

ENHANCING TAX LAW ENFORCEMENT: A STRATEGIC APPROACH FOR STRENGTHENING TAX CRIME INVESTIGATIONS IN INDONESIA

DWI NURFERYANTO¹, YOSHI TAKAHASHI²

Graduate School of Humanities and Social Sciences, Hiroshima University, Higashihiroshima 739-8529 Japan.

d214726@hiroshima-u.ac.jp¹, yoshit@hiroshima-u.ac.jp²

Abstract - Tax crimes in Indonesia have been rising steadily in recent years. Despite the Directorate General of Taxes (DGT) efforts to address this, its investigative powers remain limited. The Organization for Economic Cooperation and Development (OECD) highlights the need for tax agencies to have comprehensive investigative powers to combat tax crimes effectively. However, current legislation prevents the DGT from fully complying with these principles. This research employs qualitative methodology with descriptive, comparative, and normative-empirical legal approaches and emphasizes the need for the DGT to gain sufficient investigative powers. Our findings show that the DGT lacks crucial authorities, such as the power to arrest individuals, intercept communications, and directly submit investigation warrants and files to prosecutors. We recommend enhancing the DGT's powers by adopting practices from the Directorate General of Customs and Excise (DGCE), the Corruption Eradication Commission (CEC), and international tax agencies.

Keywords: Tax Law; Tax Enforcement; Tax Crime; Tax Investigation; Investigative Powers

1. INTRODUCTION

In a June 2012 trial at the Constitutional Court of Indonesia, concerning a judicial review request related to provisions in the General Provisions and Tax Procedures (GPTP) Act (GPTP Act, 1983), Professor Hiarij, testified that tax crimes causing harm to state finances should be considered extraordinary crimes (Hukumonline, 2012). Extraordinary crimes are offenses that have significant, detrimental, and multidimensional impacts on a country's social, cultural, ecological, economic, and political domains, as evidenced by the outcomes studied and reviewed by various national and international governmental and non-governmental institutions (Sukardi 2005, p. 34; Budyatmojo 2013). These crimes differ from ordinary offenses as a result of their severe, widespread, and massive nature, and they are regarded as enemies of humanity (Drumbl 2007, p. 4), often committed in a planned, systematic, and organized manner (Pomerleau, 2008).

Although not yet formally codified in Indonesian law, Professor Muladi concurs with Hiarij, stating that shock therapy measures in taxation—specifically, strict and comprehensive criminal investigations—are sometimes necessary, particularly against perpetrators whose actions have caused significant damage (Muladi 1995, p. 42). This perspective aligns with the understanding that tax crimes, such as tax evasion, have a substantial impact on economic damage and public finances (Slemrod, 2007). Tax evasion diminishes the tax revenue available to governments, undermining their ability to manage the economy and promote stability within financial systems (Ozili, 2020), a major challenge for developing countries (McKerchar & Evans, 2009). Consequently, strengthening law enforcement against tax crimes is essential for creating effective tax administration, as strong tax administration enhances tax optimization (Keen & Slemrod, 2017) and fosters public trust (Kumalasari et al., 2023). Conversely, weak tax enforcement can lead to under-collection of taxes when due (Marhuenda & Ortuño-Ortín, 1997).

Tax crimes results in significant economic and financial losses. For instance, global losses as a result of tax crimes are estimated to range from USD 480 billion to USD 650 billion annually (Cobham & Janský, 2018; Crivelli et al., 2016; Tax Justice Network, 2023). This trend is also evident in Indonesia, where tax crimes and related state losses continue to rise. Table 1 below presents statistical data on tax crime cases and state losses in Indonesia from 2018 to 2023.

Table 1. Tax Crime Cases and State Losses in Indonesia from 2018 to 2023.

Description	2018	2019	2020	2021	2022	2023
Tax Crime Cases	1,071	1,240	1,312	1,243	1,234	1,218
Investigated	245	318	248	210	233	346
Terminated	5	10	11	42	51	69
Sent to the Court	124	138	97	93	98	89
State Losses (in Billion IDR)	1,354	991	575	1,970	1,634	1,529

Source: Directorate of Law Enforcement, Directorate General of Taxes.

