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## The Replacement of Criminal Fine in Criminal Taxation

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### Abstract

The absence of provisions regulating the substitution of criminal fines in the KUP Law, raises legal uncertainty for law enforcement officials, especially prosecutors in executing court decisions. Considering the recovery of state financial losses that can be resolved by the consistency of court decisions, so the provisions in the KUP Law must meet the legal principles in criminal fines in criminal taxation acts. By not clearly stipulated the substitution of criminal fines in the KUP Law raises legal uncertainty. While substituting criminal fines in the KUP Law is only in the form of imprisonment. In practice, there are several forms of court rulings, there are substituting criminal fines with imprisonment, substituting criminal fines with confiscation of assets then auctioned to pay underpayment taxes, substituting criminal fines with confiscation of assets then auctioned to pay underpayment taxes if the convicted person does not have property that is adequate then replaced with imprisonment. The formulation of the legal issues in this study are: (1) the philosophy of substituting criminal fines in criminal acts in the taxation field, (2) Characteristics of substitution of criminal fines in criminal acts in the taxation field. The results of this study are expected to have a conceptual and legal reforms related to substituting criminal fines in criminal acts in the taxation field, so as to ensure legal certainty, justice and benefit, then the replacement of criminal substitute fines in criminal acts in the taxation field must be included in court decisions and followed up with execution of court decision by the Prosecutor as the executor.

**Keywords:** Criminal Fines; Criminal Acts; Taxation Field.

### Introduction

Tax is one of the state revenues used to carry out development to all Indonesian people. Taxes are important revenues that will be used by the state to finance both routine and development expenses. Paying taxes is an obligation for citizens to co-finance development to realize shared prosperity.<sup>1</sup> Tax based on Article paragraph (1) of Laws

<sup>1</sup> Bambang Ali Kusumo, 'Sanksi Hukum Di Bidang Perpajakan' (2009) VIII Wacana Hukum.[94].

Number 28 year 2007 about Amendments to Laws Number 6 year 1983 about General Provisions and Tax Procedures (hereinafter referred to as the KUP Laws) is a mandatory contribution to the state owed by individuals or entities which is coercive based on the Laws, with no direct reward and used for the benefit of the state for the greatest prosperity of the people. nowadays tax is one of Indonesia's biggest sources of income.

Tax is one of the capital to realize the independence of a nation in development financing by exploring the domestic resources. In order to realize the independence of this financing required community participation in national development fund to perform its obligations in paying taxes as a source of state revenue<sup>2</sup> Paying taxes is part of the participation of the state to help finance development to realize shared prosperity. For citizens who have a high level of legal awareness in the sense of having behaved by the law or (legal behavior).<sup>3</sup>

The law functions are the protection of human interests. For human interests to be protected, laws must be implemented. Through law enforcement, this law becomes a reality. In the enforcement of the law there are three elements that must always be considered, there is legal certainty (*Rechtssicherheit*), usefulness (*Zweckmassigkeit*) and justice (*Gerechtigkeit*). Law without justice is futile, and law without purpose or benefit is not reliable either.<sup>4</sup> A good law is a law that can accommodate and share justice with those it governs.<sup>5</sup>

The absence of regulation related to substituting criminal fines in taxation crimes as regulated in the KUP Law, causes obscurity and legal uncertainty for law enforcement officers, especially the Prosecutor in executing court decisions. There are no special rules in the UU KUP which give rise to different opinions for judges in giving court decisions.

The substitution of criminal fines in criminal acts in the taxation field is essentially a criminal sanction imposed in the context of providing a deterrent

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<sup>2</sup> Zainal Muttaqin, 'Law Enforcement On Taxation Through Non Litigation Mechanism (An Alternative)' (2015) 27 *Mimbar Hukum* <<https://jurnal.ugm.ac.id/jmh/article/view/15899>>.[375].

<sup>3</sup> Soerjono Soekanto, *Kesadaran Hukum Dan Kepatuhan Hukum* (Rajawali Pers 1982).[159].

