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WHAT IS THE IDEAL FORM OF CORPORATE CRIMINAL LIABILITY FOR TAX CRIMES ORIENTED TOWARDS RECOVERING STATE LOSSES?

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ABSTRACT

The formal recognition of corporate criminal liability in the 2023 Criminal Code and the ultimum remedium mechanism in the Tax Harmonization Law have created expectations for increased effectiveness in recovering state losses in tax crimes. However, enforcement practices reveal a paradox: fundamental normative fragmentation results in suboptimal levels of loss recovery with patterns of sentencing disparity that violate the principle of equality. This study uses a normative-doctrinal legal methodology integrated into four complementary dimensions: analysis of normative incongruities between the 2023 Criminal Code, the Tax Harmonization Law, and Supreme Court Regulation No. 13/2016; institutional data analysis documenting practical fragmentation through sentencing disparities and underutilization of the ultimum remedium mechanism; doctrinal and legal theory analysis to unravel the root causes of fragmentation through regulatory, policy, institutional, and operational dimensions; and functional comparisons with models in Australia, the United Kingdom, and the European Union that have developed operational clarity and formal institutional coordination mechanisms. The research findings reveal that normative fragmentation manifests itself in the absence of operational guidelines for the basis of selection, underutilization of the ultimum remedium mechanism, and failed institutional coordination between the Directorate General of Taxes, the Attorney General's Office, and the courts. Lessons from international models show that the effectiveness of corporate criminal liability depends less on theoretical sophistication than on operational clarity, institutional coherence, and alignment between regulatory design and institutional incentive structures. Comprehensive reforms must be integrated in three dimensions: establishing an explicit basis selection framework, implementing regulations for ultimum remedium, and formal inter-agency coordination mechanisms with unified recovery metrics.

Keywords: Corporate Criminal Liability, Tax Crimes, Recovery of State Losses, Normative Fragmentation, Institutional Coordination, Ultimum Remedium.

1. INTRODUCTION

The phenomenon of tax avoidance and evasion by corporations has become a substantial challenge in the enforcement of criminal tax law at both the global and Indonesian levels. At the international level, the Organization for Economic Cooperation and Development (OECD) estimates that aggressive tax planning strategies by multinational companies result in a loss of government revenue of USD 100-240 billion per year[1], while the Tax Justice Network, through its 'State of Tax Justice 2020' report, identifies that developing countries suffer tax losses of USD 427 billion per year from international tax avoidance practices (USD 245 billion from corporate tax abuse and USD 182 billion from private tax evasion)[2]. Estimates from the International Monetary Fund show that the average tax gap in developing countries reaches 9% of Gross Domestic Product[3].

In the Indonesian context, recent research by the World Bank (2024-2025) identifies that the combined tax gap from Value Added Tax and Corporate Income Tax reaches 6.4% of Gross Domestic Product, or equivalent to IDR 944 trillion per year in the 2016-2021 period[4]. More specifically, the compliance gap for corporate income tax alone reached 1.1% of GDP, equivalent to IDR 160 trillion per year—this is voluntary non-compliance that is the focus of criminal enforcement. The efficiency of corporate income tax collection only reached 42% of the potential that could have been collected. Although the government is able to identify corporate tax violations on a significant scale, the capacity to convert identification into effective enforcement action still faces substantial challenges. Data from the Directorate General of Taxes in 2023 shows that out of 112 identified criminal tax cases, 82 cases have reached court verdicts with criminal fines reaching IDR 1.54 trillion[5].

An analysis of 348 court decisions between 2015 and 2024 shows that the actual recovery rate of losses amounted to only 63.4% of identified state losses (Rp 486.38 billion out of Rp 766.42 billion). This finding revises the previous claim of a 16.5% recovery rate. However, litigation patterns show significant disparities: multinational corporations with equivalent losses were sentenced to an average fine of 5% of state losses, while MSMEs were sentenced to 20%—violating the principle of equality. The duration of litigation is also disproportionate to resources: multinational corporations require 6-8 years, medium-sized corporations 3-4 years, while MSMEs only 1.5-2 years. The long duration provides opportunities for defendants to dissipate assets, restructure, or declare bankruptcy. Actual restitution collected is only 30% of what is ordered in the judgment. Operational data shows that the ultimum remedium mechanism is only utilized in 1.4% of cases that are factually eligible, even though the potential for use reaches 88%, and the administrative settlement pathway results in a recovery rate of 88% in a duration of 6-18 months compared to the criminal prosecution pathway of 63.4% in 4-7 years.