Given the increasing global losses caused by tax crimes, it is imperative for world leaders and experts in law, criminology, finance, economics, and taxation to recognize tax crimes as extraordinary offenses that demand serious attention and stringent sanctions for perpetrators. With a shared understanding that tax crimes constitute extraordinary offenses requiring exceptional investigative measures, there is hope for an international agreement that can be ratified into national laws worldwide.

Criminal investigations are generally long, meticulous processes that uphold the presumption of innocence (Ferguson, 2016). A criminal investigation is a lawful search for individuals and evidence that helps reconstruct the circumstances of an illegal act or omission, along with the associated mental state. The investigation proceeds from the known to the unknown, looking back in time with the goal of uncovering the truth as far as it can be determined in any post-factum inquiry. Successful investigations rely on fidelity, accuracy, and sincerity in lawfully uncovering the true facts of an event under investigation and on equal faithfulness, precision, and integrity in reporting the findings (Weston and Wells 1974, p. 1).

These principles also apply to the enforcement of criminal tax law in Indonesia. Meticulousness and caution are essential to ensure that the Directorate General of Taxes (DGT) takes correct and procedurally compliant actions in accordance with applicable laws, so that proven tax crime perpetrators receive appropriate sanctions. The enforcement of criminal tax law is expected to create a deterrent effect for offenders and a dissuasive effect for those considering committing tax crimes (Burhan & Gunadi, 2022; Feld & Frey, 2012; Ratto et al., 2005) in Indonesia. However, there is concern that current tax policies in Indonesia are overly permissive toward tax offenders, heavily favoring taxpayer interests (Nurferyanto & Takahashi, 2024). The process of criminal tax law enforcement by the DGT is illustrated in Figure 1 below.

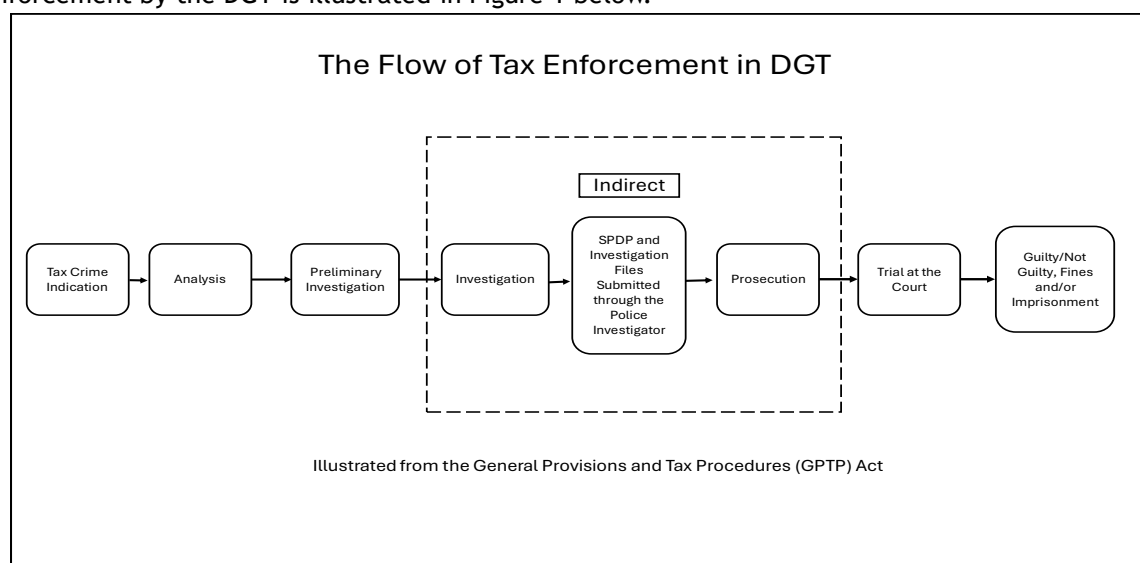


Figure 1. The Flow of Tax Enforcement Process in DGT

Tax authorities typically conduct investigations to combat tax crimes. These investigations involve a series of processes carried out by tax authorities or law enforcement agencies to identify, gather



evidence, and prosecute individuals or entities suspected of violating tax laws. Such violations may include tax fraud, tax evasion, or other actions that contravene tax regulations. The primary objectives of tax crime investigations are to enforce tax laws, ensure taxpayer compliance, provide legal certainty to all parties, and prevent state losses from tax violations. To achieve these objectives, investigators must be granted the necessary authority to perform their duties (OECD, 2017).

