be applied, so that the principles of lex certa and lex stricta are maintained without having to rely on judicial interpretation.

The implications of this obstacle for the consistency and effectiveness of criminal sanctions are significant. Inconsistent application of sanctions and the inability to impose imprisonment can undermine public confidence in the legal system and create a sense of injustice. Furthermore, this indicates that the KUP Law needs to be revised or supplemented to explicitly define corporate legal subjects and criminal sanction mechanisms. It will ensure effective law enforcement, legal certainty, and justice for both the state and corporations, while reducing reliance on situational interpretations by judges.

Differences in interpretation between courts and judges in handling tax crime cases involving corporations are a major source of inconsistency in legal practice. Although the General Provisions and Tax Procedures Law (UU KUP) use the term "every person" in Article 1 paragraph (1) and Article 39 to define criminal subjects, the lack of an explicit definition of corporations has led judges to interpret this provision differently. Some courts impose criminal sanctions only on individual managers, while others impose fines directly on legal entities. This inconsistency creates legal uncertainty for corporations, law enforcement officials, and the public, as standards for legal application are not uniform even in similar cases.

The risk of legal ambiguity and uncertainty is further increased by the judicial practice of relying on *rechtsvinding* to interpret the KUP Law. While this approach allows judges to adapt the law to the reality of the case, it can also lead to significant differences in interpretation. Corporations facing unclear legal subjects or criminal sanctions cannot accurately predict legal risks. Furthermore, this uncertainty has the potential to reduce the deterrent effect of the law, as large corporations can exploit interpretation gaps to avoid more severe sanctions.

To address these inconsistencies and challenges to legal certainty, clearer regulations or guidelines are needed from legislators or relevant authorities. The KUP Law needs to be revised to explicitly identify legal entities as criminal subjects and detail the mechanisms and types of sanctions that can be applied to corporations. These guidelines will support consistency in court decisions, reduce differences in interpretation among judges, and strengthen legal certainty for all parties involved. With firm and clear regulations, the principles of legality (l*ex scripta, lex certa, lex stricta*) can be more consistently enforced, while ensuring that tax law enforcement against corporations is fair, effective, and predictable.

CONCLUSION

Based on an analysis of the principle of legality, the provisions of the General Provisions and Tax Procedures Law (UU KUP), and court practice, it can be concluded that the application of corporate criminal liability in tax crimes in Indonesia still faces various obstacles and inconsistencies. The KUP Law uses the term "every person" without explicitly mentioning legal entities, creating ambiguity regarding the legal subject of corporations. It impacts legal uncertainty, particularly in the application of cumulative criminal sanctions in the form of imprisonment and fines as stipulated in Article 39 of the KUP Law, since imprisonment can only be imposed on individuals. The practice of *rechtsvinding* by judges allows corporations to be subject to fines, but this creates differences in interpretation between courts and the potential for injustice, thus preventing the principles of lex scripta, lex certa, and lex stricta from being fully met. This inconsistency demonstrates the need for regulatory refinements to ensure the application of corporate criminal liability is clearer, more consistent, and in accordance with the principle of legality.

As a recommendation, legislators need to revise the KUP Law to explicitly regulate legal entities as criminal subjects, including detailing the types of sanctions that can be applied, the mechanism for imposing penalties, and the procedures for implementing criminal sanctions against corporations. Furthermore, establishing guidelines or implementing regulations for law enforcement officials and judges can improve consistency in law enforcement and reduce differences in interpretation between courts. Explicit regulations and clear guidelines ensure legal certainty for corporations and effective tax law enforcement, ensuring optimal enforcement of the principle of legality, creating a just deterrent effect, and minimizing the potential for abuse of power in judicial practice.

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