

APPLICATION OF CRIMINAL PENALTIES IN LIEU OF FINES IN TAX CRIMES (Study Decision Number 1025/Pid.Sus/2023/PN Jkt)

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Article	Abstract
Keywords: Substitute Crimes, Administrative Fines, Tax Crimes. DOI: 10.28946/scls.v3i2.4843	This article examines how the application or effectiveness of the penalty in lieu of fines in tax crimes after Law Number 7 of 2021 concerning Tax Harmonization which based on Article 44C Paragraph (1), Paragraph (2), states that fines cannot be replaced by imprisonment and must be paid by the convict, but in this case if the defendant is not paid within 1 month, it is replaced with a prison sentence that does not exceed the prison sentence that is broken. The purpose of this study is to analyse the judges' considerations in imposing substitute fines in tax crime cases (decision number 1025/Pid.Sus/2023/PN Jkt) and to analyse the implementation of substitute criminal sanctions for fines in tax crimes. This study uses a normative juridical method and is supported by an empirical juridical method with a literature approach or related laws. Data analysts use qualitative descriptive. The results of this study show that the legal position of Article 44C Paragraph (1) does not provide legal certainty for losses in state revenue. Paragraph (3) provides a loophole to the defendant; if his property is insufficient, it will be replaced with a prison sentence. Decision Number 1025/Pid.Sus/2023/PN Jkt Pst provides the fact that the defendant was sentenced to a fine of 2 x IDR 1,615,653,056 = IDR 3,231,306,110, but in reality, the assets owned by the defendant are insufficient to cover the loss to state revenue. Therefore, the defendant was sentenced to imprisonment in lieu of a fine of 6 (six) months.

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A. INTRODUCTION

Tax is the main source of state revenue used to finance national development. In 2024, tax revenues increased to nearly IDR 2,000 trillion, although in 2025, there was a slowdown due to the transition to a digital tax administration system and weakening global economic conditions.¹ Therefore, every violation of tax obligations must be firmly addressed to create a deterrent effect

¹ Suroyo Gayatri Sulaiman Stefanno, "Indonesia Mencatatkan Defisit Fiskal 2024 Yang Lebih Rendah Dari Perkiraan." (Jakarta: Reuters, 2025), <https://www.reuters.com/markets/asia/indonesias-budget-deficit-2024-23-gdp-2025-01-06/>.

for perpetrators and other taxpayers. Tax crimes are often committed through various methods, such as failing to report Tax Returns (SPT), submitting incorrect or incomplete SPTs, and failing to remit collected taxes. These methods cause significant losses to state revenue.² Enforcement efforts through the courts, including the imposition of fines and substitute fines, are important instruments to uphold justice and maintain the integrity of the tax system.

The obligation to pay taxes is regulated by various laws and regulations aimed at creating fairness and equity in state financing. However, in practice, many taxpayers commit violations or tax crimes that financially harm the state and disrupt the overall tax system. Tax crimes are unlawful acts committed by taxpayers or other parties that cause losses to state revenue. These acts include submitting false, incomplete, or unsubmitted Tax Returns, forging tax documents, and failing to remit taxes that have been withheld or collected.³ The administrative sanctions stipulated in Law Number 28 of 2007 concerning the Third Amendment to Law Number 6 of 1983 on General Provisions and Tax Procedures (UU KUP) include criminal sanctions divided into three types:

1. Criminal fines: Imposed on defendants for violations of legal provisions. Administrative fines apply to taxpayers who violate tax regulations, including officials or third parties committing violations or crimes. Criminal sanctions are imposed on law violators, including taxpayers, tax officials, or third parties who deliberately commit criminal acts.⁴
2. Detention: Can only be imposed on taxpayers or third parties who violate tax norms.
3. Imprisonment: Sanction depriving taxpayers or officials of liberty due to criminal acts.