The authority to investigate alleged violations of tax regulations is typically granted to tax authorities or law enforcement agencies. A classic study on tax compliance suggests that tax compliance is influenced by the probability of detection and the severity of punishment (Allingham & Sandmo, 1972). Tax crime investigations have been shown to significantly impact taxpayers' voluntary compliance (Dubin, 2007). Therefore, jurisdictions must have appropriate investigative powers to successfully investigate tax crimes (OECD, 2017). Without adequate authority, it is challenging for tax authorities to uncover tax crimes and address tax evasion.

Furthermore, the elected President has developed an ambitious plan to boost state revenues and increase Indonesia's tax ratio to 23% by establishing a State Revenue Agency (SRA), separate from the Ministry of Finance. This agency is envisioned to integrate the DGT and Directorate General of Customs and Excise (DGCE) into a more autonomous and cohesive revenue institution (Ilhamy, 2024). According to the World Bank, semi-autonomous and integrated revenue administration models can significantly enhance the efficiency and effectiveness of tax administration (Junquera-Varela et al. 2019, p. 3). The integration of tax and customs authorities into this single agency is expected to strengthen and align the investigative powers of the DGT and DGCE, ensuring that the DGT possesses powers comparable to those of the DGCE. This integration also aims to ensure that the customs authority's other duties, beyond revenue collection, are not overlooked (Junquera-Varela et al. 2019, p. 3).

The authority of tax investigators within the DGT is regulated under Article 44 of the GTP Act. However, this authority remains less comprehensive than the principles outlined by the Organisation for Economic Cooperation and Development (OECD) in the Ten Global Principles in Fighting Tax Crimes (OECD, 2021a). One of these principles emphasizes the necessity of providing tax authorities with adequate investigative powers to enforce tax criminal law. These powers include:

- 1) Power to search property and seize physical evidence
- 2) Power to obtain third-party documentary information
- 3) Inquiry / coercive powers
- 4) Power to intercept mail and telecommunications
- 5) Power to search for and seize computer hardware, software, cell phones, and digital media
- 6) Power to conduct interviews
- 7) Power to conduct covert surveillance
- 8) Power to conduct undercover operations
- 9) Power to arrest a person

Among these nine powers, the DGT lacks the following critical power.

- 1) Power to intercept mail and telecommunications
- 2) Power to arrest a person
- 3) Power to submit a warrant to commence an investigation (known as Surat Pemberitahuan Dimulainya Penyidikan - SPDP) and investigation files directly to the prosecutor

These three deficiencies are the primary focus of this study. The research explores the potential adoption of investigative powers not currently held by the DGT but possessed by the DGCE, the Corruption Eradication Commission (CEC) (CEC Act, 2002), and tax authorities in other countries, while ensuring alignment with Indonesia's criminal justice system (CJS). The DGCE and the CEC are referenced for the adoption of powers because the DGT, DGCE, and CEC share a common mandate to safeguard state finances. The DGT and DGCE are responsible for collecting and managing state



revenue from taxes, customs, and excise duties, while the CEC protects state finances from corrupt practices.

Additionally, this study draws insights from investigative powers and practices of other tax agencies, such as the National Tax Agency (NTA) of Japan, the Internal Revenue Service-Criminal Investigation (IRS-CI) of the United States (US), Her Majesty's Revenue and Customs (HMRC) of the United Kingdom (UK), and the Netherlands Tax and Customs Administration (NTCA). These agencies are referenced as a result of their longstanding collaboration with the DGT and their possession of the powers that the DGT seeks to adopt. Moreover, these tax authorities come from developed countries and are members of the OECD, with HMRC and NTCA serving as examples of institutions that have integrated tax and customs authorities, similar to the envisioned SRA for Indonesia. The powers held and employed by tax authorities in these countries provide valuable insights and considerations for policymakers.

This study offers insights by comparing the investigative powers of DGT tax investigators with the OECD's standards for adequate investigative powers and examining the practices of granting investigative powers by the DGCE, CEC, and tax authorities in other countries. The aim is to strengthen the DGT's authority in combating tax crimes in Indonesia.

