

Pancasila, social justice and the ultimum remedium principle: Reframing criminal tax law as a citizenship issue in Indonesia

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Abstract

This article reframes the ultimum remedium principle in Indonesian criminal tax law as a problem of fiscal citizenship and Pancasila-based public authority. It asks when criminal enforcement is legitimate, rather than presuming that administrative enforcement is always preferable. The study employs statutory, conceptual, and case approaches. It analyses the 1945 Constitution; Articles 8, 12, 13, 22, 38, 39, 39A, 40, 43A, 44, 44A, 44B, and 44C of the Law on General Provisions and Tax Procedures (KUP Law); and three purposively selected lines of decisions: Supreme Court Decision No. 2239 K/Pid.Sus/2012, Supreme Court Decision No. 1149 K/Pid/2022, and District Court of Boyolali Decision No. 6/Pid.Sus/2023/PN Byl as upheld through Supreme Court Decision No. 4878 K/Pid.Sus/2023. Fiscal citizenship is operationalised through civic trust, civic duty, civic equality, and civic participation, while the Pancasila principles are translated into criteria of integrity, proportionality, legitimacy, accountability, and distributive fairness. The analysis finds that Articles 13 and 40 of KUP Law regulate different legal clocks—administrative assessment and criminal prosecution—and should not be treated as conflicting norms. The cases demonstrate that criminal sanctions can legitimately operate as a last-resort escalation for organised falsification, intentional non-remittance, repeated conduct, or serious fiscal harm. Criminalisation becomes disproportionate when culpability is low, correction and recovery remain effective, or authorities fail to justify why less restrictive measures are inadequate. The article proposes a graduated enforcement test that combines fiscal recovery with reasoned, reviewable, and equality-sensitive criminalisation.

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Introduction

Taxation is not only a fiscal instrument but also a civic institution that reflects the relationship between the state and its citizens (Schön, 2018). Through taxation, citizens contribute to the provision of public goods, while the state is required to exercise fiscal authority in a lawful, fair and accountable manner consistent with democratic governance (Sugiharti et al., 2025). In this sense, tax compliance is not only an administrative obligation



but also part of civic responsibility and fiscal citizenship within a constitutional order (Hofmann et al., 2014).

This civic dimension becomes more complex when addressed by criminal law (Putra et al., 2025). Although criminal sanctions may be necessary in serious cases, their application must remain limited because penal measures carry coercive force and social stigma that can weaken public trust if used excessively (Anindyajati et al., 2015). In this context, the principle of *ultimum remedium* is important because it places criminal punishment as a last resort after administrative and corrective mechanisms have been considered or exhausted (Jadidah, 2023).

In Indonesia, the implementation of *ultimum remedium* cannot be separated from Pancasila as the philosophical foundation of the national legal order (Susilawati & Sultoni, 2021). Pancasila requires law enforcement to uphold not only legality, but also humanity, democracy, and social justice (Arifin et al., 2023). Within tax law, these values demand a balance between the state's interest in protecting revenue and citizens' rights to dignified, proportional, and equitable treatment (Erfandi, 2016). A Pancasila-based approach therefore positions taxpayers not merely as fiscal subjects, but as citizens whose legal treatment affects trust in public institutions and the quality of democratic governance (Ariyanto, 2025).

However, the enforcement of criminal tax law in Indonesia continues to face important challenges (Nurferyanto & Takahashi, 2024b). A major challenge in Indonesian criminal tax law lies in the ambiguity of the boundary between administrative violations and criminal offences (Nurferyanto & Takahashi, 2024a). This ambiguity creates broad room for discretion in determining whether a taxpayer's conduct should be resolved administratively or prosecuted criminally (Yoon et al., 2011), thereby weakening legal certainty and potentially producing unequal treatment (Dharmasetya, 2023). When such uncertainty persists, the *ultimum remedium* principle risks becoming merely symbolic rather than functioning as an effective safeguard against excessive criminalisation (Thomas, 2024). From a citizenship perspective, the consequences of criminal tax enforcement extend beyond legal doctrine because they affect civic trust, perceptions of fairness, and the quality of state–citizen relations (Nouri et al., 2024). Research on tax compliance shows that legitimate and fair authority strengthens voluntary compliance (Gobena, 2024), whereas punitive and inconsistent enforcement may shift compliance from a norm-based orientation to one based on fear (Syahril & Hasan, 2024). Therefore, the debate over criminal tax law should also be framed as a question of democratic governance and citizenship rather than solely as a matter of fiscal enforcement (Blank & Osofsky, 2024).