Tax crimes are regulated in Articles 38 and 39 of Law Number 28 of 2007 (Third Amendment to Law Number 6 of 1983). Investigations are conducted by the Directorate General of Taxes (DGT) based on information, reports, and complaints. The DGT may conduct preliminary examinations followed by investigations if indications of tax crimes exist (regulated in Articles 43A and 44 of the UU KUP). Taxpayers are given the opportunity to restore losses to state revenue by paying tax debts and fines three times the amount of unpaid or underpaid tax, as long as the case has not been submitted to court. Over time, changes in regulations allow taxpayers to settle up to the trial stage according to Article 44B of the Tax Harmonization Law, which states that even after the case is submitted to court, the defendant can still pay the principal tax and sanctions, which may be considered to prosecute without imprisonment.⁵

Criminal law recognizes two principles: *ultimum remedium* and *primum remedium*. In tax law, the application of *primum remedium* is often considered to create gaps and premature enforcement, causing legal uncertainty and injustice. *Primum remedium* means punishment as the first or primary choice if no other enforcement measures are available. Indonesia's current tax law aims primarily to fully recover losses to state revenue. The *primum remedium* principle in tax crimes is used as coercion to prevent violations or crimes in taxation.⁶ The offenses in Law Number 28 of 2007, with characteristics more aligned with *primum remedium* than *ultimum remedium*, are regulated cumulatively in Articles 39(1), 39A, and 43 of Law Number 16 of 2009 on General Provisions and Tax Procedures (UU KUP).

² Noval Sulaiman And Hudi Yusuf, "Strategi Penanggulangan Tindak Pidana Perpajakan Di Indonesia: Studi Tentang Penghindaran Dan Penggelapan Pajak," *Jurnal Intelek Insan Cendikia* 1, No. 9 (2024): 5124-39.

³ Lani Dharmasetya, "Tindak Pidana Perpajakan," *Jawa Tengah*, 2024.

⁴ Sharah Puan Hany Et AL., "Pengaruh Keringanan Sanksi Administrasi Undang-Undang Harmonisasi Peraturan Perpajakan Terhadap Kepatuhan Wajib Pajak" 3 No 2 (2023), <https://doi.org/10.54957/jurnalku.v3i2.453>.

⁵ Deny Kurniawan, "Analisis Asas Hukum Ultimum Remedium Dalam Tindak Pidana Perpajakan Di Indonesia: Analysis Of The Legal Principle Of Ultimum Remedium In Tax Crime In Indonesia," *Jurnal Globalisasi Hukum.*, No. Vol. 1 No. 2 (2024): 284-92, <https://ejournal.trisakti.ac.id/index.php/globalisasihukum/article/view/21056/11988>.

⁶ Gunawan Jatmiko, "Analisis Penegakan Hukum Dan Perlindungan Hak Asasi Manusia Oleh Polisi," *Jurnal Hukum Pro Justitia* 26, No. 2 (2008).

The application of substitute criminal sanctions for fines becomes important because not all perpetrators of tax crimes can pay the fines imposed by the court. In some decisions, such as the Denpasar District Court Decision Number 62/Pid.Sus/2023/PN Dps, if fines are not paid, the defendant's assets may be seized and auctioned, and if still insufficient, substitute imprisonment is imposed. This mechanism ensures legal certainty and effective enforcement of court decisions. However, the application of substitute fines does not always run smoothly. Many defendants lack sufficient assets to pay fines and must serve substitute imprisonment. This raises new issues regarding enforcement effectiveness and substantive justice for both the perpetrator and the state. This dilemma challenges law enforcement officers to balance legal certainty and justice.⁷

The study of Decision Number 1025/Pid.Sus/2023/PN Tjk is interesting as it illustrates how judges apply substitute fines in tax cases and the legal considerations in their rulings. Analysis of this decision provides insight into the consistency of law enforcement and the extent to which tax law enforcement objectives are achieved. The application of substitute fines also impacts efforts to optimize state revenue from taxation. If fines and their substitutes do not provide sufficient deterrence, similar violations may continue. Therefore, it is important to examine whether substitute fines are truly effective as a law enforcement instrument in taxation.⁸ Imposing substitute imprisonment must be proportional and not cause injustice to state revenue losses, especially if the inability to pay fines is due to factors beyond intent or limited economic capacity. This requires careful judicial consideration.