<sup>4</sup> Sarwirini, 'Implementasi Restorative Justice Dalam Penegakan Hukum Pajak' (2014) 29 *Yuridika*. [384].

<sup>5</sup> Sudikno Mertokusumo and A. Pitlo, *Bab-Bab Tentang Penemuan Hukum* (Citra Aditya Bhakti 1993).[1-6].

effect to the convicted person and at the same time recovering state financial losses. That substitution of criminal fines is imposed on convicts who commit intentional or negligence related to criminal acts in the taxation field which result in state financial losses.

In practice, every decision that has permanent legally binding in the Criminal Act in the Taxation Sector is different in terms of the implementation of criminal fines. So if the verdict regarding the fines imposed on an ordinary person will not be in line with the purpose of the punishment which must give a deterrent effect to the perpetrators of the crime.<sup>6</sup>In the writer's observation, the author divides several categories of decisions type of the Supreme Court in Appeal Court and District Court that have permanent legally binding, as follows:

1. Decisions that include criminal fines, provided that if the fines are not paid by the defendant, then they will be replaced with imprisonment for 6 (six) months;
2. Decisions that include criminal fines, provided that if the fine is not paid by the defendant, his assets shall be confiscated by the Prosecutor and then auctioned off to cover the payment of the fine;
3. Decisions that include criminal fines, provided that if the defendant does not pay the fine within a certain period after the court's decision has permanent legally binding, the property is confiscated by the Prosecutor and then auctioned off to cover the fine, if the defendant does not have the assets sufficient to pay the fine, then it is replaced with imprisonment for 6 (six) months;
4. Decisions that only include criminal fines; as an example of a court decision related to a Criminal Act in the Taxation Sector, as follows:
  - a. Decision Number: 2239 K/PID. SUS/2012, dated December 18th, 2012 in the name of SUWIR LAUT a.k.a. LIU CHE SUI a.k.a. ATAK;
  - b. Decision Number: 1933 K/PID. SUS/2015, dated March 22th, 2016, in the name of VINNA SENCAHERO, HO;
  - c. Decision Number: 2583 K/PID. SUS/2016, dated February 16th, 2017, in the name of ANTON TEDJA;
  - d. Decision Number: 1824 K/PID. SUS/2018, dated September 27, 2018, in the name of INDRA IFITRIANTO, SE.

Considering the recovery of state financial losses that can be resolved by the consistency of court decisions, the provisions in the KUP Law must meet the

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<sup>6</sup> Muhammad Herza and Nurhafifah, 'Penerapan Pidana Denda Sebagai Alternatif Pidana Penjara Dalam Tindak Pidana Penganiayaan Ringan (Suatu Penelitian Di Pengadilan Negeri Banda Aceh)' (2017) 1 JIM Bidang Hukum Pidana <<http://www.jim.unsyiah.ac.id/pidana/article/view/5812/2472>>.[110].

legal principles in criminal fines in criminal taxation acts in the taxation field. The KUP Laws only regulates the substitution of a fine in the form of imprisonment. In practice, there are different forms of court decisions. Based on this background, a problem statement can be drawn as follows:

1. Philosophy of substituting criminal fines in criminal acts in the taxation field.
2. Characteristics of substitution of criminal fines in criminal acts in the taxation field.

### **Philosophy of Substituting Criminal Fines in Criminal Acts in the Taxation Field**

Criminal fines, which have just begun their ability, in the criminal system in the world, in overcoming social problems for example, in criminal or sexual crimes, turn out to bring a paradigm of change.<sup>7</sup> In line with various alternative uses of sanctions, which no longer rely on sanctions for losing independence. Criminal fines have also fulfilled the basic of criminal philosophy, which meet an aspect of retaliation, fostering and social control in society, so this criminal, highly considers humanitarian aspects and meets the requirements of criminal modernization. Because basically, a fine is one type of criminal contained in the Criminal Code (KUHP) which aims to burden someone who violates the provisions of the Criminal Code by paying a certain amount of money or assets to be felt as a loss by the makers themselves so that order in the community recovered.<sup>8</sup>