Fiscal citizenship is used here not as a synonym for obedience, but as a reciprocal relationship linking citizens, the state, and fellow citizens through contribution, rights, institutional trust, and voice. Contemporary fiscal-sociology scholarship treats taxation as part of the social contract and distinguishes the act of paying from attitudes towards fairness, belonging, and participation (Martin et al., 2009; Schmidt & Matthaei, 2024). This distinction matters for criminal tax law: enforcement may secure payment while simultaneously weakening citizenship if it is opaque, unequal, or unnecessarily coercive. Conversely, restraint without credible escalation can allow deliberate evasion to shift the common fiscal burden onto compliant citizens.

Previous studies have examined *ultimum remedium* in Indonesian tax law mainly through statutory interpretation, legal certainty, or enforcement technique. The citizenship consequences of case routing and punishment remain underdeveloped, and Pancasila is often invoked as a normative conclusion rather than used as an analytical test. This article addresses those gaps by (i) operationalising four dimensions of fiscal citizenship; (ii) translating specific Pancasila principles into reviewable criteria; (iii) distinguishing the five-year assessment period in Article 13 from the ten-year prosecution limitation in Article 40; and (iv) comparatively analysing judicial decisions that involve planned falsification and intentional non-remittance. It asks: first, how can Pancasila and fiscal citizenship structure the application

of *ultimum remedium* in criminal tax law; and second, what statutory, judicial, and policy safeguards are required to make criminalisation legitimate, proportionate, and socially just?

Method

This is normative legal research using statutory, conceptual, and case approaches. The statutory approach maps the administrative and criminal pathways set out in Indonesian tax legislation. The conceptual approach develops *ultimum remedium*, responsive regulation, proportionality, and fiscal citizenship as evaluative concepts. The case approach examines how courts classify conduct, respond to arguments that prosecution is premature, and structure imprisonment and fiscal recovery. The article does not employ a jurisdictional comparative approach and does not make empirical claims about the frequency of national enforcement practices.

The primary legal materials are the Preamble and Articles 23A, 27(1), and 28D(1) of the 1945 Constitution; Law No. 6 of 1983 on General Provisions and Tax Procedures as amended, particularly by Law No. 28 of 2007 and Law No. 7 of 2021 on Harmonisation of Tax Regulations; and KUP Law Articles 8(3)–(4), 12, 13(1), 13(4), 22, 38, 39, 39A, 40, 43A, 44, 44A, 44B, and 44C. These provisions were selected because they respectively regulate voluntary disclosure, self-assessment, administrative assessment, collection limitation, offence culpability, prosecution limitation, preliminary-evidence examination, investigation, termination, settlement in the interest of state revenue, and enforcement of criminal fines.

The judicial materials comprise Supreme Court Decision No. 2239 K/Pid.Sus/2012 (Suwir Laut/Asian Agri), Supreme Court Decision No. 1149 K/Pid/2022 (Bilal Asif), and District Court of Boyolali Decision No. 6/Pid.Sus/2023/PN Byl (Paino), which was affirmed on appeal and became final after Supreme Court Decision No. 4878 K/Pid.Sus/2023. The decisions were located through the Supreme Court Registry and decision-publication system, official court summaries, and official Directorate General of Taxes case publications. The search covered decisions published from 2012 through 2023 using the decision numbers and combinations of the terms “tindak pidana perpajakan,” “Pasal 39,” “tidak menyetorkan pajak,” and “ultimum remedium.”

Case selection was purposive rather than statistically representative. Inclusion required: (1) an offence charged under Article 39 of the KUP Law; (2) sufficiently accessible material facts, charged provisions, procedural posture, and disposition to permit substantive analysis; (3) relevance to the boundary between administrative recovery and criminal punishment; and (4) variation in conduct and sanction design. The Asian Agri line was included because the lower courts treated prosecution as premature while the Supreme Court treated organised falsification as criminal. Decision No. 1149 K/Pid/2022 was included because it integrates imprisonment with the recovery-oriented fine mechanism of Article 44C. The Paino line was included because it concerns repeated non-remittance of collected VAT and illustrates the operation of Article 40 within the post-HPP enforcement structure.

The analytical procedure consisted of seven steps. First, the study identified the legal object, trigger, and consequence of each provision. Second, it arranged the provisions into an enforcement sequence from self-correction and assessment to investigation, prosecution, and sanction. Third, it reconstructed each case's relevant facts, defence position, judicial reasoning, and disposition. Fourth, it tested whether penal escalation was necessary in light of culpability, seriousness, repetition, obstruction, recovery, and available corrective mechanisms. Fifth, it evaluated the same material through civic trust, duty, equality, and participation. Sixth, it applied Pancasila-derived criteria of integrity, proportionality, legitimacy, accountability, and distributive fairness. Seventh, it compared the cases and formulated a threshold for legitimate criminalisation.