The purpose of this study is to analyse the judges' considerations in imposing substitute fines in tax crime cases (decision number 1025/Pid.Sus/2023 PN Tjk) and to analyse the implementation of substitute criminal sanctions for fines in tax crimes. The novelty of this research lies in the application of criminal penalties in lieu of fines in tax crimes through a concrete analysis of Decision Number 1025/Pid.Sus/2023/PN Tjk, which has not been widely studied in previous research. Previous research, such as Bambang Hartono's et.al, study entitled "The Application of Criminal Sanctions to Collective Perpetrators of Tax Crimes," tends to discuss tax crimes committed jointly. This study, however, specifically examines how judges apply imprisonment or imprisonment in lieu of tax fines and their implications for the purpose of sentencing, recovery of state losses, and the effectiveness of tax law enforcement. Furthermore, this study also offers an analysis of the suitability of the application of criminal penalties in lieu of fines with the ultimum remedium principle in tax law and the development of fiscal criminal law policy in Indonesia, thus providing a new perspective on the construction of law enforcement against tax crimes.

B. RESEARCH METHODS

This study uses doctrinal legal research, which positions law as a norm or rule applicable in the legal system and court decisions. Doctrinal research was chosen because this study focuses on analyzing the application of substitute criminal fines in tax crimes as stipulated in Decision Number 1025/Pid.Sus/2023/PN Tjk. The research approaches used include a statute approach to analyze legal provisions related to tax criminal sanctions and a case approach through an analysis of Decision Number 1025/Pid.Sus/2023/PN Tjk.

⁷ Agung Satryo Wibowo et al., *Hukum Pidana Perpajakan Dan Tindak Pidana Korupsi: Titik Singgung, Perbedaan Dan Implikasi Hukum* (Indonesia Emas Group, 2025).

⁸ Tanudjaja Tanudjaja, "Tanggung Jawab Pidana Pada Korporasi Dalam Tindak Pidana Perpajakan," *Jurnal Hukum Indonesia* 3, no. 3 (2024): 96-106.

C. ANALYSIS AND DISCUSSION

1. The Judges' Considerations In Imposing Substitute Fines In Tax Crime Cases (Decision Number 1025/Pid.Sus/2023 Pn Jkt)

The legal system in Indonesia places the court as the main pillar in the pursuit of justice. Courts are institutions expected to provide fair resolutions for every case. Therefore, legal cases are generally expected to be resolved properly through the court system. The application of law in Indonesia requires close cooperation among law enforcement officers. Judges are state officials tasked with examining, adjudicating, and deciding cases in court. Judges are granted independence to conduct trials to uphold law and justice.⁹ Court decisions represent the culmination of criminal cases; hence, judges must consider aspects beyond just juridical elements so that their decisions fully reflect sociological, philosophical, and juridical values as follows:

a. Juridical Consideration

Juridical consideration refers to the judges' decision based on formal statutory provisions. Juridically, a judge cannot impose a sentence unless there are at least two valid pieces of evidence, so that the judge is convinced that the crime truly occurred and the defendant is guilty (Article 183 of the Criminal Procedure Code). Valid evidence includes: (a) witness testimony; (b) expert testimony; (c) documents; (d) indications; (e) defendant's testimony.¹⁰

b. Philosophical Consideration

Philosophical consideration means the judge considers that the punishment imposed on the defendant is an effort to rehabilitate the defendant's behavior through the sentencing process. This implies that the philosophy of punishment is to rehabilitate offenders so that after release from correctional institutions, they can improve themselves and avoid committing crimes again.¹¹

c. Sociological Consideration

Sociological consideration means the judge bases the sentence on the defendant's social background and considers that the punishment imposed benefits society. A decision that fulfills sociological considerations is one that does not contradict the living law in society (social customs).¹² According to M. Solly Lubis, it reflects the demands or needs of society that require resolution as a means to ensure usefulness.¹³

Before addressing the research problem, the author first outlines the chronology of the case based on Decision Number 1025/Pid.Sus/2023 PN Tjk. The defendant (SH) failed to remit Value Added Tax (VAT) through PT Delvin Mitra Persada for the tax years 2017, 2018, and 2019. PT Delvin Mitra Persada's business activities during these years involved construction services, specifically building BTS (Base Transceiver Station) towers in the South Sumatra region for clients such as PT Inti Bangun Sejahtera and PT Profesional Telekomunikasi Indonesia. The work included surveying, land acquisition, and construction of BTS towers, including electrical installations. The total VAT owed for the period from January 2017 to December 2019 amounted to IDR 4,748,080,910 (four billion seven hundred forty-eight million eighty thousand nine hundred ten rupiah), which was unpaid or underpaid. The loss caused by the defendant's

⁹ Dachran Busthami, "Kekuasaan Kehakiman Dalam Perspektif Negara Hukum Di Indonesia," *Masalah-Masalah Hukum* 46, no. 4 (2017): 336–42.