In Indonesia it has not yet appeared, this criminal is still in a secondary position, when compared to the criminal freedom. This is seen in threats, both within the Criminal Code, and outside the Criminal Code, criminal fines are always in second place. These facts clearly illustrate the notion that fines are classified as a mild criminal group (*Lichte straffen*) and have a severe crime (*streng straffen*). Although criminal fines are widely known in the world, there are still very few studies on this matter. Criminal fines do not have optimal functions and roles

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<sup>7</sup> Ahmad Sofian, 'Pidana Denda Sebagai Alternatif Atas Penjara Yang Penuh Sesak' (*Binus University Faculty Of Humanities*, 2016) <<https://business-law.binus.ac.id/2016/09/27/PIDANA-DENDA-SEBAGAI-ALTERNATIF-ATAS-PENJARA-YANG-PENUH-SESAK/>> accessed 1 January 2019.

<sup>8</sup> I.A. Budivaja and Y. Bandrio, 'Eksistensi Pidana Denda Di Dalam Penerapannya' (2010) XIX *Jurnal Hukum*. [78].

because law enforcement tends to choose imprisonment or confinement rather than criminal fines. Also, existing laws and regulations do not provide impetus for the imposition of fines as a substitute or alternative for imprisonment or confinement.<sup>9</sup> The attention of experts regarding criminal and criminal punishment is more focused on imprisonment. The position of the criminal fines can be known from article 10 of the Criminal Code, which determines the main penalties consisting of capital punishment, imprisonment, confinement and fines. These views form a conflicting attitude between imprisonment and fines.<sup>10</sup>

The development of the maximum threat of criminal fines in Indonesia, many occur today through criminal legislation outside the Criminal Code. The maximum threat of criminal fines in the legislation outside the Criminal Code becomes billions, while its position remains secondary behind criminal freedom. Human nature in fulfilling the function of life is always confronted with the existence of conflicting traits; so that inevitably in shaping each of his personalities using character and inner conscience, he must weigh his feelings, choose values that are useful for him in social life. In the United States criminal fines are used as a very influential alternative to punishment, namely paying fines, even for violations of driving speed limits/other traffic violations. Federal law has granted seizure permits for drug traffickers' property, including cars and ships used to transport drugs and homes paid for in profits. Also pay monetary restitution for petty theft that has to pay for stolen goods/pay for restitution by working/by providing community services to perpetrators found guilty of committing crimes without violence and placed starting from hospitals, homeless shelters, schools, homes - home care. Restitution is often combined with probation and is increasingly being used as a way to pay compensation to victims.<sup>11</sup>

Criminal fines have prevailed in European countries and even the crime of missing independence in the short term has been replaced with criminal fines

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<sup>9</sup> Selfina Susim, 'Pidana Denda Dalam Pemidanaan Serta Prospek Perumusannya Dalam Rancangan KUHP' (2015) IV Lex Crimen.[225].

<sup>10</sup> Syaiful Bakhri, *Pidana Denda Dan Korupsi* (Total Media 2009).[1-2].

<sup>11</sup> Mark Costanzo, *Aplikasi Psikologi Dalam Sistem Hukum, Psycology Applied To Law* (Penerjemah: Helly Prayitno Soetjipto ed, Pustaka Pelajar 2006).[467-468].

and flexibility in the way payments of criminal fines have been regulated by considering the culture and public awareness, and linking with positive legal approaches, legal sociology and pragmatic law so that can be studied from economic law. Economic analysis of legal developments, as stated by experts, specifically national economic developments to achieve legal objectives. First the law does not only consist of static elements, but elements that are direct and appropriate in the development of law. The two laws are not only regulatory capital but also a whole system in motion. The third law is the technique of developing and applying an idealistic thought building as the goal of the rule of law. The fourth law is a building of values and technical elaboration in the application of values to solve certain problems.