Fiscal citizenship is operationalised as a reciprocal and multidimensional relation generated through taxation, rather than as tax compliance alone. Schmidt and Matthaai (2024)

distinguish behavioural, attitudinal, and identificatory relations between citizens, the state, and fellow citizens; Martin et al. (2009) similarly situate taxation within the changing social contract. The four dimensions below synthesise that literature with research on trust, tax morale, procedural justice, and responsive regulation (Kirchler et al., 2008; Murphy, 2004; OECD, 2019). They are analytical lenses, not variables measured through interviews or surveys in this normative study.

Results and Discussion

Fiscal citizenship and the meaning of *ultimum remedium*

The analytical point of fiscal citizenship is reciprocity. Citizens have a duty to contribute to public goods, but the state and fellow citizens also owe reciprocal obligations: lawful expenditure, fair distribution of burdens, equal enforcement, and procedures that recognise taxpayers as rights-bearing members of the polity. Tax morale is therefore not a fixed personal virtue. It is shaped by institutional quality, perceived fairness, and expectations that others also comply (Frey & Torgler, 2007; OECD, 2019). A tax system that relies only on deterrence may obtain enforced compliance, while trust in legitimate authority is more closely associated with voluntary compliance (Kirchler et al., 2008; Murphy, 2004).

This reciprocity must also govern how the self-assessment system interprets taxpayer non-compliance and calibrates sanctions. In essence, the designation of taxpayers as legal entities has been part of the 1983 tax reform. Under the Law on General Provisions and Tax Procedures (KUP Law), taxpayers are required to “calculate, determine, and pay on their own the amount of tax due,” while tax collectors are responsible for “guidance, investigation, supervision, and the imposition of administrative sanctions” (Elucidation of KUP Law). Therefore, the imposition of administrative or criminal sanctions must assume the taxpayer’s good faith in collectively funding government expenditures and must consider the differences in taxpayers’ knowledge and skills in fulfilling their obligations under the self-assessment system (Appiah et al., 2024). The imposition of sanctions is carried out with the aim of improving taxpayer compliance, as the state requires funds collected from taxpayers to finance state expenditures (Falsetta et al., 2024). The imposition of excessive sanctions can disrupt taxpayers’ businesses or freedom to earn income and pay taxes, thereby being counterproductive to the budgetary function of taxes in replenishing the state treasury.

Within this framework, civic trust concerns the perceived fairness and reliability of tax institutions; civic duty concerns the internalised obligation to contribute; civic equality concerns equal legal status and distributive fairness among taxpayers; and civic participation concerns access to information, correction, clarification, contestation, and a reasoned hearing. These dimensions are distinct but interdependent. Unequal enforcement can reduce trust; opacity can prevent participation; and both can displace duty with fear. Conversely, under-enforcement of deliberate evasion can also damage equality and trust because compliant citizens must bear a larger share of the common burden.

Accordingly, *ultimum remedium* should not be reduced to a categorical rule that every administrative mechanism must be exhausted before prosecution. It is a principle of justified escalation: authorities should use the least coercive response capable of securing lawful compliance, but retain credible criminal sanctions for high-culpability conduct. Responsive regulation rejects a rigid choice between persuasion and punishment; it calibrates escalation to the regulated actor’s conduct and the failure or inadequacy of lower-level responses (Ayres & Braithwaite, 1992; Braithwaite, 2021). Criminal punishment is therefore neither intrinsically anti-civic nor automatically legitimate. Its citizenship quality depends on necessity, proportionality, equality, accountability, and opportunities for lawful correction.

Pancasila as an operational analytical framework

Pancasila supplies more than a general moral endorsement of humane enforcement. Read with the Preamble and Articles 23A, 27(1), and 28D(1) of the 1945 Constitution, its principles can be translated into criteria for reviewing the reasons, process, distribution, and effects of criminal tax enforcement. Article 23A authorises compulsory taxation by law; Articles 27(1) and 28D(1) simultaneously require equality, legal certainty, and fair treatment. Pancasila therefore does not negate fiscal coercion. It disciplines that coercion by locating revenue protection within ethical government, human dignity, democratic accountability, national solidarity, and social justice (Abbon, 2019; Arifin et al., 2023; Erfandi, 2016).

Table 1.