The development of the international tax law enforcement paradigm has undergone a fundamental transformation from a punishment-based approach to an integrated enforcement model that combines criminal, administrative enforcement, and restitution mechanisms within a cohesive framework. OECD standards and the United Nations Convention Against Corruption recommend that recovery of losses should be the primary priority, with punishment as a secondary instrument. The United Kingdom demonstrates an integrated model through the Crown Prosecution Service, which coordinates with Home Office asset recovery authorities, resulting in an 83% conviction rate for fraud crimes and £243.3 million in annual asset recovery through a combination of confiscation (£128.5 million), forfeiture orders (£107.3 million), and civil recovery (£7.4 million)[6]. Australia shows a more integrated approach with the Australian Taxation Office integrating investigation, prosecution, and asset recovery into a single framework, reporting 97% of cases successfully identified through a proactive approach in fiscal year 2023-24, all of which resulted in restitution orders[7]. The European Union, through Directive 2014/4/EU, provides an asset recovery framework with legal clarity through explicit definitions of "proceeds" and standardized valuation methodologies[8].

Restorative Justice Theory provides a philosophical basis for understanding that when the law enforcement system fails to effectively restore state losses, the state has an obligation to shift its paradigm to an integrated enforcement model that prioritizes loss recovery as its primary objective. This philosophy is in line with Article 28H of the 1945 Constitution and is reflected in Law No. 7 of 2021 concerning Tax Harmonization with the ultimum remedium mechanism[9]. However, aspirational regulatory frameworks without clear operationalization often become a source of legal uncertainty and abuse of litigation opportunities[10].

Normative fragmentation still characterizes Indonesia's legal landscape despite significant regulatory developments. The 2023 Criminal Code establishes three bases of liability—vicarious liability, identification theory, and strict liability—but without operational guidance on when each basis applies. The Tax Harmonization Law introduces

ultimum remedium without clear implementing regulations regarding timing, criteria, and assessment methodology. Supreme Court Regulation No. 13 of 2016 is not fully aligned with the 2023 Criminal Code. Most fundamentally, there is no formal inter-agency coordination mechanism to harmonize the actions of the Directorate General of Taxes, the Attorney General's Office, and the courts—the three institutions operate in separate silos with different priorities: The DGT focuses on collecting 80% of its KPIs, the Attorney General's Office on a 50% conviction rate, and the courts on a 40% case resolution rate.

The research question for this study is: How should Indonesia construct a framework for corporate criminal liability for tax crimes that is oriented towards recovering state losses, integrating the 2023 Criminal Code, the 2021 Tax Harmonization Law, and Supreme Court Regulation No. 13 of 2016, which currently operate in a fragmented manner, while adopting best practices from the United Kingdom, Australia, and the European Union? This question requires an in-depth analysis of: (1) how to strategically integrate the three bases of liability to optimize recovery outcomes; (2) identifying the root causes of fragmentation, including a 78-year regulatory lag, policy incoherence, and institutional misalignment; and (3) formulating an integrated framework with a feasible implementation roadmap.

The research theoretical framework integrates four foundations: Radbruch's Legal Certainty Theory diagnoses the uncertainty of regulatory fragmentation that reduces stakeholders' ability to predict the system; Corporate Accountability Models Theory evaluates the exchange of the three models in achieving accountability, deterrence, and recovery of losses; Restorative Justice Theory justifies the priority of state loss recovery as the first-level objective in the context of the corporate income tax compliance gap of IDR 160 trillion per year; Responsive Law Theory guides designing implementable solutions with inter-agency coordination mechanisms, capacity building, and methodology standardization. The integration of these four theories produces a research framework that is theoretically sound yet practically implementable, aiming to provide academic contributions and practical guidance for policymakers in providing an ideal model for achieving optimal state loss recovery.

2. METHOD

This study applies a normative-doctrinal legal methodology to examine the system of positive legal norms and their structural interdependence in the enforcement of corporate criminal liability for tax crimes. This methodology was chosen because the issue is legal-normative in nature: identifying regulatory fragmentation between the 2023 Criminal Code, the 2021 Tax Harmonization Law, and Supreme Court Regulation No. 13 of 2016 in regulating corporate criminal liability and mechanisms for recovering state losses. The investigation focused on detecting normative contradictions, divergent interpretations, and normative vacuums in practical implementation.

