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Implementation Strategy of Criminal Policy in Directorate General of Taxes

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ABSTRACT: The purpose of this study is to determine the aspects contributing to resistance to the implementation of criminal policies and establish implementation strategies. To have an effective and accountable criminal justice system be formed. The resistance is provided by pretrial. The impact of this mechanism is substantial because can invalidate the law enforcement that has been established over the years and must be procreated from the beginning. The methodologies used involve qualitative research. Data was obtained through document reviews, interviews, and FGD. The results revealed that the factors determining pretrial submission harmonize with Grindle's theory that can be separated into 2 (two) aspects namely content and context of policy. Furthermore, the author reveals two additional factors. The strategies are also classified into two scopes. Internally, the DGT modifies criminal policy, annotates verdicts, and strengthens implementer unit. Externally, enhances coordination with other stakeholders in the integrated criminal justice system.

Keywords: Tax Investigation, Pretrial, Implementation Strategy

INTRODUCTION

The taxation system is considered as an aspect of the welfare state as the funds generated are not only to increase state revenue, but also used to finance public needs (Alfitri, 2012; Arzaghi & Balthrop, 2018; Hatipoğlu et al., 2022). Therefore, Indonesia as a welfare state, obligating the government to ensure the well-being of its citizens across various dimensions, including economic, social, cultural, legal, educational and political interests (Lutfi, 2016). In its concept, the state intervenes in all affairs and activities of society and is responsible for all developments that lead to the achievement of public welfare. In Indonesia, constitutionally the state is given the authority to carry out tax collection as mandated in Article 23A of the 1945 Constitution (Osisiogu & Mmahi, 2020).

The strategic role of taxes in Indonesia can be seen from the large contribution of tax revenue in the state budget, which is intended to improve public welfare. When considering at the posture of tax revenue in the State Budget from 2019 until 2023, the following data are obtained:

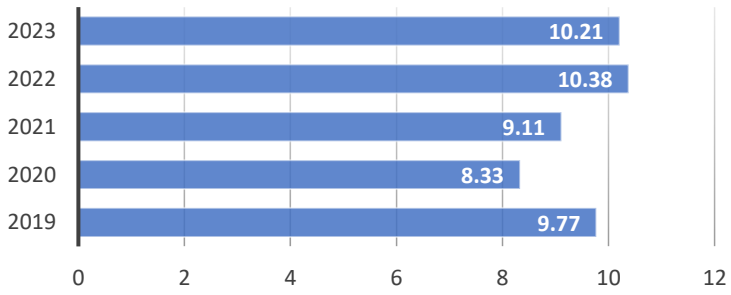
Table 1. Tax Contribution to the State Budget

Year	Tax Revenue Target	Tax Revenue Realisation	% of Tax Revenue Target	% of Total State Revenue Target (APBN)
2019	1577,56 T	1332,7 T	84,44%	62%
2020	1198,8 T	1072,1 T	89%	63%
2021	1229,58 T	1278,6 T	103,90%	73%
2022	1484,96 T	1716,8 T	116%	76%
2023	1718,0 T	1869,2 T	102,8%	108,8%

Source: mediakemenkeu.go.id.

However, the important role of taxes in the country's development is not directly proportional to the level of Indonesia's tax ratio, which is still below international standards. In 2022, the highest tax ratio achieved by Indonesia in the past five years was 10.38%. The National Development Planning Agency (Bappenas) states that a country's tax ratio ideally should be at the level of 15% of GDP or at least 12% of GDP (Consulting, 2023). The tax ratio of Indonesia in the last five years can be seen in the chart below:

Figure 1. Indonesia's Tax Ratio



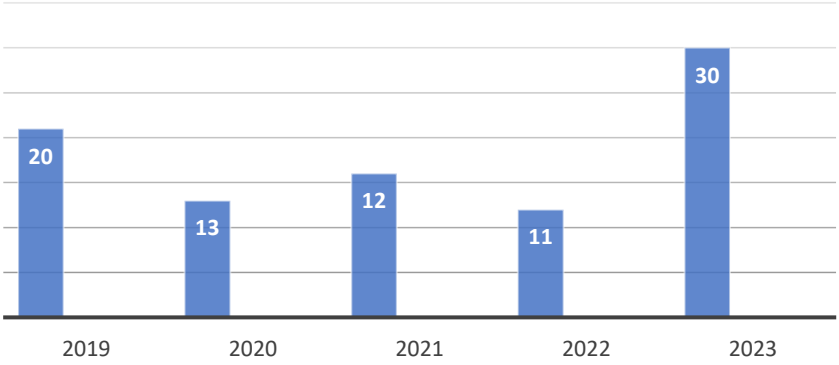
One of the factors affecting the tax ratio is low tax compliance and awareness. (Vighova, 2022) mentioned that criminal offences in the field of taxation are an economic challenge faced by all countries. In line with this perspective, Dimic in (Jovanovic, 2022; Lockwood, 2020; Masik & Gajewski, 2021; Ritala et al., 2021) stated "*despite the fact that public goods are financed with taxes, a number of taxpayers resort to behaviours that have characteristics of tax avoidance (tax evasion).* Similarly, Olaoye and Ogundipe (Olaoye, 2018) also explained *"tax payers irrespective of economic status are unwilling when it comes to the payment of tax liability which results to their evasion and avoidance of tax.*"

Moreover, the tax collection system in Indonesia adopts a self-assessment system, the method of assessment where taxpayers assess themselves on the income they have received or have accrued. The role of taxpayers is required to be more active in fulfilling their tax obligations. This system daes not run optimally, because the level of public tax awareness is still low (Jaya, 2019)(González Canché, 2022; Rusdi Hidayat, 2019). This condition encourages the government to optimize tax revenue with various policies, one of which is the implementation of criminal sanctions.