Pancasila criteria for criminal tax enforcement

Pancasila value	Analytical criterion	Operational question	Legal or judicial indicator
Belief in the One and Only God	Integrity and ethical responsibility	Is coercive power used for a lawful public purpose and supported by honest, reasoned decision-making?	Accurate loss calculation; no instrumental prosecution; transparent reasons; responsibility for abuse of authority
Just and civilised humanity	Proportionality and dignity	Does criminalisation correspond to culpability, harm, role, and the inadequacy of less restrictive measures?	Intent or negligence distinguished; individual role assessed; correction and recovery considered; stigma and imprisonment justified
Unity of Indonesia	Social cohesion and legitimacy	Does enforcement sustain confidence that every member contributes under a common and fair fiscal order?	Consistent case routing; effective action against serious evasion; avoidance of arbitrary or selective enforcement
Democracy guided by deliberation / representation	Accountability and participation	Can the taxpayer understand, answer, correct, contest, and obtain reasons for escalation?	Notice, disclosure, hearing, defence, review, published criteria, and express judicial response to alternatives
Social justice for all Indonesians	Civic equality and distributive fairness	Are the fiscal burden and penal consequences distributed fairly among comparable actors?	Equal enforcement; role-sensitive liability; proportional sanctions; revenue recovery without double or procedurally unfair burdens

Source: Author (2026).

The matrix yields a two-level review. The first level tests legality: whether the conduct falls within the offence, the correct authority acted, and the limitation period remains open. The second tests legitimacy: whether culpability and seriousness support escalation; whether affected persons received an accountable process; whether sanctions are proportionate and equality-sensitive; and whether enforcement sustains the common fiscal order. The first Pancasila principle functions as an integrity requirement, while the second through fifth

provide more determinate criteria for proportionality, legitimacy, participation, and distributive fairness. A decision that merely cites Pancasila without applying these questions does not perform this analytical function.

The statutory architecture: Administrative assessment, limitation and criminal process

The KUP Law creates connected but legally distinct pathways. Under the self-assessment system conferred by the provision laid down in Article 12 of the KUP Law, tax calculation is performed by the taxpayer without waiting for an assessment letter to be issued by the tax authority. In fact, under the system, the issuance of a tax assessment letter is dependent upon the conclusion of a tax audit. After a tax return has been filed, in the event of underassessment, the taxpayer may invoke Article 8 of KUP Law, which allows taxpayers to make corrections to tax calculations by way of disclosure of an incorrect tax return. Moreover, Article 13(1) of KUP Law authorises the Director General of Taxes, after examination, to issue an underpayment assessment (SKPKB) within five years from the tax becoming due or the end of the relevant tax period or tax year. Article 22 of the KUP Law separately governs the statute of limitation for tax collection, as determined from the date on which a tax-collection instrument has been issued (e.g., tax assessment letter, Tax Court decision, Supreme Court decision). These instruments establish the amount of taxes due based on a tax audit or the results of tax disputes. They do not, however, determine criminal guilt.

The criminal guilt may be established once the tax authorities switch procedure from administrative to criminal provisions, which establish offence and culpability. Article 38 of KUP Law penalises specified return failures caused by negligence, whereas Article 39 of KUP Law penalises deliberate conduct, including failure to file, false or incomplete returns, false bookkeeping, and failure to remit tax that has been withheld or collected. Meanwhile, Article 39A of KUP Law targets false tax invoices and related documents. Moreover, Article 43A of KUP Law authorises a preliminary-evidence examination before investigation, whereas Article 44 of KUP Law governs investigation by authorised tax investigators. Even after criminal indications arise, the statutory design retains exit and recovery points. Article 44A of KUP Law requires termination in stated circumstances, including disclosure under Article 8(3) of KUP Law, insufficient evidence, absence of a tax offence, or operation of law. Article 44B of KUP Law permits termination in the interest of state revenue after prescribed payment and allows payment of taxes along with fines during court proceedings to withhold a prosecution. Article 44C of KUP Law makes Article 39 and 39A of KUP Law fines mandatory and recoverable through seizure and auction.

Table 2.

Administrative and criminal stages under the KUP Law

Stage	Principal norm and object	Legal clock or trigger	Legal consequence and relevance to <i>ultimum remedium</i>
Self-assessment and correction	Articles 8 and 12: taxpayer calculates, pays, files, and may correct/disclose	Before specified examination or investigation milestones	Supports voluntary compliance; correction does not erase all consequences but is relevant to necessity and civic participation
Administrative assessment	Article 13: examination and SKPKB quantifying underpayment and administrative sanctions	Ordinarily within five years from tax due/end of period or year	Creates an administrative assessment; it is not a conviction and does not by itself determine intent

Collection/settlement	Article 22 and collection instruments; Articles 44A–44B for criminal-stage recovery	Collection clock generally runs from the relevant instrument; Article 44B is available under its procedural conditions	Recovers revenue through administrative or hybrid mechanisms; settlement may terminate investigation or affect imprisonment
Preliminary evidence and investigation	Articles 43A and 44: ascertain criminal indication and collect proof	Triggered by information, data, reports, or complaints and proof of offence elements	Escalation requires evidence of a tax offence, not merely an unpaid administrative amount
Criminal sanction	Articles 38, 39, 39A, and 44C: imprisonment and/or fines	After proof beyond the criminal standard and final judgment	Legitimate for serious culpable conduct; fines prioritise recovery but remain punishment and require proportionality

Source: Author (2026).