The investigation was conducted through an integrated analysis of four complementary dimensions. First, an analysis of the three main legal instruments to identify normative incongruities, particularly the absence of operational guidelines on the criteria for selecting the basis of liability (vicarious liability, identification theory, and strict liability) in the 2023 Criminal Code, as well as the absence of implementing regulations for the ultimum remedium mechanism in Article 44B of the Tax Harmonization Law. Second, analysis of institutional data from the Directorate General of Taxes for 2023-2024, which documents 112 criminal tax cases with 82 convictions, identifies concrete manifestations of normative fragmentation through patterns of sentencing disparity based on corporate size (multinationals convicted at 5% versus MSMEs at 20% of state losses), disparities in litigation duration correlated with resources rather than case merit, and underutilization of the ultimum remedium mechanism in a minimal percentage of eligible cases.

Third, the analysis of legal doctrine and theory explores the theoretical basis through Radbruch's theory of legal certainty, corporate accountability theory, restorative justice theory, and responsive law theory to unravel the root causes of fragmentation, including a 78-year regulatory lag since the 1945 Criminal Code, policy incoherence in enforcement priorities, and institutional misalignment with different KPIs between institutions (DJP 80% revenue collection, Attorney General's Office 50% conviction rate, Courts 40% case closure rate). Fourth, a functional comparison with models in the United Kingdom, Australia, and the European Union, which have developed sophisticated frameworks with operational clarity, clear procedural guidance, and formal inter-agency coordination mechanisms, reveals that recovery disparities in Indonesia are a consequence of institutional coordination gaps and procedural ambiguity, not regulatory inadequacy.

Interpretation techniques use systematic-critical legal interpretation to analyze the consistency of norms between instruments, exchange analysis to

evaluate trade-offs in accountability models in achieving accountability versus loss recovery, and root cause analysis to track the causal factors of fragmentation through regulatory, policy, institutional, and operational dimensions.

3. RESEARCH RESULTS

An analysis of court decisions from 2015 to 2024 identified three manifestations of normative fragmentation that significantly hinder the integration of the enforcement of corporate criminal liability in tax crimes. Although the 2023 Criminal Code explicitly recognizes corporations as subjects of criminal law by establishing three bases of liability, namely vicarious liability, which imposes liability based on employment relationships; identification theory, which identifies fault through the conduct of managers; and strict liability, which does not require proof of individual mens rea[11], [12]. This normative instrument does not include operational guidelines on when and how to choose the appropriate model for concrete conditions. Articles 47 and 48 of the 2023 Criminal Code stipulate that corporate crimes can be committed by persons giving orders, persons in control, or beneficial owners outside the organizational structure, with the conditions for liability covering the scope of business, unlawful corporate profits, corporate policy, negligence in prevention, and acquiescence to the commission of a crime[13]. However, the absence of clear selection criteria and a hierarchy of application bases creates broad discretionary space for judges in choosing which basis to apply[14]. An analysis of court decisions shows that 67% of judges did not provide explicit justification in their legal considerations regarding the choice of liability basis used, indicating substantive ambiguity that opens up opportunities for exploitation in corporate defense strategies and results in inconsistencies in decisions across jurisdictions.

The second manifestation of normative fragmentation is seen in the underutilization of the ultimum remedium mechanism regulated in Article 44B of the 2021 Tax Harmonization Law. This mechanism provides a settlement pathway that allows for the termination of investigations or consideration of non-prosecution without imprisonment if the defendant pays the losses to state revenue plus administrative sanctions, even at the trial stage[15]. The principle of ultimum remedium as a last resort in criminal tax enforcement reflects the priority of recovering state losses rather than mere punishment, in line with the philosophy of restorative justice which emphasizes restitution as a first-order objective[16]. The restorative justice perspective views the success of criminal enforcement as being measured not only by the level of punishment imposed but also by the extent to which losses are successfully recovered for the state and how effectively the mechanism secures public awareness and tax compliance. However, the absence of implementing regulations governing standardized timing criteria for when settlements are offered, valuation methodologies for consistently calculating state losses, and transparency requirements regarding disclosure of the agreed settlement amount has resulted in the settlement mechanism being unsystematic and opaque in practice. An analysis of the DGT's annual reports for the 2016-2020 period shows that the ultimum remedium mechanism in Article 44B was implemented in only 1.4% of the total number of factually eligible cases (8 out of 558 P-21 cases). This gap is caused by procedural ambiguities and a perverse incentive structure in which perpetrators benefit more from choosing the criminal route.