The accommodation of criminal sanctions in taxation policy is intended as a preventive effort to prevent criminal acts in the field of taxation, as well as a repressive effort that provides a deterrent

effect. As Jovanovic *states "by imposing these sanctions (prison sentence and fine), special prevention can be achieved, influencing the perpetrators not to commit this criminal act in the future"* (Jovanovic, 2022).
As the consequence of criminal policy implementation, the state has the power to commit coercive measures, such as seizing and searching. Nevetheles, these powers commited regarding protection and respect for human rights. Related to that matter, Indonesia adopted principle of habeas corpus act where the citizens given a right to plead objection towards official who carry out coercive measures. That right is embodied through pretrial mechanism, to verify whether the coercive measure violates human rights or procedural obligations (ANN et al., 2021; Rekayana, 2016; Rulandari & Rahmayani, 2023).
Investigation in tax crime settled by tax investigator in the Directorate General of Taxes. Like other law enforcement officers, they also face objection by pretrial petition. Based on this research period, from 2019 to 2023 there were 87 petitions filed againts Directorate General of Taxes, as seen in the table below:

Table 2. Number of Taxpayer Pretrial from 2019 to 2023



Source: processed by the author based on the IKU Report of the Subdirectorate of Advocacy from 2019 to 2023.

In other words, there were 87 allegations of procedural errors in law enforcement by the Directorate General of Taxes. The dispute between tax investigators and taxpayers is described by Olaoye and Ogundipe (Olaoye, 2018) in their research about tax crime control, where criminal law enforcement in the field of taxation must be accompanied by an adequate punishment mechanism. This stated that "*in the conduct of field audit and tax investigation, they must put in place adequate machinery in the form of security personnel to help protect tax inspectors so as to mitigate the occurrence of fracas between tax inspectors and tax evaders which makes it impact not to be felt on tax evasion control."*

Several case studies concluded that the special provisions in tax criminalization became one of the factors in the filing of pretrial petition (Sofian, 2020) (Wahyono, 2018). This fact is also recorded in research conducted by Franky Kawuka (Kawuka, 2019) where the preliminary investigation in tax crime which called "Pemeriksaan Bukti Permulaan" is not recognized as a part of investigation. These special provisions affect the judge's decision and potentially cause a disparity in the decision on the examination of the pretrial submission.

The pretrial petition, on the one hand, provides protection for taxpayers' rights in criminal law enforcement procedures. However, on the other hand, the decision on this application has a

significant impact on the Directorate General of Taxes because the legal consequences can cancel all actions taken by the tax investigator and cause the implementation of criminal policies to be ineffective.

However, the scope of the previous research is only limited to certain petitions. Therefore, to examine this phenomenon more comprehensively, the author analysis pretrial petitions faced by the Directorate General of Taxes in the last five years. The result was then classified based on the factors of policy implementation proposed by Grindle. Furthermore, based on Rumelt's theory, the analysis results will be elaborated into a strategy in the implementation of criminal policy to create an accountable criminal policy, which guarantees the state's right to collect state revenue while protecting taxpayers' rights in the process, which in turn can minimize pretrial petition.

METHOD

This research was conducted in Subdirectorate Advocacy of Directorate General of Taxes which have responsibilites in handling pretrial petition.

The author used a qualitative approach, a method to explore and understand the phenomenon that some individuals or groups of people ascribe as problems. The qualitative research process involved important efforts, such as asking questions and procedures, collecting specific data from participants, analyzing data inductively from specific themes to general themes, as well as making interpretations of the meaning of the data (Creswell, 2019). Qualitative research was selected because this study aims to comprehensively explain pretrial petition filed by taxpayers from 2019 to 2023. This research is not intended to test a theory or hypothesis and does not generalize.

Jaber F. Gubrium (Somantri, 2005) mentioned that there are at least four methods of data collection in qualitative research, namely observation, interview, focus group discussion (FGD), and document analysis. The data collection methods used in this research were literature review, focus group discussions, and interviews.

Literartur review is an assessment of literature related to question, to gather theory and ideas have been established (Taylor, d.n.). The analysis was conducted on secondary data such as the pretrial petitions and decisions in the period 2019 to 2023, legal documents, journals, books, reports and other supported sources.

The result of literature review was then confirmed through FGDs conducted with employees in Subdirectorate Advocacy. Furthermore, interviews were conducted with four stakeholder officials at the Directorate General of Taxes consisting of the advocacy unit, law enforcement unit and tax regulation harmonization unit. Meanwhile, three external informants consisting of academics and legal consultants have been involved in the pretrial case handling process at the Directorate General of Taxes.