¹⁰ Ahmad Rifai, "Penemuan Hukum Oleh Hakim Dalam Perspektif Hukum Progresif," *Grafiti*, 2011.

¹¹ *Ibid.* hlm. 127

¹² Ahmad Rifai. *Op. cit.* hlm.128

¹³ Kapita Selektia Hukum Pidana Sudarto and Hukum Pidana, "Bandung: Alumni, 1986," Wignjosebroto, Soetandyo, "Kriminalisasi Dan Dekriminalisasi: Apa Yang Dibicarakan Sosiologi Hukum Tentang Hal Ini, 1993.

failure to remit collected VAT was IDR 1,615,653,056 (one billion six hundred fifteen million six hundred fifty-three thousand fifty-six rupiah).

The defendant was charged with alternative charges: first, Article 39 paragraph (1) letter d of Law Number 28 of 2007 concerning the third amendment to Law Number 6 of 1983 regarding general provisions and tax procedures, as last amended by Law Number 16 of 2009; or second, Article 39 paragraph (1) letter i of the same law.

Based on the panel's considerations, the defendant fulfilled the elements of Article 39 paragraph (1) letter i of Law Number 28 of 2007, thus was found guilty and sentenced to one year imprisonment and a fine of twice the amount of the unpaid tax, totaling IDR 3,231,306,110 (three billion two hundred thirty-one million three hundred six thousand one hundred ten rupiah). If the defendant does not pay the fine within one month after the decision gains permanent legal force, the defendant's assets will be seized by the Public Prosecutor and auctioned to pay the fine. If the defendant lacks sufficient assets, the defendant will be sentenced to substitute imprisonment for six months.

The author conducted an interview with Mr. Rusli, SE, a Special Crimes Prosecutor at the Lampung High Prosecutor's Office.¹⁴ He stated that the defendant did not return any of the losses to state revenue, amounting to twice the unpaid tax of IDR 1,615,653,056, totaling IDR 3,231,306,110. Furthermore, after the decision became final on January 11, 2024, the Prosecutor's Office conducted asset seizures but found no assets to cover the losses. Therefore, a substitute imprisonment of six months was imposed. Mr. Rusli added that during the trial, the defendant was uncooperative in returning the losses, despite expressing remorse and acknowledging the failure to remit VAT to the state treasury.

Tax invoices clearly stated the amounts payable by customers and partners, including the 10% VAT that should have been paid by customers and partners to PT Delvin Mitra Persada for the tax periods from January to December 2017, 2018, and 2019. However, the defendant did not remit the VAT collected from several companies, such as PT Profesional Telekomunikasi Indonesia, PT Inti Bangun Sejahtera Tbk, PT Silfaron Perdana, PT Waskita Karya (Persero) Tbk, and Petrogas (Basin) Ltd, to the state treasury.

The defendant's inner attitude was revealed to be aware of receiving payments for goods/services transactions that generated 10% VAT, which had been paid by the companies as transaction counterparts to the defendant through PT Delvin Mitra Persada. However, the defendant knowingly used the VAT funds for personal interests, employee salaries, and company operations instead of remitting them to the state.

The author analyzes that the panel's consideration in delivering the verdict has not provided benefits to society. Article 44C paragraph (1) explains that fines cannot be replaced with imprisonment, except that if asset searches and auctions are conducted and still insufficient to cover losses, then imprisonment not exceeding the original sentence may be imposed (paragraph 3).

Based on this, it can be seen that imposing one year imprisonment on the defendant did not have an effect on recovering losses to state revenue. The total loss of IDR 3,231,306,110 was not returned by the defendant, who was uncooperative, yet the panel sentenced only one year imprisonment.