The third manifestation of normative fragmentation is seen in the pattern of implementation of the basis of accountability in judicial practice, which shows an imbalance and is difficult to defend theoretically. Analysis of the verdicts shows that vicarious liability dominates in the majority of the verdicts studied, with identification theory used in a small number of cases, while strict liability is rarely applied. This dominance of vicarious liability is consistently seen across various levels of court—from the District Court to the Court of Cassation—and does not show any significant pattern of difference based on the magnitude of state losses or the complexity of corporate structures. This dominance of vicarious liability does not reflect a rational choice based on case-specific analysis of which model is most appropriate for achieving the objectives of accountability, deterrence, and recovery of damages, but is rather determined by a practical preference for ease of proof as stated in the legal considerations of the decisions, since this basis only requires proof of an employment relationship and that the crime was committed within the scope of employment without the need to prove individual mens rea or explicit corporate policy. There is no consistent pattern in the selection of bases across case types or jurisdictions, indicating that the choice of basis is determined more by the individual preferences of judges or the customs of particular courts than by standardized objective criteria[17]. This results in disparate outcomes where vicarious liability cases yield a low

recovery rate of state losses, while strict liability cases yield 18-25%, suggesting that the choice of basis has direct implications for the effectiveness of recovery. The preference for vicarious liability is not supported by modern corporate criminal accountability theory, which recognizes that strict liability more appropriately allocates responsibility when corporate structures are designed to disperse individual responsibility or when corporate mens rea is difficult to prove.

Institutional coordination fragmentation is at the root of suboptimal recovery outcomes in Indonesia's corporate criminal accountability enforcement system[18]. The Directorate General of Taxes, the Attorney General's Office, and the courts operate in separate silos with misaligned operational priorities: The DGT prioritizes revenue collection with a target of 100% realization of tax revenue in the state budget, the Attorney General's Office prioritizes conviction statistics to increase the success rate of prosecutions, while the courts prioritize a 100% clearance rate to achieve case completion targets. These differing priorities create a strategic misalignment where there is no unified objective for loss recovery, resulting in the DGT tending to use administrative channels to maximize collection with high certainty and in a short time, the Attorney General's Office pushing for criminal prosecution to improve conviction statistics independent of recovery outcomes, and the Courts focusing on case resolution efficiency without in-depth consideration of recovery outcomes or consistency in sentencing across jurisdictions. The DGT handles hundreds of tax crime cases each year (93-573 cases in the 2019-2022 period), with the majority resolved through administrative mechanisms based on the ultimum remedium principle, where criminal sanctions are only applied as a last resort. The absence of a formal inter-agency coordination mechanism to harmonize the actions of these three institutions has resulted in inefficiency in resource allocation, jurisdictional conflicts, and ultimately suboptimal recovery, which only reaches 0.05% of the state losses decided by the court, mainly because tax investigators do not have the authority to seize suspects' assets[19]

Disparities in recovery outcomes between administrative and criminal pathways reveal serious structural inefficiencies: criminal prosecution results in an effective recovery rate of 63.4% of identified state losses with a duration of 4-7 years for complex cases, while administrative settlements are considered to yield a more significant recovery rate for state losses. Extended litigation duration provides opportunities for corporations to dissipate assets, making recovery difficult even when convictions are achieved. Sentencing patterns are also problematic: multinational corporations are sentenced to an average fine of 5% of state losses, while MSMEs are sentenced to an average of 20%, creating an inverse relationship that violates the principle of equality. Litigation duration correlates strongly with available resources rather than case merit, indicating that access to justice is influenced by wealth disparities.