The demand for proportionate and citizenship-sensitive enforcement also has a temporal dimension. This effort must also be supplemented by harmonising the provisions regarding the statute of limitations for the issuance of Tax Assessment Notices for Underpayment (SKPKB) and the prosecution of tax crimes. Article 40 of the KUP Law stipulates that the statute of limitations for criminal prosecution in the field of taxation is 10 (ten) years from the time the tax becomes due, the end of the tax period, the end of the tax year, or the end of the fiscal year. Meanwhile, the provisions of Article 13 of the KUP Law grant the Director General of Taxes the authority to issue an SKPKB within a period of 5 (five) years from those respective dates. Given the ambiguity in the formulation between actions punishable by administrative and criminal sanctions, this discrepancy in the statute of limitations theoretically allows criminal prosecution to become the *primum remedium* for all taxpayer acts resulting in non-payment or underpayment (Nurferyanto & Takahashi, 2024b), which are discovered or addressed after the five-year statute of limitations has expired but remain within the ten-year period. This approach is rational for tax authorities to adopt, even though the nature of such acts constitutes administrative violations that, if discovered or addressed before the statute of limitations for issuing the SKPKB expires, could be addressed under or in accordance with the provisions of Article 13 of the KUP Law.

This concern is significant, but the existence of two statutory periods must be analysed by distinguishing their legal objects and consequences rather than treating numerical discrepancy alone as a conflict of norms. Articles 13 and 40 of KUP Law therefore regulate different objects, purposes, and legal consequences. Article 13 of KUP Law governs on a five-year administrative competence to issue an assessment having completed a tax audit. Meanwhile, Article 40 of KUP Law confers a ten-year statute of limitation on criminal prosecution. Their clocks use similar tax-period anchors, but the similarity does not create a normative conflict. A closed ordinary assessment period does not automatically extinguish a still-timely prosecution; conversely, an open assessment period does not establish an offence. The two provisions meet through Article 13(4) of KUP Law, which excepts tax offences from the ordinary finality of the reported amount: the assessed liability does not become fixed at the five-year mark if a tax offence was committed within that period. The bridge this exception opens no longer runs through a revived administrative assessment. Article 13(5) of KUP Law, which had formerly permitted a post-five-year SKPKB with a 48% administrative interest surcharge after a final conviction, was repealed by Law No. 11 of 2020 on Job Creation. Recovery of the loss to state revenue instead

proceeds through the criminal process itself: Article 44B, as amended by Law No. 7 of 2021 on Harmonisation of Tax Regulations, allows a suspect or defendant to settle that loss together with an administrative surcharge, including after the case has been submitted to court, as a factor the prosecutor may weigh in seeking a sentence without imprisonment; Article 44C then converts any unsettled loss into a mandatory fine that cannot be substituted with imprisonment and is recoverable through seizure and auction of the convicted person's assets.

A concrete illustration clarifies the distinction. For Tax Year 2021, the ordinary Article 13 of KUP Law assessment window will normatively close in 2026, while Article 40 of KUP Law permits prosecution until 2031, calculated from the end of the tax period in which the conduct is discovered. If deliberate falsification is discovered in 2028, the statute of limitation of SKPKB cannot be altered merely by reclassifying an administrative underpayment as crime. Prosecution remains legally possible only if the elements and culpability of Article 39 or 39A of KUP Law are proven. This conclusion, however, remains uncertain, as there are no objective criteria for classifying a taxpayer's conduct as mere administrative fault, or a crime. An example of a plausible criterion is whether the number of fraudulent documents exceeds a certain threshold or whether the conduct resulted in the loss of state revenue of a certain amount. In the absence of objective criteria, tax auditors remain at liberty to classify a taxpayer's conduct as mere administrative fault, or a crime. This compounds the lack of legal certainty afforded to taxpayers by the KUP Law.