With regard to the purpose of punishment in renewing criminal law, it cannot be separated from criminal guidelines, which means that it consists of general criminal guidelines which consist of guidelines for using legal resources, guidelines for imposing penalties or sanctions, guidelines for forgiveness, crimes can still impose penalties even though there are reasons for eradication criminal offenses (relating to the principle of *culpa in causa*), guidelines for the application of the criminal formulation system, imprisonment, specific minimum criminal guidelines, guidelines for modification of crimes, guidelines for corporate crimes, guidelines for the punishment of children. In the criminal guideline there are principles of humanity, the principle of considering the mistakes of the defendant and the forgiveness of victims/victims' families, the principle of considering the views of the community, the principle of *culpa in causa*, the principle of modification (due to changes/developments of prisoners and the purpose of punishment), the guideline for a single criminal formulation system, containing the principle flexibility (not rigid), guidelines for the application of alternative formulation systems, the principle of subsidiarity (the principle of lighter precedence), combined criminality (supervision and fines), the principle of social reinterrogation (resocialization) for life inmates who have served 17 years of conditional release, (guidelines do not impose imprisonment), containing the principle of austerity (*parsimony principle*)

and finally added to the principle of prison installments.<sup>12</sup>

Criminal fines in various philosophies of crimes and their use are enforced in the world, then the criminal penal system is the most rational answer in the search for alternative crimes, lost independence, due to the crime of missing independence as a symbol of punishment which is outdated, ancient and only a manifestation of retaliation eye.

Didik Endro Purwoleksono, *primum remedium* is a criminal sanction used as a primary weapon or first threatened in law and this sharp criminal sanction distinguishes it from other legal sanctions.<sup>13</sup> Crime as an extraordinary crime should use criminal law as the main instrument in law enforcement because administrative law and civil law will not be able to overcome it. Therefore, the substitute of criminal fines in criminal acts in the field of taxation uses criminal law as *primum remedium*, so that criminal fines can be carried out by auctioning the assets of the convicted person, in the event that the auction results of the convicted property have not met the amount of the fine to be paid to the state, the remaining unpaid fines may be subject to imprisonment.

A criminal act in the field of taxation include acts committed by a person or by a body that is represented by a certain person (management), fulfills the formulation of the law, is threatened with criminal sanctions, is against the law, is carried out in the taxation field, and can cause losses to state revenues.<sup>14</sup> Fidel, in order for an action to be classified as a criminal act in the taxation field, the act must fulfill the following elements: (1). Subject Elements, (2). Elements of Deed, (3). The element of effect, (4). Error Element.<sup>15</sup>

In general understanding, what is meant by tax crime or also called tax crime (Taxing Crime) is an act that violates the provisions regarding liability in the field

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<sup>12</sup> Barda Nawawi Arief, 'RUU KUHP Baru Sebuah Restruktisasi/Konstruksi/ Reformasi Sistem Hukum Pidana Indonesia', *pelatihan hukum pidana dan kriminologi II Kerjasama MAHUPIKI Pusat dan FH Universitas Pelita Harapan Surabaya, 9-11 Maret 2015* (Universitas Pelita Harapan Surabaya 2015).

<sup>13</sup> Didik Endro Purwoleksono, *Hukum Pidana* (Airlangga University Press 2016).

<sup>14</sup> Fidel, *Tindak Pidana Perpajakan Dan Amandemen Undang-Undang: KUP, PPh, PPN, Pengadilan Pajak* (Carofin Media 2015).[175].