An analysis of the enforcement model of the Australian Jurisdiction shows that the Criminal Code Act 1995 (Cth), Part 2.5, in particular Sections 12 and 12.3, establishes multiple bases for corporate criminal responsibility with accessible operational criteria. The Australian Taxation Office (ATO) implements a mandatory restitution framework whereby each conviction results in documented restitution orders. ATO data for 2024-2025 shows 343 convictions with reparation orders of AU$25,386 and fines of AU$5.18 million[20]. The European Union, through Directive 2014/42, establishes a definition of proceeds that guides interpretation in the context of recovery maximization[21]. Directive 2024/1260 introduces mandatory Asset Recovery Offices with separation of functions for asset tracing and management, setting explicit timelines that prevent prolonged proceedings as an avenue for asset dissipation.

The United Kingdom has a more sophisticated framework for addressing corporate criminal liability. Section 45 of the Criminal Finances Act 2017 creates the offense of "failure to prevent the facilitation of UK tax evasion," which adopts a strict liability model for corporate bodies, allowing prosecution without requiring proof of individual mens rea from the directing minds[22]. The uniqueness of the UK framework is that it provides an affirmative defense that the relevant body has "reasonable prevention procedures" to prevent associated persons from facilitating tax evasion. This model effectively allocates the burden to corporations to demonstrate adequate compliance systems, shifting from the traditional identification model that is difficult to implement. More importantly, the UK has developed Deferred Prosecution Agreements (DPAs) as a sophisticated mechanism for resolving corporate crime cases. DPAs are consented to under judicial supervision with the requirement that the Court must be satisfied that the agreement is "in the interests of justice" and the terms are "fair, reasonable, and proportionate". The UK's SFO and CPS have concluded 13 DPAs resulting in total financial settlements exceeding £3 billion, with cases including Airbus (€990.9 million)[23], Tesco (£128.9 million), Rolls-Royce

(£497.2 million)[24], and Entain (£615 million). The DPA mechanism in the UK demonstrates how recovery-oriented enforcement can be integrated with accountability: corporations can avoid criminal conviction by fulfilling specified conditions, including payment of financial penalties, compensation, investigation costs, and a commitment to remedy conduct[25].

Empirical evidence from the three jurisdictions shows that Australia's coordinated ATO-CDPP-AFP framework with shared metrics[26] results in high conviction rates (99% overall, 72% for defended matters) with substantial asset restraint (AFP restrained $175.8 million in FY 2023-24). EU Member States show substantial variation in recovery outcomes, with France achieving 20% of its recovery objectives in 2024, while the UK's DPA mechanism produces predictable financial settlements with judicial oversight. This comparison reveals critical gaps in Indonesia's system: first, the absence of operational guidance for basis selection comparable to Australia's Criminal Code or the UK's CFA 2017 framework; second, the absence of sophisticated settlement mechanisms such as the UK's DPAs coupled with judicial oversight; third, the lack of structured coordination mechanisms with shared success metrics such as those in Australia and the EU.

The results of the analysis above show that normative fragmentation, underutilization mechanisms, and failed institutional coordination reinforce each other, creating a systemically suboptimal enforcement ecosystem[27]. Uncertainty in the basis of selection provides discretionary space that perpetrators exploit through strategic defense. Underutilization of ultimum remedium indicates that law enforcement agencies have not adopted rational allocation based on cost-benefit analysis and fiscal recovery maximization[28]. Institutional fragmentation with misaligned KPIs ensures that each agency pursues separate objectives, creating inefficiencies in resource allocation[29]. Lessons from the Australian, European Union, and United Kingdom models show that fragmentation is not the result of philosophical differences but rather gaps in operational clarity, procedural guidance, and institutional coordination frameworks. Comprehensive reforms that integrate regulatory clarity in the basis of selection with the adoption of operational criteria from international models, an explicit procedural framework for ultimum remedium with standardized valuation methodologies, and formal inter-agency coordination with a unified recovery metric as the primary KPI are imperative for the transformation of the law enforcement paradigm towards an effective and sustainable recovery-oriented model of " " in line with the spirit of restorative justice and fiscal sustainability[16], [30].

4. RESULT AND DISCUSSION

The findings reveal a fundamental gap between the normative architecture of corporate criminal liability in Indonesian tax law and its implementation in practice. This gap has not been adequately analyzed by Indonesian literature on corporate criminal liability[33]. Although Indonesian literature has documented formal recognition of corporate liability through the 2023 Criminal Code[34] and the 2021 Tax Harmonization Law[35], in-depth analysis of the institutional and structural factors causing the gap between norms and implementation remains limited. Previous Indonesian literature has focused more on aspects of formal recognition and the doctrine of liability than on analyzing law enforcement practices.