The analysis of the collected data is conducted through several stages as proposed by (Siregar & Harahap, 2019), namely compare, contrast, criticize, synthesize, and summarize. After collecting

data, the author proceeds to the stage of finding factors within the documents. In the second stage, the author verifies compare the finding and tha practice by focus group discussion. Next, the author provides insights and explores the reasons behind the phenomena. And then, the author synthesizes concepts, theories, or propositions with existing literature and summarize it as material to develop interview guidelines. Finally, based on the interview, the author draws strategies to be used as the results and discussion in this article.

RESULT AND DISCUSSION

Research results of policy analysis in the implementation of criminal policy in Directorate General of Taxes can be stated as follows:

Internal Factors

Investigation in tax crime is divided into two main processes called Pemeriksaan Bukti Permulaan or preliminary investigation and investigation. Although based on Indonesia's criminal procedure code (KUHAP) the object of pretrial limited for investigation, but taxpayers file petition for both procedures. The argument that delivered againts those procedures are:

In Pemeriksaan Bukti Permulaan (Preliminary Investigation)

1. Power sharing in Pemeriksaan Bukti Permulaan is not consistent with the principle of delegating or mandating authority as Law No. 30 of 2014 on Government Adminitrtaion has been regulated. That paradigm is proposed as a reason to declare the process of collecting evidence invalid, as in pretrial petition as follows:
    a) No.: 04/Pid.Pra/2019/PN. Jkt. Utr. di Pengadilan Negeri Jakarta Utara;
    b) No.: 2/Pid.Pra/2021/PN.Sag. di Pengadilan Negeri Sanggau;
    c) No.: 30/Pid.Pra/2021/PN.Mdn di Pengadilan Negeri Medan;
    d) No.: 18/Pid.Pra/2022/PN.Bdg. di Pengadilan Negeri Bandung;
    e) No.: 14/Pid.Pra/2022/PN.Sby. di Pengadilan Negeri Surabaya;
    f) No.: 01/Pid.Pra/2022/PN.Smn. di Pengadilan Negeri Sleman;
    g) No.: 02/Pid.Pra/2022/PN.Pms. di Pengadilan Negeri Pematang Siantar;
    h) No.: 02/Pid.Pra/2022/PN.Bpp. di Pengadilan Negeri Balikpapan;
    i) No.: 12/Pid.Pra/2022/PN.Smn. di Pengadilan Negeri Sleman;
    j) No.: 19/Pid.Pra/2023/PN.Jkt.Pst. di Pengadilan Negeri Jakarta Pusat;
    k) No.: 22/Pid.Pra/2023/PN.Jkt.Sel. di Pengadilan Negeri Jakarta Selatan;
    l) No.: 6/Pid.Pra/2023/PN.Tng. di Pengadilan Negeri Tangerang;
    m) No.: 5/Pid.Pra/2023/PN.Bdg. di Pengadilan Negeri Bandung.

    The power of Directorate General of Taxes in carrying out Pemeriksaan Bukti Permulaan is not consistent with Law No. 13 of 2022 on Law Formulation. Taxpayers perceive that Pemeriksaan Bukti Permulaan as coercive measures, so it must be regulated in law or constitution. In fact, although Pemeriksaan Bukti Permulaan attributed by Law No. 6 of 1986 but the procedures stated in Regulation of The Minister of Finance Concerning Pemeriksaan Bukti Permulaan.

2. The Preliminary Investigation regulation or Pemeriksaan Bukti Permulaan obligate taxpayers to let the tax officers to acess documents or a room which considare as a coercive measures althougt that obligation has no consequences. This argument can be found in petitions below:
    a) No.: 07/Pid.Pra/2018/PN.Smn di Pengadilan Negeri Sleman;
    b) No.: 2/Pid.Pra/2021/PN.Sag di Pengadilan Negeri Sanggau;
    c) No.: 30/Pid.Pra/2021/PN.Medan di Pengadilan Negeri Medan;
    d) No.: 12/Pid.Pra/2021/PN.Jkt.Tim di Pengadilan Negeri Jakarta Timur;
    e) No.: 13/Pid.Pra/2021/PN.Jkt.Tim di Pengadilan Negeri Jakarta Timur;
    f) No.: 10/Pid.Pra/2022/PN.Bdg. di Pengadilan Negeri Jakarta Timur;
    g) No.: 18/Pid.Pra/2022/PN.Bdg di Pengadilan Negeri Bandung;
    h) No.: 02/Pid.Pra/2022/PN.Bpp di Pengadilan Negeri Balikpapan;
    i) No.: 12/Pid.Pra/2022/PN.Smn di Pengadilan Negeri Sleman;
    j) No.: 22/Pid.Pra/2023/PN.Jkt.Sel di Pengadilan Negeri Jakarta Selatan;
    k) No.: 6/Pid.Pra/2023/PN.Tng di Pengadilan Negeri Tangerang;
    l) No.: 2/Pid.Pra/2023/PN.Bdg di Pengadilan Negeri Bandung;
    m) No.: 5/Pid.Pra/2023/PN.Bdg di Pengadilan Negeri Bandung;
    n) No.: 1/Pid.Pra/2023/PN.Sda di Pengadilan Negeri Sidoarjo;
    o) No.: 4/Pid.Pra/2023/PN.Sda di Pengadilan Negeri Sidoarjo.

3. The vacum of mechanism whether there is malprocedure in Preliminary Investigation/ Pemeriksaan Bukti Permulaan. The literature research found that 51% petitions related with Preliminary Investigation/ Pemeriksaan Bukti Permulaan.