In the event that prosecution of a tax crime resulted in a final conviction, the loss to state revenue may not be recovered through a revived Article 13 of KUP Law assessment. Rather, it proceeds through Articles 44B and 44C of KUP Law, which convert that loss into a fine the convicted person must pay, secured where necessary by seizure of assets. If the conduct is only an unassessed administrative underpayment and no offence is proved, Article 40 of KUP Law supplies no alternative collection route. This reading preserves both legal certainty and the independent function of criminal law.

The five-to-ten-year interval creates a specific *ultimum remedium* risk. Because criminal prosecution remains available after the Article 13 limitation period has elapsed, investigators and courts must ensure that prosecution is not used as a backdoor substitute for administrative delay. The required safeguard is not a judicially invented five-year criminal bar, but rather a rigorous proof of offence elements, an explanation of investigative timing, and a reasoned assessment of why criminal intervention remains necessary. In Pancasila terms, legality under Article 40 of KUP Law must be supplemented by humanity-based proportionality, democratic accountability, and social-justice equality.

Judicial operation of *ultimum remedium*: Supreme Court Decision No. 2239 K/Pid.Sus/2012 (Suwir Laut/Asian Agri)

The case concerned the tax manager of fourteen Asian Agri Group companies and the submission of corporate income-tax returns for 2002–2005 that were alleged to be false or incomplete. The evidence described coordinated tax-planning meetings and the understatement of taxable income; the calculated loss to state revenue was Rp1,259,977,695,652. The charge relied on Article 39(1)(c), in conjunction with Article 43(1), of the then-applicable KUP Law. The defence argued, and the District Court of Central Jakarta accepted, that the indictment was premature because the matter should first be resolved through tax-administration mechanisms. The High Court affirmed. The Supreme Court reversed, found the defendant guilty, imposed two years' imprisonment suspended for a three-year probationary period, and ordered the fourteen companies to pay twice the underpaid amount—Rp2,519,955,391,304—within one year (Supreme Court of the Republic of Indonesia, 2012).

The decision demonstrates that *ultimum remedium* is not a jurisdictional exhaustion rule where the proved conduct is a planned, multi-year falsification rather than an ordinary

assessment dispute. The scale, coordination, repeated false reporting, and high fiscal harm supplied strong culpability and seriousness indicators. Criminal enforcement therefore protected civic equality by preventing organised actors from externalising their fiscal burden to compliant taxpayers. Yet the sanction also raises an accountability concern: the companies bore the monetary order although they were not named defendants with a full opportunity to be heard in that criminal proceeding. A Pancasila analysis thus supports escalation against the deliberate scheme but requires role-specific liability and due process for every person or corporation subjected to penal consequences. Fiscal recovery does not by itself cure a participation defect.

The case also illustrates Articles 13 and 40 in operation. The disputed tax years began more than five years before the Supreme Court judgment, but the criminal case was not thereby converted into an ordinary late assessment. Prosecution addressed intentional falsification under the criminal norm, while any assessment following a final conviction depended on the separate statutory bridge then found in Article 13(5) — a provision subsequently repealed by Law No. 11 of 2020 on Job Creation and replaced by the state-revenue-loss recovery mechanism now set out in Articles 44B and 44C. The lower courts were right to recognise that tax administration and criminal law are distinct; their error was treating administrative availability as an absolute bar despite allegations and proof of organised criminal intent. The Supreme Court's stronger position would nevertheless have benefited from a more explicit explanation of this statutory separation and of the procedural basis for the corporate payment order.

Supreme Court Decision No. 1149 K/Pid/2022 (Bilal Asif). The defendant was charged under Article 39(1)(i) in conjunction with Article 43(1) and Article 64(1) of the Criminal Code for participating in the continued failure to remit tax that had been withheld or collected. The prosecutor sought four years' imprisonment and a fine of Rp62,774,473,080. The District Court of South Jakarta, in Decision No. 54/Pid.Sus/2020/PN Jkt.Sel, imposed one year and six months' imprisonment and the same fine, with three months' substitute detention; the High Court affirmed. On cassation, the Supreme Court retained the custodial term and fine but applied Article 44C of Law No. 7 of 2021: the fine had to be paid, with seizure and auction of assets if unpaid, and a three-month prison term if assets were insufficient (Supreme Court of the Republic of Indonesia, 2022).

This decision rejects a false dichotomy between punitive and restorative enforcement. Imprisonment served denunciation and deterrence for intentional, continuing non-remittance; the mandatory fine and asset-recovery mechanism served fiscal restoration. Criminal law operated as a serious escalation, while sanction design remained revenue-oriented. The decision is compatible with civic duty and equality because tax already withheld or collected is held for remittance, making deliberate retention qualitatively different from a calculation error. At the same time, proportionality requires courts to state the defendant's decision-making role, duration, benefit, cooperation, and ability to repair the loss. A large statutory fine is not self-justifying merely because it recovers revenue.