This gap is critical because the recovery of state losses from corporate tax crimes depends not only on the existence of accountability rules, but also on how these rules are operationalized through decision-making by judicial and institutional bodies[36]. To understand this operational gap, an in-depth examination of the ambiguity in the selection of the basis for liability is needed as a fundamental structural problem that allows for institutional misalignment and underutilization of mechanisms[37]. Comparative literature on corporate criminal liability has emphasized the sophistication of various liability models—vicarious liability, identification theory, and strict liability[38] —but has not sufficiently analyzed how the judicial and institutional context shapes which model becomes dominant in practice and what consequences this dominance has on the effectiveness of loss recovery.

The basic choice of liability appears technical, but in fact reveals a deep contradiction in the way the law conceptualizes corporate liability and enforcement priorities. The regulatory framework establishes three models of liability with different logic and evidentiary requirements, but does not provide operational guidance for choosing between them. This situation creates a paradoxical legal space, where the selection criteria are simultaneously mandated and unavailable[39]. When judges are faced with the specific facts of a case, they cannot base their decisions on rational choice principles because a decision-making roadmap is unavailable. Instead, judges tend to follow habitual patterns—choosing vicarious liability because it requires the

lowest threshold of proof—rather than because this basis best allocates responsibility or maximizes recovery of damages. The empirical dominance of vicarious liability thus reflects path dependency shaped by institutional limitations rather than principled legal reasoning.

Lessons from international comparative models reveal instructive differences. The Australian and European Union systems have developed explicit selection frameworks by clearly defining the characteristics of corporate behavior that require the application of each model. The European Union's 2014/42 Asset Recovery Directive explicitly defines "proceeds" as "any economic advantage deriving directly or indirectly from a criminal offense"—a definition that guides the basic interpretation of liability in the context of maximizing the effectiveness of recovery. In contrast, the Indonesian system allows ambiguity to persist due to the absence of such an operational definition, resulting in judicial discretion driven by convenience rather than clear legal principles. The Australian model implements strict liability capabilities in the Criminal Code, allowing courts to impose penalties on corporate legal entities regardless of individual mens rea[40], in line with the recognition that the complexity of corporate structures often prevents the proof of individual culpability. This framework is designed to prevent corporate structures deliberately designed to disperse individual responsibility from escaping criminal liability[41]. Indonesia's regulatory framework theoretically recognizes this, but implementation practices show a reluctance to apply strict liability precisely because of the lack of operational guidance on when its application is appropriate. Thus, the system has optimized the wrong metric—the probability of conviction rather than the effectiveness of loss recovery.

The underutilization of the ultimum remedium mechanism reveals a second critical misalignment: between the philosophy of restorative justice embedded in the mechanism and the perverse incentive structure that makes settlement irrational for offenders[42]. In theory, this mechanism reflects the state's priority on restoring losses rather than mere punishment, in line with a victim-centered restorative justice approach that emphasizes restitution as the primary objective. The Australian model demonstrates operational clarity in this regard. The Australian Taxation Office (ATO) has a mandatory restitution framework in which every convict for tax crimes results in a restitution order with a documented collection mechanism. Empirical evidence shows that clarity regarding restitution obligations produces systematic recovery outcomes. In contrast, Indonesia's ultimum remedium without implementing regulations creates procedural ambiguity that makes settlement offers legally risky for law enforcement officials. Offering a settlement before a complete investigation creates vulnerability to legal challenges regarding the hastiness of the offer. Furthermore, the definition of state losses in settlements only covers taxes owed, excluding interest and penalties that are comprehensively covered in administrative settlements. This creates a perverse incentive structure, where perpetrators of criminal acts rationally avoid settlements. EU Directive 2024/1260 adopts a different approach by stipulating that the definition of proceeds includes "any form of property and any subsequent reinvestment or transformation of direct proceeds,"—providing clarity that settlement calculations must be comprehensive[43]. This Indonesian structure reflects institutional coordination failure in public administration, where policies designed to achieve one objective paradoxically encourage behavior that compromises that objective. Here, the ultimum remedium design intended to maximize loss recovery actually makes settlements less attractive than criminal prosecution, where strategic litigation prolongs proceedings while perpetrators reduce asset exposure.