In Investigation

In investigation, the author found factors as follows:

1. Distinction investigation procedures such as: preliminary investigation/ Pemeriksaan Bukti Permulaan, issuance 2 investigation warrant, and Notice of Commencement of Investigation (Surat Pemberitahuan Dimulainya Penyidikan/ SPDP). Even though those procedures are written in tax criminal policy, the taxpayers interpret the procedures differently as legal uncertainty. First, the use of term "Pemeriksaan Bukti Permulaan" is not common in law enforcement. The taxpayer file petitions based on this argument in petition Number 05/Pid.Pra/2019/PN.Mnd. dan No.: 96/Pid.Pra/2020/PN.Jkt.Sel. In 2018, The judge in petition Number 15/Pid.Pra/2018/PN.Mdo. even considare the Directrate General of Taxes did not conduct preliminary investigation and its againts the KUHAP.
2. The tax criminal policy which formulated in internal memo such as circular letter did not bind generally. In fact, the Directorate General of Taxes has several tax criminal policies which are written in circular letter such: circular letters in prelmininary investigation and circular letter in investigation. The Judge in petition number 1/Pid.Pra/2020/PN.Gsk and 2/Pid.Pra/2022/PN.Skb. considare that Circular Letter is a form of institution notification and can not classified as a legal norm.
3. The formulation of tax criminal policy does not ensure legal certainty because there is a different expiration between administrative and criminal law enforcement, that is 5 years and 10 years. The Key Informant-6 and Key Informant-7 find it possible to generate moral hazard of tax officer, especially in deciding handling procedure of tax violation if the period close to

expiration. The judge in petition number 05/Pid.Pra/2019/PN. Sda and 07/Pid.Pra/2019/PN.Sda granted the petitions because they considare that the expiration should be follow administrative law enforcement in five years.

4. Readiness of the implementor unit, both in material and in formal aspect. Key-Informant 2 stated that the educational background of investigator which mostly in accounting, is significant to build a solid investigation and still needs improvement in legal studies. Key Informant-10 explained that pretrial decisions do not affect implementation in the application. This makes implementation practices do not unite and still based on habit, as mentioned by Key Informant-11.

External Factors

1. Differences in the petitor's perception in understanding the application of ultimum remedium in criminal procedures at the Directorate General of Taxes.
   Ultimum remidium is an essential principle in criminal law because it means the criminal law enforcement must be the last resort to sustain and resolve problems and dynamics of legal developments that exist or are being faced in society (Ardika, 2020), including to achieve taxpayers' compliance. The taxpayers perceive that the implementation of ultimum remedium in taxation means that the administrative law enforcement is sequence and must be done before criminal law. In fact, ultimum remedium in taxation means that the taxpayers are given a chance to resolve their obligation by voluntary disclosure during the criminal law enforcement. The following is petitions that question this matter:
   a. No.: 95/Pid.Pra/2019/PN.Mdn di Pengadilan Negeri Medan;
   b. No.: 1/Pid.Pra/2020/PN.Gsk di Pengadilan Negeri Gresik;
   c. No.: 7/Pid.Pra/2021/PN.Jkt.Utr di Pengadilan Negeri Jakarta Utara;
   d. No.: 8/Pid.Pra/2021/PN.Jkt.Utr di Pengadilan Negeri Jakarta Utara;
   e. No.: 2/Pid.Pra/2021/PN.Skb di Pengadilan Negeri Sukabumi;
   f. No.: 10/Pid.Pra/2022/PN.Bdg di Pengadilan Negeri Bandung;
   g. No.: 18/Pid.Pra/2022/PN.Bdg di Pengadilan Negeri Bandung;
   h. No.: 22/Pid.Pra/2023/PN.Jkt.Sel di Pengadilan Negeri Jakarta Selatan.

2. Taxpayers' Efforts to Free from Tax Obligations
   This effort can be seen from the inclusion of reasons outside the pretrial object such as bankruptcy. Such as petition number 7/Pid.Pra/2020/PN.Srg., 8/Pid.Pra/2023/PN.Srg, 1/Pid.Pra/2023/PN.Tng, 14/Pid.Pra/2019/PN.Sby and 30/Pid.Pra/2021/PN.Mdn. In the last two petitions, The Judge decide to accept petition because of bankruptcy. The effort also seen in repeated submission, as follows:
   a. taxpayer initial EP filed 4 petition, that is No. 2/Pid.Pra/2023/PN.Blt, 1/Pid.Pra/2023/PN.Mlg, 3/Pid.Pra/2023/PN.Mlg, and 4/Pid.Pra/2023/PN.Mlg;
   b. taxpayer initial YW filed 5 petition, that is 24/Pid.Pra/2021/PN.Sby, 9/Pid.Pra/2023/PN.Sby, 11/Pid.Pra/2023/PN.Sby, 15/Pid.Pra/2023/PN.Sby, and 78/Pid.Pra/2023/PN.Jkt.Sel.

3. The Vacuum of provision which regulate examination of pretrial petition

The literature research found disparity in Judges' decisions, albeit the object of the petition is the same. The key informant-2 said that one of the factors that caused this phenomenon was the sporadic provisions of the pretrial procedure law. The key informant-3 mentions that the vacuum of regulation also leads the perception that the objects of pretrial seem to be limitless. Therefore, the Taxpayer is free to submit a pretrial petition on the pretext that the action is a coercive measure even though it is not an object regulated in the KUHAP.