<sup>15</sup> *ibid.*[177].

of taxation and the requirements stipulated in the tax law.<sup>16</sup> Or in other words, a tax crime is a type of crime that is against the criminal law committed, intentionally or unintentionally, which has a relationship in the field of taxation, causing state losses in the form of material and immaterial.<sup>17</sup>

Viewed in a broad sense, criminal law policy in the perspective of taxation covers the scope of policy in the field of material tax criminal law, and in the field of formal tax criminal law. In the next discussion, it only focuses on the substantive tax criminal law policy. For example, one interesting case that has appeared in the mass media and caused a loss in state revenue is a case of manipulation of Fictional Tax Invoice. This case occurred because the Taxpayer was proven to use an invalid Tax Invoice document, as if the Taxpayer had correctly issued the Tax Invoice in accordance with the actual transaction.

The conclusion of criminal sanctions in taxation turns out to be quite varied, not only concerning Taxpayers, but also the associations, banks, including tax officials. The sanctions are spread over several articles in the KUP Law (see resume table for articles on criminal tax sanctions). We certainly hope that the sanctions do not need to be applied. But not only because of the difficulty of the field, but because the day-to-day level of taxpayer awareness of taxpayers in Indonesia has been increasingly high.

Criminal fines have a civil nature, similar to the payments required in civil cases against people who commit acts that harm others, the difference is that fines in criminal cases are paid to the state or society, whereas in civil cases to individuals or legal entities. Besides, fines in criminal cases can be replaced with imprisonment if not paid. Apart from that fines are not calculated in accordance with the amount of loss incurred by an act as in a civil case. Criminal fines are still imposed even though the convicted person has paid civil damages to the victim. This is what many ordinary people misunderstand, especially in traffic violations. It is often

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<sup>16</sup> Edi Setiadi dan Rena Yulia, *Hukum Pidana Ekonomi* (Graha Ilmu 2010).[51].

<sup>17</sup> Said Sampara and Insan Anshari Al Aspary, *Tindak Pidana Perpajakan (Suatu Kajian Yuridis-Normatif)* (Cipta Karya 2012).[6].



thought that if compensation has been paid to the victim (sometimes through the mediation of the police), criminal charges have been removed. Medium is actually not the case. Criminal prosecution can still be carried out by prosecutors, at most it will only alleviate the penalties imposed by the judge. In practice, it was felt that many cases had settled, meaning that they were finished on the spot, without being forwarded to the prosecutor's office, because both parties had made peace.

Criminal fines, if related to criminal objectives, will appear that the relationship lies in crimes against property. In the case of the implementation of a criminal offense, it must not exceed the conditions that are limitatively prohibited by certain sanctions, so harmony must be sought between the harm caused by a crime and the number of criminal fines to be paid by the convicted person. For this reason, consideration must be given to both the minimum and maximum threats to a crime.

The role of the judge is very important in imposing a crime, after knowing the purpose of punishment, the judge is obliged to consider the circumstances that exist around the makers of the crime, what and how the influence of the criminal act committed, the influence of the criminal imposed on the criminal maker in the future, the influence criminal acts against victims as well as many other circumstances that need to get the attention and consideration of judges in imposing a crime. All of this is a criminal guideline.

From the description above, in addition to the weaknesses of criminal fines, criminal fines also have the following advantages: First, by imposing fines, the anonymity of the convicted person will be maintained, each convict felt the need to hide their identity or remain anonymous or unknown. Most of them are afraid to be recognized as people who have been imprisoned by their social circle or acquaintances. Second, criminal fines do not cause stigma or an evil stamp for convicted persons, as can be the case from the application of criminal deprivation of liberty. Third, with the imposition of a criminal fine, the state will get the income and besides the process of implementing the law is easier and cheaper.

The drafting of the Criminal Code Bill is motivated by national needs and demands for systemic criminal law reform (structure, substance, and culture).