2. METHODS

This study employed a qualitative research methodology with a descriptive-analytic approach. It involved data collection and a detailed description of the research problem (Rahmawati, 2013). Specifically, this study examines the DGT's limited investigative powers in combating tax crimes. With this method, formulating a hypothesis is not compulsory (Harahap, 2020, p. 19). We formulated research questions instead. Many qualitative researchers have utilized research questions as a substitute for hypotheses. (Chigbu, 2019) Consequently, we have incorporated research questions as follows: What tax investigative powers does the DGT not currently have? How can the DGT adopt and implement the missing tax investigative powers to optimize the eradication of tax crimes?

A comparative method was also employed in this study. The goal is to identify similarities and differences between social entities (Mills et al., 2006). The comparative method was utilized to analyze the DGT's investigative powers regarding the OECD's principle for adequate investigative powers for tax authorities, as well as the investigative powers possessed by the DGCE, CEC, and tax authorities in other countries. This comparison aims to identify similarities and disparities in investigative powers, enabling the DGT to adopt necessary authorities that are currently lacking.

Additionally, this study employs a normative-empirical legal research approach, which examines the implementation of regulations regarding tax investigative powers and their execution by the DGT. The goal is to assess whether the actual application of the law aligns with legislative provisions and whether it enables the concerned parties to achieve their intended objectives (Muhammad 2004, p. 53). Normative-empirical legal research (applied law research) requires both secondary and primary data (Muhaimin 2020, p. 116).

Secondary data collection techniques include literature reviews and document analysis, which cover national legislation, official records of law-making minutes, court decisions (case law), textbooks, research results, journals, scientific writings, other related reading materials, the Internet, and additional sources (Marzuki 2005, p. 141; Rahmawati 2013). Primary data collection techniques include interviews, observations, questionnaires, and surveys (Muhaimin 2020, p. 133).

Anonymous oral and written interviews were conducted at the DGT head office between May and July 2023. The 21 participants included directors, deputy directors, section heads, staff, and tax investigators from the DGT.

3. RESULTS

This research stems from the rising trend of tax crimes in Indonesia, as highlighted in Table 1. As Muladi has argued, "shock therapy" through stringent legal action is essential when tax crimes escalate and result in significant state losses (Muladi 1995, p. 42). This study aims to emphasize the critical need for the DGT to have adequate investigative power, as outlined by the OECD in the Ten Global Principles of Fighting Tax Crimes (OECD, 2017, 2021a, 2021b) to effectively fulfill its functions



and responsibilities. Specifically for Indonesia, these powers should include the ability to submit the SPDP and investigation files directly to the prosecutor. Our findings indicate that the DGT currently lacks the authority to arrest and detain individuals, the power to intercept mail and telecommunications, and the authorization to submit SPDP and investigation files directly to the prosecutor. This limitation hinders the effectiveness of tax crime enforcement, prolong bureaucratic processes, and incurs additional costs.

Considering these challenges, we propose that the DGT be granted comprehensive investigative powers by adopting the authorities held by the DGCE, CEC, and tax authorities in other countries. Moreover, with the government's plan to establish an SRA that integrates the DGT and DGCE into a single institution, it is essential to align the powers of this agency, ideally incorporating the more extensive powers currently held by the DGCE. By granting comprehensive powers, the DGT is expected to enhance its ability to combat tax crimes in Indonesia, while adhering to the CJS applicable to civil servant investigators (Penyidik Pegawai Negeri Sipil, or PPNS) and maintaining collaboration within the framework of coordination and oversight by police investigators.

4. DISCUSSION

4.1. An Overview of Tax Investigation Within the Legal System in Indonesia

In legal theory, the principle of *Lex Specialis Derogat Legi Generali* dictates that specific provisions override general ones. Consequently, provisions governing tax investigations in the GPTP Act take precedence over the general provisions outlined in the Indonesian Criminal Procedure Code (CP Code) (CP Code, 1981). Therefore, tax investigators primarily rely on the GPTP Act when conducting tax investigations. When the GPTP Act lacks specific provisions or does not address certain issues, tax investigations defer to the CP Code.