Analysis of policy implementation in resolving factors contributing to objections to the implementation of criminal policies is reflected by the content of policy and the context of implementation based on Grindle' theory. The content of the policy consists of interests affected, type of benefits, extent of change envisioned, site of decision making, program implementors, and resources committed. The context of implementation consists of power, interest, and strategies of actors involved, institution and regime characteristics, compliance, and responsiveness.

Analysis based on Grindle's Theory

Policy Content Aspect

Interest Affected

Grindle (2017) states that *"...to the extent that public actions seek to introduce changes in social, political, and economic relationships, they generally stimulate considerable opposition from those whose interests are threatened by them."* In this case, criminal policy will affect the interests of taxpayers and can restrict taxpayers' rights to freedom or property because seizure, detention, or other coercive measures can be carried out in the implementation of criminal policy. In addition, taxpayers are also burdened with the obligation to pay the tax debt and fines. This encourages taxpayers to make efforts to evasion tax responsibility, through pretrial petitions.

This is reflected in the petitors' arguments. Based on the petition document, none of the reasons for filing a pretrial petition were found to be in accordance with the object limitations and standard prescribed by KUHAP or the Constitutional Court Decision. The petitor tended to argue matters outside the object of pretrial, namely: 1) 51% of the petitions filed were related to the Preliminary Investigation, which is not the object of pretrial; 2) The petitor stated that they could not be held liable because had no connection with the evasion or they are in insolvency; and 3) The petitor filed repeated objections neither in the same jurisdiction nor in different jurisdictions.

Type of Benefits

Taxes are mandatory contributions levied on individuals or corporations by a government entity, which have an indirect benefit. The character of this benefit becomes one of the factors that causes taxpayers to tend to fight rather than recover losses to state revenue. This is in line with Grindle's thougt that "*Moreover, programs that are designed to achieve long-range objectives may be more difficult to implement than those whose advantages are immediately apparent to the beneficiaries*". (Grindle, 2017). Olaoye and Ogundipe (2018) also mentioned that the fulfilment of tax obligations essentially tends to be avoided by taxpayers. This is in accordance with the view of Tjip Ismail (Inosentius, 2019) who believes that the character of tax payments that are not accompanied by direct benefits is still

considered as burden by some people, so there are taxpayers who deliberately do not fulfil tax obligations. This non-compliance is not only done through administrative offences but also allegations of tax crime offences.

According to the author, this is also influenced by the characteristics of the losses incurred by tax crime offences. Losses in state revenue can only be felt by the state, the impact is not felt directly by the perpetrators or even the community. Therefore, when criminal policy is enforced, taxpayers still tend to avoid recovering losses to state revenue. From 2018 to 2020, it is known that the amount of recovery of losses to state revenue averaged only 0,26% of the total fine decided by the panel of judges (Keuangan, 2021). This is corroborated by the statement conveyed by Key Informant-2 who said, *"from the results of the verdicts in 2021 to 2023, from the loss of state revenue of around 2 Trillion, only around 0,05% could be recovered"*. This means that even when have committed a tax crime, taxpayers prefer imprisonment to payment.

Extend of Changed Envision

Related to change evision, Grindle explains "*differences in the degree of behaviour change the program envisions for its intended beneficiaries is another way the content of policy affects its implementation"* (Grindle, 2017). It is further explained that policies to change behavioural patterns are more difficult to implement than policies that only require adaptation or participation. In Indonesia's taxation system, criminal sanctions are expected to create voluntary taxpayer compliance, which in turn will contribute to increasing Indonesia's tax ratio. Increasing the tax ratio at the most basic level requires strengthening the community's tax morale. Tax morale is the intrinsic motivation behind taxpayers to comply with and pay taxes according to the provisions to contribute in providing public facilities (Ritonga, 2017). OECD research shows that factors that influence tax morale are highly personalized, such as age, religion, gender, employment status, and educational background (Christian Daude, 2012).

In this case, law enforcement does not necessarily result in behavioural change. Taxpayers instead use the pretrial mechanism as a loophole to avoid fulfilling tax obligations. Key Informant-8 and Key Informant-9 explained that the situation was exacerbated by the glorification of victory by the pretrial petitioner, which encouraged taxpayers to make attempts through pretrial. Key Informant-2 even added that *"In some cases, it was found that convicts could still sell fictitious invoices, especially when it was not the Beneficiary Owner (BO)."* The degree of change aspired through the implementation of ciriminal policy is huge because it involves the values believed by everyone, which will be difficult to control. Thus, Grindle's statement proves that policies aimed at changing behaviour patterns are more difficult to implement.

Site of Decision Making

The organizational structure of law enforcement in the Directorate General of Taxes is quite large as it involves Regional Offices throughout Indonesia. As illustrated by Grindle (2017), *"...is executed by a large number of individual decision makers dispersed throughout an extensive geographic area"*, this condition becomes one of the factors causing complications in policy implementation. In relation to pretrial

petition, the Informants mentioned that in practice, it is difficult to create uniformity in criminal law enforcement in each Regional Office because each unit has the authority to determine its own strategy and has different experiences in dealing with pretrial petition.
In the handling of pretrial, court decisions and case handling dynamics will basically be conveyed to law enforcement management, particularly if there are important things to anticipate in the law enforcement process. However, the position of law enforcement management located at the Head Office of the Directorate General of Taxes creates a wide span of control that covers the entire territory of Indonesia, so that uniformity through management potentially cannot be done optimally. The difference in position between policy makers and implementers means that inputs on investigation strategies may only be delivered but not implemented.