Related to the renewal of criminal penalties in the Criminal Code Bill, criminal penalties in the Criminal Code Bill have undergone several renewals. Criminal fines that are widely known in the practice of punishment in the world experience ups and downs, in tune with the development of the flow of philosophy in the implementation of punishment. In the Criminal Code Bill in Indonesia there is a change in the approach to the basic crimes for perpetrators with the addition of additional crimes and the inclusion of acts (*maatregel*) as an alternative to punishment. The types of punishment are first, the main criminal code which consists of imprisonment, criminal cover, criminal supervision, criminal fines, social work. Second, namely a special crime that is capital punishment. Third, namely additional crimes. Additional crimes consist of revocation of certain rights, confiscation of certain goods and bills, the announcement of a judge's decision, payment of compensation, and the fulfillment of adat obligations. Fourth, i.e. actions that consist of treatment in a mental hospital, surrender to the government, surrender to a person, revocation of a driving license, deprivation of profits derived from a criminal offense, repairing the consequences of a criminal offense, work training, rehabilitation, and treatment in an institution.

Criminal provisions of the KUP Law aside from discussing criminal proceedings which due to negligence and intentionality can cause losses to state revenues, also discusses criminal penalties. Criminal fines in the practice of criminal law must go through judicial decisions, to determine the amount of the fine, which must be paid, and are not allowed to fight it through civil mechanisms. The latest thing about criminal fines, in the politics of criminal law in Indonesia, has received a rousing welcome, by the Legislator, when determining the formulation of criminal sanctions for fines, but inversely proportional to the court's decisions, the Judges' reluctance to apply fine sanctions is still apparent, because it is still not considered to have a deterrent effect, in the system of retaliation, which still originates from the imprisonment. Another thing that causes the lack of application of criminal fines, due to the model of its implementation, which always alternates with imprisonment, if fines are not able to be paid, resulting in fines losing their

position as a modern criminal. Although in many theories and developments in criminal justice in various developed countries, it has fulfilled a sense of justice in its society, concerning fines that are humanistic, fair, and civilized.

In practice, justice can be felt in several court decisions that have permanent legal force, which states that criminal fines for convicted persons are not only for those convicted but also imposed on companies or corporations related to criminal offenses committed by convicted persons. The prosecutor in carrying out the execution has successfully carried out the confiscation of assets then auctioned to pay underpayment taxes as state revenues.

In line with economic, information technology, social and political developments, it was realized that it was necessary to amend the Law on General Provisions and Tax Procedures. The amendment aims to provide more justice, improve services to taxpayers, increase certainty and law enforcement, and anticipate progress in the field of information technology and changes in material provisions in the field of taxation. In addition, the amendment is also intended to increase the professionalism of the taxation apparatus, increase the transparency of tax administration, and increase the voluntary compliance of taxpayers.

Criminal provisions of the KUP Law aside from discussing criminal proceedings which due to negligence and intentionality can cause losses to state revenues, also discusses criminal penalties. Criminal fines in the practice of criminal law, must go through judicial decisions, to determine the amount of the fine, which must be paid, and are not allowed to fight it through civil mechanisms. The latest thing about criminal fines, in the politics of criminal law in Indonesia, has received a rousing welcome, by the Legislator, when determining the formulation of criminal sanctions for fines, but inversely proportional to the court's decisions, the Judges' reluctance to apply fine sanctions is still apparent, because it is still not considered to have a deterrent effect, in the system of retaliation, which still originates from the imprisonment. Another thing that causes the lack of application of criminal fines, due to the model of its implementation, which always alternates with imprisonment, if fines are not able to be paid, resulting in fines losing their

position as a modern criminal. Although in many theories and developments in criminal justice in various developed countries, it has fulfilled a sense of justice in its society, concerning fines that are humanistic, fair, and civilized.

### **Characteristics of Substitution of Criminal Fines in Criminal Acts in the Taxation Field**

The purpose of this study is to discover the philosophy of substituting criminal fines in criminal acts in the taxation field and discovering the characteristics of substitute criminal fines in criminal acts in the taxation field. The benefits of this research are providing suggests and recommendations related to the philosophy and characteristics of substituting criminal fines in tax criminal, as well as providing suggests and recommendations to the Police, Prosecutors and Judges in conducting law enforcement in handling criminal acts in the field of taxation. This research is normative legal research. The approach used in this research is the statutory approach, conceptual approach, case approach and comparative approach.