2. Implementation of Substitute Criminal Sanctions for Fines in Tax Crimes

Article 44C of the General Provisions and Tax Procedures Law (UU KUP) explicitly regulates that fines imposed under Article 39 and Article 39A cannot be replaced by imprisonment and must be paid by the convicted party. This provision emphasizes the importance of paying fines as a form of recovering state losses resulting from tax crimes. Thus,

¹⁴ Rusli, "Staf Penuntutan Pidana Khusus" (wawancara pribadi, 2025).

the state prioritizes financial recovery over simply imposing imprisonment, which does not directly contribute revenue to the state treasury.¹⁵

Paragraph two of Article 44C stipulates that if the convicted party fails to pay the fine within one month after the court decision has permanent legal force (*inkracht*), the public prosecutor is authorized to seize and auction the convicted party's assets. This mechanism aims to ensure that the fine payment is effectively executed and that the state recovers the losses incurred. Asset seizure and auction are crucial enforcement steps to uphold court decisions effectively.

However, paragraph three of Article 44C provides that if after asset tracing and seizure, the convicted person does not have sufficient assets to pay the fine, they may be sentenced to imprisonment for a period not exceeding the prison sentence originally imposed by the court. This provision offers an alternative punishment in the form of imprisonment as a substitute for fine payment, but with a proportional duration limit according to the court's ruling.

This provision in Article 44C creates a loophole that draws attention in tax law enforcement practice. The loophole arises when the convicted party lacks sufficient assets to pay the fine and must serve imprisonment instead. This raises questions about the effectiveness of state loss recovery, as imprisonment does not generate revenue for the state while tax losses remain uncovered.

From the perspective of recovering state revenue losses, Article 44C affirms that the primary priority is paying fines in cash or through asset seizure. However, if this option fails, imprisonment becomes the last resort. This condition indicates that the tax law enforcement system still faces challenges in ensuring optimal recovery of state losses, especially when the convicted party's assets are insufficient.¹⁶

Furthermore, this provision eliminates the possibility of automatically replacing fines with imprisonment, which previously allowed defendants to substitute fines by serving prison sentences. By removing this option, it is expected to increase taxpayer and offender compliance in paying fines, so state losses can be promptly recovered without adding to the state's burden through prisoner maintenance costs.

Nevertheless, the application of Article 44C also raises challenges regarding legal certainty and substantive justice. Imprisonment as a substitute for fines for those unable to pay can cause injustice, especially for taxpayers economically incapable of fulfilling fine obligations. This requires law enforcement officers to carefully consider the convicted party's economic condition and seek fair and proportional solutions.

In practice, Article 44C encourages law enforcement officers, especially prosecutors, to conduct thorough asset tracing and seizure before imposing imprisonment. This is important so that court decisions are not merely formal but also yield tangible results in recovering state losses. Good coordination between the Directorate General of Taxes, the Attorney General's Office, and related agencies is key to successfully implementing this provision.

Moreover, Article 44C emphasizes the need for accurate calculation of state losses as the basis for determining fines. This calculation must be done carefully so that the imposed fine reflects the actual loss and provides an effective deterrent. Thus, this provision functions not only as a law enforcement tool but also as a fiscal justice instrument supporting the sustainability of the tax system.

Overall, Article 44C of the UU KUP provides a clear legal framework for recovering state losses through fines and asset seizure mechanisms while limiting the replacement of fines with imprisonment. However, this provision still leaves challenges in implementation, especially concerning the certainty of loss recovery if the convicted party lacks sufficient assets. Therefore,

¹⁵ Miftahul Jannah, "Analisis Yuridis Penerapan Konsep Asas Lex Specialis Sytematis Dalam Tindak Pidana Perpajakan," *Journal of Contemporary Law Studies* 2, no. 2 (2024): 141–58.

¹⁶ Christopher Hartono and Widyawati Boediningsih, "Model Pemulihan Kerugian Keuangan Negara Akibat Kasus Korupsi Melalui Civil Forfeiture," *Jurnal Ilmu Hukum, Humaniora Dan Politik (JIHHP)* 5, no. 3 (2025).

continuous efforts are needed to strengthen implementation and supervision to optimally achieve the goal of state loss recovery.