Program Implementors

Vighova mentioned that the capacity and quantity of human resources is one of the factors that affect criminal law enforcement (Vighova, 2022). Based on the literartute review, in several petitions, it was found that the parties named as suspects submitted applications with the argument that they had no connection with the criminal offence being investigated. As a result, there were several people who eventually escaped criminal liability. Key Informant-2 explained that this was the effect of investigation could not show the correlation between the parties named as suspects and the alleged criminal offence. The most dominant factor influencing this is that the implementor's educational background and expertise are not in the field of law. Therefore, legal arguments to defend the results of the investigation are not well recorded in the investigation documents. Another influencing factor is adaptation to the dynamics of pretrial proceedings. Key Informant-10 explained that pretrial decisions can be used as a source of consideration when determining policies, but this does not affect implementation in the field. This makes implementation practices do not unite and still based on habit, as mentioned by Key Informant-11.

Resources Committed

The information provided by Key Informant-2, that in implementing the criminal policy, the implementor unit has received sufficient support, both in terms of budget, quantity and quality of human resources, as well as supporting facilities, such as forensic laboratories as a means of processing digital data that can be accounted for. One thing that still needs strengthening, as explained by Key Informant-2 in point above, is the educational background that influences the construction of the investigation. The availability of resources does not guarantee that there will be no objection to the implementation of criminal policies. Based on the petitions review, several petitions such as number 14/Pid.Pra/2022/PN.Sby, 6/Pid.Pra/2023/PN.Tng, and 1/Pid.Pra/2023/PN.Sda actually question the acquisition of electronic data through digital forensics. Data acquisition through digital forensics is essentially an additional method of data acquisition in law enforcement at the Directorate General of Taxes. Its implementation has been standardized to ensure data integrity. However, the taxpayers in their petition mentioned that this process is a coercive measure, hence the pretrial petition. The judge in petition number 14/Pid.Pra/2022/PN.Sby even equated electronic data acquisition with search and seizure.

Policy Context Aspect
Compliance and Responsiveness

Some of the tax criminal policy formulated distincly from KUHAP. It causes differences in perception between taxpayers or their attorneys and the Directorate General of Taxes. Thus, petitions are often filed due to improper information received by taxpayers. What is often found in pretrials are rules on investigation procedures that differ from the provisions in the KUHAP. Some distintive provisions in the criminalization at the Directorate General of Taxes, including 1) the investigation is based on Preliminary Investigation called Pemeriksaan Bukti Permulaan; 2) Issuance of 2 (two) Investigation Warrants for the same criminal offence; and 3) The issuance of 2 (two) Investigation Warrants has caused differences in calculating the period for submitting a Notice of Commencement of Investigation (SPDP). One of the main procedures in criminal law enforcement at the Directorate General of Taxes is Pemeriksaan Bukti Permulaan. The procedure has the same position and purpose as a preliminary investigation. However, the taxpayer is considered that the investigation is not based on a preliminary investigation, the reason is accepted by the Judge as in petition Number: 05/Pid.Pra/2019/PN.Mnd. and Number: 96/Pid.Pra/2020/PN.Jkt.Sel. Another thing that caused differences in perspectives was the existence of 2 (two) Investigation Warrants in one series of investigations. The Applicant views that the basis of the investigation becomes unclear, as well as the basis for the issuance of the SPDP. Moreover, the distintive provisions are regulated in the official memo of the Director General of Taxes so that taxpayers perceive that those provisions are only binding internally, and they are not obliged to comply.

Institution and Regime Characteristic

Related to the character of institutions, Grindle provides a larger illustration in the context of the state by explaining that *"...the process of implementation may vary considerably depending upon whether the political regime is an authoritarian one or a more open system*" (Grindle, 2017). In line with Grindle's thoughts, other studies state that respectful treatment has a positive influence on increasing compliance, increasing cooperative attitudes, and reducing taxpayer concerns about tax authorities. Meanwhile, authoritarian procedures can create intimidating conditions and reduce taxpayer compliance (Prastiwi, 2023). If Grindle's illustration is applied in a narrower scope, such as the Directorate General of Taxes, then basically the Directorate General of Taxes is an open institution. Tax criminal policy is an administrative penal law; therefore, the Directorate General of Taxes has implemented an ultimum remedium mechanism through Article 8 paragraph (3) and Article 44B for taxpayers who want to resolve their criminal cases outside the judicial channel. In the FGD conducted with the Executives in the Advocacy Subdirectorate, Key Informant-10 explained that the application of the ultimum remedium principle is also often disputed by taxpayers because taxpayers consider that an audit should be conducted first. Key Informant-6 mentioned that the Taxpayer's perception related to the audit should be conducted before punishment is based on the law, *giving uncertainty to Taxpayers, when they will be held accountable administratively and when they will be punished*. Meanwhile, Key Informant-7 did not fully agree with this statement. The informant mentioned that: *"Preliminary Evidence Audit will indeed be stronger if it is based on prior audit. But, formally, the KUP Law does not order the activities to be carried out sequentially."*