In the broader context of investigations in Indonesia, Article 1, Paragraph 2 of the CP Code defines an investigation as a series of actions by investigators, conducted according to the procedures outlined in the law, aimed at searching for and collecting evidence to clarify the crime and identify the suspect. Additionally, Article 1, Paragraph 1 defines an investigator as a police officer of the Republic of Indonesia or certain civil servants specifically authorized by law to conduct investigations. Based on Article 6, Paragraph (1), investigators are categorized into two types:

- a) Police officers of the Republic of Indonesia
- b) Certain civil servants specifically authorized by law (PPNS)

Further, Article 7, Paragraph (2) states that civil servants have authority according to the laws governing their respective functions and are subject to coordination and oversight by police investigators in the performance of their duties. Examples of PPNS include tax investigators, customs and excise investigators, immigration investigators, and forestry investigators. Generally, the PPNS have very limited powers, while police investigators possess all the powers outlined in both the CP Code and the Police Act (Police Act, 2002). Consequently, police investigators are authorized to assist and oversee investigations conducted by the PPNS.

The provisions of the CP Code clearly establish the subordinate status of the PPNS to police investigators, creating an imbalance between the two parties, where one oversees and the other is overseen. This situation impacts the implementation of investigations carried out by the PPNS, as regulated by Regulation of the Head of the Indonesian National Police No. 6 of 2010 (Perkap 6, 2010). Nearly all stages of investigations conducted by the PPNS involve and depend on police investigators for matters such as arrests, detentions, and the submission of investigation files. However, PPNS investigators have a deeper understanding of the substance and process of investigations in specialized fields, adding to the bureaucratic delays and costs. This issue is further compounded by the frequent occurrence of complex bureaucracy, corruption, and unofficial costs in Indonesia, even within the law enforcement process itself (Holloway, 2014; Kasim, 2013; Syahuri et al., 2022; Transparency International, 2023; Turner et al., 2022).



In addition to the two types of investigators regulated by the CP Code, other investigators are governed by special laws, such as those for CEC investigators and prosecutors' office investigators. These investigators are neither police investigators nor the PPNS, but they possess specific powers to investigate certain types of criminal offenses as mandated by their respective operational laws, such as the CEC Act and the Public Prosecution Service Act (Prosecution Act, 2004). Their investigation procedures are based on their legislative frameworks, which may differ from the CP Code. However, the CP Code generally applies to matters not specifically or adequately regulated by the respective operational laws. These investigators are not subject to the coordination or supervision of police investigators. Under the CEC Act, the CEC has the authority to oversee or even take over investigations conducted by police investigators or prosecutor office investigators.

Regarding tax crime investigations, the GTP Act provides specific guidelines:

a) Definition of Tax Crime Investigation:

Article 1, Point 31 defines a tax crime investigation as a series of actions conducted by an investigator to search for and gather evidence that clarifies the occurrence of a tax crime and identifies suspects.

b) Definition of Tax Investigator:

Article 1, Point 32 defines an investigator as a specific civil servant within the DGT who is granted special authority to conduct investigations into tax crimes according to legal provisions.

c) Exclusive Authority of Tax Investigation:

Article 44, Paragraph (1) states that tax crime investigations can only be carried out by specific civil servants within the DGT, who are granted special authority to investigate tax crimes.

These provisions highlight the exclusive role of DGT investigators in handling tax-crime investigations and underscore their specialized authority within the tax enforcement framework.

Article 44 of the GTP Act governs around 12 powers of the DGT's PPNS. However, they currently lack several critical powers. The following subsections will discuss these issues in more detail.

Based on the above, it is apparent that there is an overlap between the various laws governing investigations, with each institution establishing its procedures according to its specific interests. For tax investigations, the GTP Act serves as a specialized law, while the CP Code acts as the general law.

4.2. Power to Arrest Individuals

The power to arrest and detain individuals suspected of criminal offenses is essential for investigators, as it enables thorough examination and more effective monitoring of suspects. In Indonesia's CJS, arrest and detention are distinct concepts. Arrest involves temporarily restricting a suspect's freedom by an investigator when sufficient evidence as per the procedures outlined in the CP Code. However, detention refers to placing a suspect or defendant in a specified location by an investigator, prosecutor, or judge, following the provisions of the CP Code.