The author argues that the application of substitute criminal sanctions for fines should be maximized. Below is the series of steps for applying substitute criminal sanctions based on Article 44C of the UU KUP:

- a. Imposition of fines
After the defendant is found guilty of committing a tax crime under Articles 39 and 39A of the UU KUP, the judge imposes a fine that must be paid by the convicted party. According to Article 44C paragraph (1), this fine cannot be replaced by imprisonment.
- b. Payment deadline
The convicted party must pay the fine no later than one month after the court decision obtains permanent legal force (*inkracht*). This provision ensures that fine payments occur within a clear timeframe and do not delay the execution of the decision.
- c. Asset seizure and auction
If the convicted party fails to pay the fine within one month after the decision is final, the prosecutor traces the convicted party's assets. Then, the prosecutor seizes and auctions those assets to pay the fine according to applicable laws and regulations.
- d. Maximum asset tracing
Seizure and auction are conducted thoroughly and maximally to ensure state loss recovery from fines. This is a primary priority in tax law enforcement to avoid uncollected state losses.
- e. Substitute imprisonment if assets are insufficient
If after tracing and seizing assets, the convicted party does not have enough assets to pay the fine, substitute imprisonment may be imposed. The duration of imprisonment must not exceed the prison sentence originally imposed by the judge.
- f. Limit on substitute imprisonment
The duration of substitute imprisonment is limited so it does not exceed the principal prison sentence. This provides legal certainty and prevents substitute imprisonment from being harsher than the principal sentence.
- g. Execution of substitute imprisonment
If substitute imprisonment is imposed, the convicted party must serve the sentence after asset seizure and auction efforts fail. This is the last resort in tax law enforcement.
- h. Effectiveness of state loss recovery
This mechanism ensures that state loss recovery through fines is genuinely realized. Eliminating the option to replace fines with imprisonment aims to avoid state losses due to the inability to pay fines.
- i. Role of prosecutors in execution
Prosecutors actively trace, seize, and auction the convicted party's assets. Coordination with related agencies is vital for the smooth execution of fines.
- j. Legal certainty and justice
The entire process of applying substitute fines must consider principles of justice and legal certainty. Substitute penalties must be proportional and consider the convicted party's economic condition to avoid new injustices.

Based on Law Number 1 of 2023 concerning the Indonesian Criminal Code, Article 81 Paragraph (2) states: "The court decision as referred to in paragraph (1) may stipulate that the payment of a criminal fine may be made in installments." The following is the sequence of payment of criminal fines up to the substitute punishment for fines under Law Number 1 of 2023 concerning the Indonesian Criminal Code:

- a. Imposition of Criminal Fines (Article 80)
 - 1) The judge is required to consider the defendant's ability by taking into account the

- actual income and expenses of the defendant when imposing a criminal fine.
- 2) This provision does not reduce the application of the special minimum fine that has been stipulated.
- b. Payment of Criminal Fines (Article 81)
- 1) Criminal fines must be paid within a specific period as determined in the court decision.
 - 2) The court may allow the payment of fines in installments.
 - 3) If the fine is not paid within the specified period, the convicted person's assets or income may be seized and auctioned by the prosecutor to settle the unpaid fine.
- c. Substitute Punishment for Fines (Article 82) If the seizure and auction of assets or income are insufficient or cannot be carried out, the unpaid fine may be replaced with:
- 1) Imprisonment
 - 2) Supervision penalty
 - 3) Community service penalty
 - 4) Provision: The substitute penalty may not exceed the fine of category II.
- Duration of substitute punishment:
- 1) Imprisonment: minimum 1 month, maximum 1 year (may be increased up to 1 year and 4 months in case of concurrence)
 - 2) Supervision: minimum 1 month, maximum 1 year
 - 3) Community service: minimum 8 hours, maximum 240 hours
 - 4) If part of the fine is paid during the substitute punishment, the duration of the substitute punishment is reduced proportionally.
- Calculation of substitute punishment duration for every IDR 50,000 or less of the fine, it is equivalent to:
- 1) 1 hour of community service, or
 - 2) 1 day of supervision/imprisonment
- d. Substitute Punishment for Fines Above Category II (Article 83)
- 1) If seizure and auction cannot be carried out, fines above category II that are not paid are replaced with imprisonment for a minimum of 1 year and a maximum as stipulated for the relevant criminal offense.
 - 2) The provision for reducing the duration of substitute punishment (as in Article 82, paragraph 3) also applies here, specifically for substitute imprisonment.

This series reflects a systematic effort in tax law enforcement oriented toward recovering state losses while providing deterrence to tax crime offenders. The application of substitute fines in taxation must be based on accurate and proportional calculations, especially if the defendant has paid most of the fine, for example, 90%. This shows the defendant's good faith and seriousness in fulfilling obligations, so the application of substitute penalties should consider this aspect to avoid injustice.