Interest Strategies of Actors Involved

The implementation of tax criminal policy is related to other law enforcement institutions, such as the police, prosecutor's office, and judiciary. Each institution is autonomous and has its own policy in dealing with pretrial motions. For example, if the Directorate General of Taxes faces a pre-trial petition, the Directorate General of Taxes' interest is to abort the petition by immediately submitting the file to the police and prosecutor's office. However, in practice, both the police and the prosecutor's office tend to wait for the judge's decision in anticipation that the petition will be accepted so that the filing process between PPNS, the police and the prosecutor's office does not meander. Another thing that is also important to note is the freedom of judges in deciding pretrial applications and the potential for legal discovery (*rechvinding*) so that disparities in judges' decisions are often found.

In the context of policy, the author considers that there are additional factors, namely provisions that regulate the correlation between power and interests. This is important as the implementation of punishment policy will not only intersect with other policies but also with stakeholders who have power and interests in the punishment process. This can be explained as follows:

The Policy Regarding the Relation between Power and Interest

Based on the entire description above, it is known that the implementation of the sentencing policy as well as the challenges filed against it involve many actors who each have power and interests that affect the outcome of the sentencing. Document studies have shown that this condition is prone to cause legal uncertainty, for example through the diparity of decisions and the broad scope of pretrial objects filed by taxpayers. This study found that the legal vacuum that regulates the relationship between these actors becomes one of the factors for the submission of resistance to criminalization policy or at least a loophole that according to taxpayers can be utilized as an effort to escape criminal liability. The author noted that there are at least 2 (two) legal lacunae, namely the legal lacunae on the procedure of Preliminary Evidence Examination and the legal lacunae on the procedure of pretrial petition examination.

Considering the explanation of Article 43A of KUP Law, which equates the position of Preliminary Evidence Examination with investigation, the Preliminary Evidence Examination should also not be an object of pretrial. However, pretrial motions against the Directorate General of Taxes are dominated by Preliminary Evidence Investigation. According to Key Informant-12, *"there is no other remedy that can be submitted by taxpayers if there are allegations of errors in the Preliminary Evidence Audit."*

Related to the legal vacuum of pretrial examination procedures, it has created disparity in decisions, where judges have different assessments and considerations of the arguments presented by the Petitioner. In fact, for cases that have the same object and subject, such as petition numbers 16/Pid.Pra/2021/PN.Jkt.Sel and 17/Pid.Pra/2021/PN.Jkt.Sel which were rejected at the South Jakarta District Court, then resubmitted to the Sukabumi District Court with register number 2/Pid.Pra/2021/PN.Skb. and accepted by the judge. Not only in different courts, but even in the same district court, there are differences in judges' views. For instance, in the South Jakarta District Court, there are judges who state that the validity of the determination of a suspect only assesses the formal aspects of the fulfilment of a minimum of 2 (two) pieces of evidence. However, other

judges assessed the process of obtaining the evidence. Key Informant-3 mentioned that one of the factors causing this phenomenon was the sporadic provisions of pretrial procedural law and even the provisions in the Supreme Court Circular Letter, which according to some judges did not bind them in making decisions. The absence of such provisions has resulted in the vagueness of the limitation of pretrial objects and the unlimited freedom of judges in deciding cases, which has resulted in legal uncertainty.

Strategies to Minimize Taxpayer Resistance

Based on these factors, the author developed a strategy that can be carried out by the Directorate General of Taxes, which based on "The Kernel of Good Strategy" proposed by Richard Rumelt. The strategy determination step according to Rumelt consists of 3 (three) main steps, namely inventorying the problem, assessing the policies implemented, then determining the right steps to deal with the problem (Rumelt, 2011).

Strategies that can be carried out by the Directorate General of Taxes to minimize the resistance filed by taxpayers, namely:

a. The internal strategy is carried out by strengthening 3 (three) important aspects of pretrial handling, namely:
   1) reformulation of criminal policy to minimize the legal loopholes for filing resistance.
   2) to annotate pretrial decisions as input for policy makers and policy implementers; and
   3) the strengthening of the implementing unit should be carried out continuously and is the first strategy that can be implemented immediately by the Directorate General of Taxes to minimize the filing of pre-trial petitions.
b. External strategies are carried out through:
   1) coordination with stakeholders involved in the criminal justice system, including the police, prosecution and judiciary.
   2) Socialization tax policy with legal consultant associations; and
   3) encourage the Supreme Court to issue procedural guidelines for pretrial hearings to create a mechanism that ensures legal certainty.

From the overall strategy, the author conducted a policy alternative analysis to determine the priority of strategies to be carried out by the Directorate General of Taxes. The analysis is based on Bardach's thinking which identifies 4 (four) criteria in choosing policy alternatives (Patton et al., 2015). The analysis is based on Bardach's idea that identifies 4 (four) criteria in selecting policy alternatives (Patton et al., 2015), namely technical feasibility, economic and financial possibility, political viability, and administrative operability.