Typically, an arrest can last up to 24 hours from the time of apprehension, during which the investigator decides on further actions. In certain cases, such as terrorism (Terrorism Act, 2003) and narcotics (Narcotics Act, 2009) offenses, this period may be extended. If necessary, detention may follow an arrest, particularly in situations where there is concern that the suspect or defendant may flee, destroy or conceal evidence, or commit additional crimes. The CP Code provides for the extension of detention beyond the initial arrest period. Arrest and detention are particularly vital in addressing tax crimes, as incarceration (rather than fines) has been shown to significantly impact taxpayer compliance (Dubin, 2007).

However, in the context of tax crimes in Indonesia, tax investigators under the GTP Act lack the authority to arrest and detain individuals. To undertake these actions, tax investigators must seek assistance from the police. This requires a bureaucratic process, including a written request, which is not always granted by the police, as they may refuse based on their own considerations (Perkap 6, 2010). This dependency complicates and lengthens the arrest and detention procedures in tax investigations, increasing the risk of data leaks and additional costs. Moreover, if the police deny the request, it undermines the effectiveness and efficiency of tax investigations and may hinder the investigation process.



This situation contrasts sharply with that of the DGCE. Although both the DGT and DGCE operate under the Ministry of Finance and share the responsibility of collecting state revenue, customs investigators have the authority to arrest and detain individuals suspected of committing criminal customs offenses under Article 112 (2) d of the Customs Act. Similarly, under Article 63 (2) c of the Excise Act, excise investigators can arrest and detain individuals suspected of criminal excise offenses. This autonomy enables the DGCE to swiftly conduct investigations without needing police assistance for arrests and detentions. If necessary, the DGCE can seek support from entities such as the police and military during these procedures.

The authority to independently arrest individuals suspected of tax crimes is also exercised by tax authorities in various countries, such as HMRC in the UK, IRS-CI in the US, and the NTCA in the Netherlands (OECD, 2021b).

For the DGT to enhance the effectiveness and efficiency of its investigations, it is essential that it be granted the authority to independently carry out arrests and detentions without relying on police investigators, similar to the DGCE and other international tax authorities. Achieving this requires amending tax legislation concerning arrest and detention authorities, which would necessitate approval from the House of Representatives and other stakeholders. The DGT would also need to prepare the necessary personnel and resources for executing arrests and detentions.

Despite the challenges, including resistance from various parties, the DGT remains committed to expanding its authority in this area. The Director of Law Enforcement at the DGT expressed this commitment:

“We propose expanding the authority of tax investigators to include the power to carry out arrests and/or detentions in the draft Tax Law. Although this proposal was ultimately rejected by members of the House of Representatives for inclusion in the Tax Law, the rejection has not deterred us from continuing our efforts in tax law enforcement.” – Respondent Number One (R1).

Tax investigators have also shared their perspectives:

“The authority to carry out arrests and detentions would undoubtedly enhance the effectiveness and efficiency of investigations, particularly for certain tax crimes, such as the issuance of tax invoices not based on actual transactions, which often involve fictitious companies where perpetrators frequently evade capture and destroy or conceal evidence. This authority would also be beneficial for tax-related offenses linked to other criminal activities such as drug trafficking, gambling, and similar offenses.” (R11)

“As tax investigators, we strongly support the development of legislation that grants tax investigators the authority to conduct arrests and detentions. This is because on several occasions, we often encounter bureaucratic hurdles and procedures that must be navigated through police investigators for arrest and detention. These challenges result in significant drawbacks, such as wasted time, increased coordination costs, and slower case resolution.” (R15)

4.3. Power to Intercept Mail and Telecommunications

The power to intercept mail and telecommunication is a crucial authority in criminal investigations and intelligence activities. In practice, interception is widely utilized by law enforcement agencies to uncover crimes, particularly given the evolving modus operandi of serious offenses. It has become a reliable tool in criminal investigations (Eddyono, 2014; Krisnadi, 2009).