Institutional coordination failure is the third force that fragments the system and acts as a force multiplier for the two previous problems. When three agencies optimize separately for different metrics—revenue collection, conviction rates, and case closure rates—their individual rational choices produce collectively suboptimal outcomes[44]. International models show that institutional coordination mechanisms significantly improve outcomes. European Union Directive 2024/1260 establishes mandatory requirements for Asset Recovery Offices and Asset Management Offices, demonstrating that institutional separation for asset tracing and management improves recovery effectiveness[45]. Australia's experience with coordination between the ATO Criminal Investigation Unit, the Commonwealth Director of Public Prosecutions, and the Australian Federal Police shows that formal coordination frameworks with shared success metrics produce better recovery outcomes than bifurcated systems[46]. In the Indonesian context, the administrative preferences of the Directorate General of Taxes (DJP) interact with the prosecutorial preferences of the Attorney General's Office (Kejaksaan) to produce bifurcated enforcement: the majority of cases are resolved administratively (resulting in high recovery

but without criminal accountability), leaving the prosecution pathway underfunded and protracted[47]. Extended litigation duration correlates with litigant resources rather than case complexity, allowing wealthy perpetrators to prolong proceedings and achieve asset dissipation before final judgment[48]. This creates inverse sentencing patterns in which proportional penalties decrease as perpetrator size increases—violating the fiscal justice principle that requires proportionality between the magnitude of the loss and the severity of the sanction. Comparative evidence shows that systematic coordination frameworks with defined timelines for asset freezing, confiscation, and management prevent prolonged proceedings that enable asset dissipation. The mechanism is subtle: it is not judicial bias but structural inequality in access to justice that prolongs proceedings until assets are lost, after which judges impose sentences on the remaining value. Institutional misalignment transforms access-to-justice inequality into sentencing inequality, demonstrating how coordination failure results in downstream justice violations.

These three manifestations of fragmentation reinforce each other in self-perpetuating cycles. Ambiguity in the basic choice of liability encourages perpetrators to litigate aggressively because outcomes are unpredictable. This litigation becomes protracted when perpetrators have sufficient resources. Prolonged proceedings allow for asset dissipation[49] Enforcement officials, realizing that recovery will be minimal even with eventual conviction, become less motivated to prosecute, creating an opening for the Attorney General's Office to prioritize conviction statistics. At the same time, the DGT resolves cases that can be settled administratively, but lacks the authority to coordinate with prosecutors on optimal sequencing. The system lacks governance mechanisms to break these cycles. From a normative perspective, this analysis reveals that the 2023 Criminal Code's recognition of corporate liability without contemporaneous specification of liability selection criteria represents incomplete legal transplantation: liability models are accepted in form, but the substantive principles for their application remain ambiguous.

Based on these three manifestations of fragmentation, simultaneous reforms are needed in three dimensions, grounded in proven international models. First, establishing an explicit basis selection framework through judicial guidelines that ground liability choice in corporate structure analysis. When corporate complexity manifests itself through distributed decision-making and dispersed responsibility, strict liability or identification theory becomes appropriate because both attribute accountability at the corporate level rather than dispersing it through individual agents. This framework can adopt the structure of Australia's Criminal Code, which recognizes strict liability capability, combined with the procedural clarity of EU directives that regulate when each basis is applicable. Guidelines must mandate written justification for basis selection, converting judicial discretion from hidden to transparent while maintaining the necessary flexibility for case adaptation. In this way, basis selection becomes a reasoned choice grounded in case characteristics, rather than habitual practice driven by convenience.

Second, implementing regulations for ultimum remedium must resolve both procedural ambiguity and perverse incentive structures, adopting timelines and definitions from international best practices. Timing clarity—specifying settlement availability at each enforcement stage with explicit procedures such as the EU's 30-day initial assessment period—eliminates the legal risk of settlement offers. Expanding the definition of loss to include administrative components (interest and fines) in line with the EU asset recovery directive's comprehensive proceeds definition eliminates the perpetrator's incentive to avoid settlement. Standardized valuation methodologies, in line with the EU directive's asset-type specific guidance, ensure consistency. Transparency through regular reporting parallel to the ATO's mandatory reparation order publication enables institutional learning and public accountability. These provisions operationalize the restorative justice philosophy by making settlement genuinely attractive relative to protracted criminal prosecution, ensuring that the most efficient mechanism for recovery optimization becomes the default pathway in enforcement.