District Court of Boyolali Decision No. 6/Pid.Sus/2023/PN Byl and Supreme Court Decision No. 4878 K/Pid.Sus/2023 (Paino). The defendant, operating through CV KU, collected but did not remit VAT from January 2019 to December 2020, causing a reported revenue loss of Rp449,744,341. The District Court found intentional non-remittance, imposed two years' imprisonment, and a fine of approximately twice the loss; the High Court affirmed and the Supreme Court rejected the cassation applications, making the conviction final (District Court of Boyolali, 2023; Supreme Court of the Republic of Indonesia, 2023). Prosecution in 2023 was well within Article 40's ten-year period and did not depend on whether an Article 13 assessment could also have been issued.

Repeated retention of VAT already collected provides a defensible criminalisation threshold: intent, duration, and appropriation of funds collected from others distinguish it from

low-culpability non-compliance. The case therefore demonstrates a legitimate function for criminal sanctions. However, the publicly available official case summary does not state whether the defendant attempted disclosure or settlement under Articles 8(3) or 44B, or how the court weighed any cooperation. No inference that these avenues were exhausted can be drawn. That omission matters for civic participation and accountability: a court should record whether corrective opportunities were available, used, refused, or inadequate, even when the final level of culpability justifies punishment.

Table 3.

Comparative case findings on the operation of ultimum remedium

Judgment	Conduct, provision, and disposition	What the judgment demonstrates	Fiscal citizenship and Pancasila assessment
2239 K/Pid.Sus/2012	Organised false/incomplete returns; Article 39(1)(c) jo Article 43(1); conviction, suspended imprisonment, and twice-loss payment order	Administrative mechanisms are not an absolute precondition where planned criminal falsification is proved	Escalation protects equality and common revenue; corporate monetary liability without full party status raises participation and accountability concerns
1149 K/Pid/2022	Continued intentional non-remittance; Article 39(1)(i); imprisonment plus mandatory fine enforced under Article 44C	Punitive and recovery functions can be combined; <i>ultimum remedium</i> concerns justified escalation, not the absence of punishment	Supports duty and equality; proportionality still requires role-, benefit-, and cooperation-sensitive reasoning
6/Pid.Sus/2023/PN Byl; 4878 K/Pid.Sus/2023	VAT collected but not remitted during 2019–2020; two years' imprisonment and approximately twice-loss fine	Repeated intentional retention supports criminal escalation; Article 40 is distinct from administrative assessment	Punishment is defensible, but official public materials do not disclose consideration of correction/settlement, limiting participation review

Source: Author (2026).

Across the three lines of decisions, *ultimum remedium* operates best as a burden of justification. Authorities need not prove ritual exhaustion of every administrative step, but they should demonstrate why the conduct belongs at the criminal apex: intentional or fraudulent behaviour, repetition, organisation, serious harm, obstruction, failed correction, or inability of administrative measures to protect the fiscal order. Courts should then explain why the chosen combination of imprisonment, fine, and recovery is proportionate. The cases also show that recovery and punishment are complementary but legally distinct: payment can restore revenue, while criminal liability responds to culpable public wrong; neither function should be allowed to obscure due process or equality.

From a punitive–restorative dichotomy to graduated enforcement

A balanced model begins with a presumption of responsive, not uniformly lenient, regulation. Education, correction, assessment, and settlement should remain credible for error, complexity, first-time negligence, and conduct that can be fully repaired without compromising deterrence. Escalation becomes legitimate as culpability and regulatory defiance increase. Criminal sanctions are especially justified for intentional evasion, fraudulent records or invoices, repeated offences, organised schemes, large or socially significant losses, obstruction,

concealment, and deliberate non-remittance of tax withheld or collected. These factors indicate both a serious public wrong and the likely inadequacy of ordinary administrative correction.

Conversely, criminalisation risks disproportionality where the conduct is essentially a calculative or filing error; culpability is low; the taxpayer makes timely voluntary correction; the loss and administrative sanctions are fully paid; records are disclosed; there is no repetition or obstruction; and the state cannot explain why assessment, collection, or Article 44B settlement is inadequate. This does not mean that negligence can never be criminal: Article 38 expressly defines specified negligent conduct as an offence. It means that the choice and severity of penal intervention must remain responsive to fault, harm, correction, and necessity.

Table 4.