Furthermore, to assess each of these strategies, the author conducted an Analytical Hierarchy Process (AHP) which developed by Thomas L. Saaty. According to Saaty, AHP is a decision support model that will outline problems that are multi-factor or multi-criteria into a hierarchy into something more structured and systematic (Saaty, 1980). According to Kusrini, the main equipment of AHP is a functional hierarchy with the main input in the form of human perception (Kusrini, 2007), in this case the perception of Key Informants. The results of the analysis are as follows:

Tabel 2. Priority Based on Criteria and Subcriteria

Criteria	Criteria Priority	Subcriteria 1	Subcriteria 2	Subcriteria 3
technical feasibility	0,529	0,529	0,218	0,089
economic and financial possibility	0,051	0,051	0,021	0,009
political viability	0,315	0,315	0,051	0,053
administrative operability	0,105	0,051	0,043	0,018

Tabel 3. Priority in Internal Strategy

Strategi Internal	technical feasibility	economic and financial possibility	political viability	administrative operability	Total
reformulation of criminal policy	0,529	0,009	0,053	0,043	0,634
to annotate pretrial decisions	0,089	0,051	0,051	0,051	0,241
the strengthening of the implementing unit	0,529	0,021	0,315	0,051	**0,916**

Tabel 4. Priority in External Strategy

Strategi Eksternal	technical feasibility	economic and financial possibility	political viability	administrative operability	Total
Sinergy with stakeholders involved in the criminal justice system	0,218	0,009	0,053	0,043	0,322
Socialization tax policy with legal	0,089	0,051	0,051	0,018	0,208

consultant associations					
encourage the Supreme Court to issue procedural guidelines for pretrial examination	0,529	0,021	0,315	0,051	**0,916**

According to the author, internal and external strategies must be implemented in parallel. In accordance with the results of the assessment above, strengthening the implementor unit will linearly ensure the quality of law enforcement carried out, meaning that the procedures and steps taken in tax criminal enforcement can be legally accounted for. Indirectly, the strengthening of the implementing unit will minimize the gap for filing pre-trial petitions.

Internal improvements must be supported by clear rules. As the author explained about the level playing field, it is undeniable that criminalization is vulnerable to resistance because it limits taxpayers' rights. However, resistance is often carried out by utilizing legal loopholes due to the lack of strict limits on the examination of pre-trial petitions. If all actions of the implementing unit in criminal law enforcement can be tested through pretrial institutions. Often, it is not the actions of the implementing unit that are tested, but the sentencing policy that is tested in pretrial. Therefore, human rights to be protected through pre-trial motions must also consider the rights of the state in exercising its authority.

In the future, it is expected that pre-trial petitions will consequently only test the actions of law enforcement units in accordance with clearly and unequivocally formulated provisions so that they will no longer be used as a strategy for taxpayers to evade their tax responsibilities. On the other hand, the Directorate General of Taxes will continuously improve criminal policies that encourage taxpayers to recover losses to state revenue.

CONCLUSION

An analysis of pretrial petition filed by taxpayers against criminal procedures revealed that the motivations behind these petitions could be understood through the lens of Grindle's policy content and context, as follows:

1. In Content Policy Aspect
    a. The interests affected, namely the enforcement of criminal law, give the Directorate General of Taxes the right to limit the Taxpayer's rights to freedom and property, thereby encouraging the Taxpayer to submit a pretrial application.
    b. The type of benefits, the type of benefits is not directly obtained by taxpayers so that their fulfillment is often avoided because it is considered a burden.

c. Change Envision, the policy aims to increase tax compliance which is influenced by tax morale. As an intrinsic motivation owned by everyone, it is difficult to control by the state.
d. Site of decision making, there is a wide range of control between policymakers based at the Headquarters of the Directorate General of Taxes and implementers spread across Regional Offices throughout Indonesia to ensure that criminal procedures are carried out uniformly and follow the dynamics of resistance proposed by taxpayers cannot be carried out optimally.
e. Program implementer, which is adequate but needs to be strengthened for the criminal aspect because the educational background and expertise of the program implementer are not in the legal field.
f. The resources committed are adequate both in terms of human resources, budget, and supporting facilities for the implementation of criminal justice.

2. In Context Policy Aspect
   a. The power, interests, and strategies of the actors, namely the tax criminal policy, involve several parties including the police, the prosecutor and the judicial authority. In addition, also the interests of taxpayers. Stakeholders in law enforcement have their own policies and independence in handling the pretrial procedure.
   b. Institution and regime characteristics, the Directorate General of Taxes are opened institutions which provides an alternative to resolve tax crime through ultimum remedium. However, the provisions of the ultimum remedium that are specifically regulated cause a difference in perception between the Taxpayer and the implementing unit.
   c. Compliance and responsiveness, there are several distinction provisions outside the KUHAP so that Taxpayers have different interpretations, especially these special provisions are regulated in the form of a circular letter of the Director General of Taxes so that Taxpayers feel that they do not have any rights and are not obliged to comply with these provisions.

Furthermore, within the policy context, the author has identified an additional factor beyond the three initially proposed by Grindle, that is the policy regarding to organizing relationships between power and interest, including manong stakeholeder in law enforcement or between tha state and taxpayers.

Based on the factors that have been found, the research developed a strategy using *"The Kernel of Good Strategy"* and found several strategies divided into 2 parts, namely internal strategies and external strategies. Internal strategies are commonly aimed at strengthening law enforcement starting from strengthening policies or implementers. Meanwhile, external strategies are aimed at creating a level playing field in the handling of pretrial motions in court.

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