Based on the discussion in this study it was found that the philosophy of substituting criminal fines in criminal acts in the field of taxation is essentially criminal sanctions imposed in the context of providing a deterrent effect to the convicted person and at the same time recovering state finances. The substitution for criminal fines is imposed on convicts who commit intentional or negligence related to criminal acts in the field of taxation which result in state financial losses. The characteristics of substitution of criminal fines in criminal acts of the taxation sector are the legal principles of substituting criminal fines in criminal acts in the taxation field based on legal certainty, justice and usefulness, but that legal principles mentioned above have not been clearly regulated in the KUP Laws. While substituting criminal fines in the KUP Law is only in the form of imprisonment. In practice, there are several forms of court decision, there are substituting criminal fines with imprisonment, substituting criminal fines with confiscation of assets then auctioned to pay underpayment taxes, substituting criminal fines with confiscation of assets then auctioned to

pay underpayment taxes if the convicted person does not have property that is adequate then replaced with imprisonment.

The comparison with other countries is the Netherlands does not apply imprisonment as a substitution for criminal fines in taxation crimes, but applies the confiscation of assets to pay compensation; The State of China, which applies criminal acts in the field of taxation with the lowest criminal up to capital punishment in accordance with the threat of tax criminal sanctions, as well as applying criminal fines and confiscation of property. Hong Kong as a country that imposes penalties in the field of taxation, has an illustration of the number of penalties varying from level 1 to level 6. Thailand as a country whose judges apply court decisions in the field of taxation with criminal fines and if fines are not paid the court decides to confiscate his property. That several countries that have applied substitution of criminal fines other than imprisonment, is China that imposed additional crimes in tax criminal offenses including confiscation of property determined by the judge.

Considering that the form of substitution of criminal fines in the KUP Law is only in the form of imprisonment, while in judicial practice there are several other forms, so it is recommended in the upcoming revision of the KUP Law to prioritize confiscation of convicted assets as a form of restoring state financial losses, so the concept of substituting criminal fines in criminal acts in the field of taxation is to confiscate and auction off the assets of the convicted person first, but if the assets of the convicted person are not sufficient, the remaining unpaid fines may be subject to imprisonment.

In guarantee legal certainty, justice and usefulness, the replacement of criminal penalties in tax crime must be included in court decisions and followed up with execution of court decisions by the Prosecutor as the executor. Thus, the Judge can apply a substitution for the criminal fines in his decision and the Prosecutor as the executor can carry out the execution by confiscating and auctioning the assets of the convicted person, if the assets of the convicted person are not sufficient, then imprisonment can be carried out. That point aims to increase state funding by returning state losses from taxes, in order to realize national development goals for the welfare of the people.

## Conclusion

The philosophy of substituting criminal fines in criminal acts in the field of taxation is essentially a form of punishment in the context of recovering income from the state finances through criminal sanctions imposed in the context of providing a deterrent effect to convicts who commit intentional or negligence related to criminal acts in the taxation field.

Considering that tax is income in the state finances, the principle of expediency is the main basis for the regulation of substitute criminal fines in taxation crimes. However, the provisions in the KUP Law have not been clearly regulated, so that it has implications for the unclear provisions regarding the forms of substitute for criminal fines in tax criminal offenses, as well as the varied forms of court substitute criminal decisions in tax crime.

In practice, there are several forms of court rulings, namely substituting criminal fines with imprisonment, substituting criminal fines with confiscation of assets then auctioned to pay underpayment taxes, substituting criminal fines with confiscation of assets then auctioned to pay underpayment taxes if the convicted person does not have property that is adequate then replaced with imprisonment. Comparison with other countries that have applied a substitute for criminal fines other than imprisonment is the Netherlands and China that impose additional crimes in criminal acts in the field of taxation, among others in the form of confiscation of property determined by the judge.

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