Graduated enforcement and the threshold for criminalisation

Regulatory level	Typical indicators	Legitimate response	Required citizenship/Pancasila safeguard
Corrective/administrative	Error, ambiguity, low culpability, first occurrence, prompt disclosure, full cooperation	Education, correction under Article 8, examination, SKPKB, administrative sanction, collection	Clear notice, opportunity to clarify, equal treatment, proportionate burden
Escalated recovery/settlement	More serious underpayment or criminal indication, but acknowledgement, payment, and credible remediation remain possible	Preliminary-evidence examination; Article 8(3), 44A, or 44B mechanism as legally available; monitored compliance	Published eligibility, recorded reasons, no coercive settlement, equal access, transparent calculation
Criminal enforcement	Intentional fraud/evasion, false invoices, repeated or organised conduct, serious loss, obstruction, concealment, deliberate non-remittance, failed correction	Investigation, prosecution, proportionate imprisonment and/or mandatory recovery-oriented fine	Proof of culpability; necessity reasons; role-sensitive sanction; due process; asset recovery without arbitrary or duplicative burden

Source: Author (2026).

Operationally, investigators, prosecutors, and courts should use a documented criminalisation test. The decision should identify: (1) the applicable offence and mental element; (2) magnitude, duration, repetition, organisation, and obstruction; (3) the taxpayer's role, benefit, disclosure, cooperation, and recovery efforts; (4) available administrative or settlement mechanisms and why they are inadequate or no longer applicable; (5) the Article 13 and Article 40 timelines; (6) treatment of comparable cases; and (7) the proportional mix of imprisonment, fine, and recovery. Publication of anonymised routing and sentencing reasons would improve civic equality and institutional learning without compromising taxpayer confidentiality.

This model preserves the original contribution of a Pancasila-based citizenship approach while avoiding an anti-punitive conclusion. Humanity does not require impunity; it requires fault-sensitive and non-excessive punishment. Unity is not served by leniency towards

organised evasion; it is served by a credible common fiscal order. Democracy requires reasons and opportunities to be heard, not the elimination of enforcement. Social justice requires both fair treatment of the accused and protection of compliant citizens from unequal burden shifting. *Ultimum remedium* is thus the point at which necessity, not administrative chronology alone, justifies criminal law.

Conclusion

This article concludes that *ultimum remedium* in Indonesian criminal tax law is a principle of justified and reviewable escalation. Fiscal citizenship gives that principle four dimensions: enforcement must maintain civic trust through fair and reasoned authority, support civic duty without relying solely on fear, protect civic equality among compliant and non-compliant taxpayers, and preserve meaningful opportunities for correction, contestation, and defence. Pancasila makes those dimensions legally evaluative through integrity, proportionality, social legitimacy, democratic accountability, and distributive fairness.

Articles 13 and 40 of the KUP Law do not establish competing limitation periods. Article 13 ordinarily limits administrative assessment to five years, while Article 40 bars criminal prosecution after ten years. Assessment quantifies an administrative liability; prosecution adjudicates a culpable public offence. Article 13(4), read together with Articles 44B and 44C as amended by Law No. 7 of 2021 on Harmonisation of Tax Regulations, provides the bridge when a final conviction occurs after the ordinary assessment period not, as under the since-repealed Article 13(5), through a revived administrative assessment, but through settlement or mandatory recovery of the loss to state revenue within the criminal process itself. Between years five and ten, criminal law must not become a substitute for administrative delay: the state must prove the offence and explain investigative timing, necessity, and proportionality.

The judicial comparison confirms that criminal sanctions have legitimate functions. The Asian Agri decision shows that organised and repeated falsification need not await ritual exhaustion of administrative remedies, although sanctions affecting non-party companies raise accountability concerns. Decision No. 1149 K/Pid/2022 shows that imprisonment and recovery-oriented fines can operate together rather than as punitive and restorative opposites. The Paino line shows that repeated intentional non-remittance of collected VAT can justify criminal escalation within Article 40, while also revealing the need for courts to record consideration of correction and settlement.

The article's principal contribution is a graduated criminalisation threshold. Penal enforcement is justified by high culpability, fraud, repetition, organisation, serious fiscal harm, obstruction, deliberate non-remittance, or the demonstrated inadequacy of correction and recovery. It becomes disproportionate where culpability is low, voluntary correction and full recovery are effective, and authorities cannot show necessity. Requiring written reasons across these factors would transform Pancasila from symbolic justification into an operational framework and strengthen both state revenue and the reciprocal legitimacy of fiscal citizenship.

Competing interests

The authors declare that no relevant interests or conflicts of interest are associated with this research.

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Ethics Approval

This study is normative-juridical legal research and does not involve human or animal subjects, primary data collection from participants, or clinical or experimental procedures. Accordingly, formal ethics committee approval was not required for the conduct of this research.

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