Third, formal inter-agency coordination mechanisms must realign institutional incentives toward a unified recovery objective, adopting structured coordination formats from international models. Rather than maintaining separate KPI optimization, the coordination board must establish an aggregate recovery rate as a shared metric, with each agency evaluated on its contribution to the collective goal rather than individual targets—in line with the EU directive's requirement for national asset recovery strategies with coordinated implementation. Budget allocation authority enables resource sharing for complex investigations, following Australia's integrated coordination model. Regular forums facilitate case-level coordination on settlement

opportunities, preventing wasteful bifurcation of enforcement efforts. This institutional restructuring addresses root institutional failure by transforming incentive alignment from the current misalignment toward a coherent recovery orientation.

These three reforms, when integrated systematically and grounded in proven international models, can transform enforcement from fragmented to coherent, addressing root causes rather than mere symptoms. The theoretical contribution lies in demonstrating that the effectiveness of corporate criminal liability depends less on the theoretical sophistication of liability models than on operational clarity in their application, institutional coherence in their implementation, and alignment between regulatory design and institutional incentive structures. Lessons from Australia's mandatory restitution framework, the EU's asset recovery directives, and comparative corporate criminal liability models show that technical solutions—clear definitions, explicit procedures, coordinated institutions—can significantly improve recovery outcomes without requiring fundamental philosophical shifts in criminal law theory.

5. CONCLUSION

Fragmentation in corporate criminal liability for tax crimes reveals a fundamental paradox in Indonesia's legal architecture: although the 2023 Criminal Code explicitly recognizes corporations as subjects of criminal liability by establishing three sophisticated bases for liability, and the Tax Harmonization LawTax Harmonization Law has introduced an ultimum remedium mechanism oriented toward loss recovery, enforcement practices show a loss recovery rate of only 63.4% with a pattern of sentencing disparity that violates the principle of equality before the law. This paradox arises not from the inadequacy of substantive regulations but from normative fragmentation that manifests itself in three mutually reinforcing dimensions: first, the absence of operational guidelines in the selection of liability bases results in broad discretionary space that is exploited by defendants, demonstrating that formal recognition of corporate liability without contemporaneous specification of liability selection criteria represents incomplete legal transplantation; second, the ultimum remedium mechanism designed to maximize recovery suffers from systemic underutilization due to the absence of clear implementing regulations, reflecting a misalignment between the restorative justice philosophy embedded in the mechanism and the perverse incentive structures in the field; and third, failed institutional coordination between the Directorate General of Taxes, the Attorney General's Office, and the Courts, which are optimized for different KPIs, results in enforcement bifurcation and suboptimal recovery outcomes, demonstrating that individual rational choice produces paradoxical collective outcomes.

Lessons learned from international models reveal that effectiveness in corporate criminal liability and asset recovery does not depend on theoretical sophistication in designing liability models, but rather on operational clarity in applying them, institutional coherence in implementing them, and strategic alignment between regulatory design and institutional incentive structures. Comprehensive reform must be integrated across three complementary dimensions. First, establishing an explicit basis selection framework that bases selection on corporate structure analysis, mandates written justification, and converts judicial discretion into transparent reasoned choice while maintaining necessary flexibility, adopting the structure of Australia's Criminal Code which recognizes multiple bases with accessible operational criteria. Second, implementing regulations for ultimum remedium that resolve procedural ambiguity and eliminate perverse incentives through timing clarity, comprehensive loss definition, standardized valuation methodologies, and transparency requirements, ensuring that recovery-oriented settlement pathways become genuinely rational choices for perpetrators. Third, a formal inter-agency coordination mechanism that aligns institutional incentives toward a unified recovery metric as a shared KPI, consolidates resource allocation, and facilitates case-level coordination, adopting a structured coordination format from international models. The integration of these three dimensions of reform, grounded in proven international frameworks and four solid theoretical foundations, can transform the enforcement system from a systemically fragmented one into a coherent recovery-oriented ecosystem, ensuring that the recovery of state losses becomes a truly first-order objective with parallel robust criminal accountability mechanisms, in line with the spirit of restorative justice and fiscal sustainability.

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