In practice, Article 44C of the UU KUP regulates that fines must be paid and cannot be replaced by imprisonment. However, if the defendant cannot pay the entire fine, asset seizure and auction are conducted first. If assets are insufficient, substitute imprisonment is imposed. Therefore, paying 90% of the fine should be an important consideration in reducing or even avoiding substitute imprisonment. With a 90% payment, this can be regarded as a significant fulfillment of obligations, so substitute fines should be adjusted proportionally. This approach aligns with restorative justice principles that prioritize state loss recovery while giving offenders room to correct mistakes without heavy imprisonment.¹⁷

Calculating state revenue losses is the main basis for determining fines and substitute penalties. If the defendant has paid most of the fine, the remaining obligation must be carefully

¹⁷ Muhamad Zainul Arifin and M H SH, *Tindak Pidana Korupsi Kerugian Ekonomi Dan Keuangan Negara (Perspektif Hukum Dan Praktik)* (PT Publica Indonesia Utama, 2024).

calculated and used as the basis for applying substitute penalties. This is important so that law enforcement remains fair and does not overly burden the defendant. Applying substitute fines, considering partial payment can also improve the effectiveness of tax law enforcement. This approach encourages taxpayers to promptly pay fines and avoid imprisonment, so state loss recovery goals can be optimally achieved. Moreover, proportional application of substitute fines based on payment strengthens public trust in the justice and tax systems. Society will see the law as not only repressive but also fair and humane, encouraging voluntary compliance in paying taxes and fines.

In implementation, law enforcement officers, especially prosecutors, need to conduct thorough asset tracing and consider payments already made before deciding on substitute penalties. This ensures court decisions reflect actual conditions and do not cause injustice to defendants. Substitute fines that consider partial payment also align with legal certainty principles. Clear standards provide transparent guidelines for both law enforcement and defendants in tax law enforcement processes. However, the application of substitute fines must still observe the maximum prison sentence regulated by law so that it does not exceed the principal sentence. This maintains a balance between criminal sanctions and the defendant's human rights, preventing excessive punishment.

Overall, applying substitute fines that consider 90% payment is an appropriate and principled step in justice and effective law enforcement. This approach protects state interests in loss recovery while providing defendants opportunities to rectify mistakes without facing heavy and disproportionate imprisonment.¹⁸

D. CONCLUSION

The implementation of substitute criminal sanctions for fines in tax crimes, particularly based on Article 44C of the General Provisions and Tax Procedures Law (UU KUP), must align with the spirit of recovering state losses. Although Article 44C stipulates that fines cannot be replaced by imprisonment, its implementation still needs to consider the good faith of the defendant in fulfilling their obligations. The criterion of a 90% threshold for state loss recovery becomes relevant as a benchmark to determine the proportionality of substitute penalties, in line with the restorative justice principle that prioritizes the recovery of state losses.

Even though Article 44C does not explicitly mention the 90% threshold, the underlying spirit of state loss recovery in this article indicates the need for flexibility in its application. If the defendant has paid 90% of the fine, the application of substitute imprisonment may be considered more lenient or even avoided, while still taking into account the provisions of Article 44B UU KUP, which allows for the termination of the investigation if the state losses have been recovered. This approach encourages taxpayers to be more cooperative in fulfilling their obligations and minimizes state losses.

Therefore, the application of substitute criminal sanctions for fines in tax crimes must be carried out carefully and proportionally, considering Article 44C UU KUP and the spirit of state loss recovery. The 90% recovery criterion can serve as a fair and effective reference in determining the amount of substitute penalties, while simultaneously encouraging taxpayers to be more compliant and responsible in meeting their tax obligations.

¹⁸ Soeherman Soeherman, Tuti Widyaningrum, and Cecep Suhardiman, "Penguatan Pusat Pemulihan Aset (PPA): Langkah Strategis Percepatan Pemulihan Kerugian Negara Akibat Tindak Pidana Korupsi: Ditinjau Dari Perbandingan Sistem Hukum," *J-CEKI: Jurnal Cendekia Ilmiah* 3, no. 6 (2024): 6583–6600.

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