Interception enables law enforcement agencies to gather compelling evidence for trials that may be difficult to obtain through other methods. It plays a key role in uncovering organized crime, identifying perpetrators, understanding their roles, facilitating arrests, and conducting further investigations. Moreover, interception aids in preventing and detecting criminal plans prior to them being executed, thereby protecting society. However, the utilization of interception must be balanced with the protection of individual privacy rights. Stringent regulations and effective oversight are necessary to ensure that interception is conducted lawfully and not abused. Court or competent authority authorization is required to maintain a balance between law enforcement and human rights. In the context of criminal law, interception must be conducted through lawful procedures,



meaning it must be legally performed by authorized government agencies in accordance with applicable regulations, whether against individuals or groups.

In Indonesia, interception has long been a subject of controversy and debate among stakeholders, including legal experts and law enforcement officials. The controversy centers on the risks of abuse of power, human rights violations, the authorities permitted to intercept, and the procedures involved (Makarim, 2014). Currently, Indonesia lacks unified regulation governing lawful interception procedures (Dewi, 2018). With 17 different laws addressing interception practices, there is a clear lack of synchronization or harmonization among these regulations. This has led to overlapping provisions and discrepancies in the mechanisms and rules governing interception (Eddyono, 2014; Fadhil, 2020).

One Indonesian law enforcement agency with the authority to intercept and combat financial crimes, such as corruption, is the CEC. According to the CEC Act, Chapter I, Paragraph 2, the uncontrolled rise in corruption crimes not only threatens national economic life but also the overall national and state life. Widespread and systematic corruption is a violation of the public's social and economic rights and should be treated as an extraordinary crime requiring extraordinary measures rather than conventional approaches.

As defined in Article 1, Number 5, of the CEC Act, interception refers to the activity of listening to, recording, and/or documenting the transmission of nonpublic electronic information and/or documents, whether through wired, communication, wireless networks such as electromagnetic or radio frequency emissions, or other electronic devices. Article 12, Paragraph (1) states that the CEC is authorized to conduct interceptions when carrying out investigative duties related to corruption crimes, as referred to in Article 6, Letter e. Interception has proven to be a reliable tool for uncovering corruption cases (Krisnadi, 2009).

Currently, the DGT lacks the authority to intercept mail and telecommunications for tax crimes. Like other law enforcement agencies with intercepting capabilities, this authority would significantly enhance the efficiency and effectiveness of law enforcement by accelerating the evidence collection process and revealing criminal networks, such as those involved in fictitious tax-invoicing crimes in Indonesia. The DGT's digital forensic unit, which is experienced, geographically dispersed across Indonesia, and accredited under ISO/IEC 17025:2017, would further support this capability (DGT Annual Report, 2022).

As discussed in Chapter 1, Hiariej argues that tax crimes causing substantial harm to state finances are extraordinary. Therefore, adopting the intercepting authority held by the CEC for the DGT is justifiable, as tax crimes also result in significant state losses, potentially leading to severe consequences for the national economy and broader national and state life. Moreover, tax authorities in other countries, such as the HMRC in the UK and the NTCA in the Netherlands, have similar intercepting powers (OECD, 2021b).

Regarding the power to intercept mail and telecommunications, the Deputy Director of Investigation stated:

"The authority to conduct interceptions was once proposed by a member of the Working Committee of the House of Representatives to be included in the draft Harmonization of Tax Regulation (HTR) Act. However, during a meeting held by the Working Committee, this proposal was removed for certain reasons." (R5)

The Head of the Investigation Section also added:

"The considerations used by the Working Committee of the House of Representatives to reject the authority of the DGT to conduct intercepting included concerns about abuse of power, the DGT's insufficient competence to perform intercepting, the risk of human rights violations, and the continuing role of the police in assisting with the investigation of tax crimes." (R7)

Tax investigators have expressed the following perspectives:

"The authority to intercept is essential for anticipating and obtaining evidence of manipulation or tampering with responses by individuals under investigation when they are examined by tax investigators. While tax investigations are inherently post-audit in nature, those undergoing tax



investigations can collaborate and manipulate their responses or cases behind the scenes before being examined by investigators. This is where the necessity for interception by the DGT becomes evident.” (R9)

“The authority to intercept is essential for the DGT because in cases where perpetrators are caught through Operations to Catch Red-Handed Criminals, evidence of conversations between those involved in tax crimes is necessary. Additionally, interception is needed to uncover the networks involved in issuing fictitious tax invoices.” (R20).

4.4. Power to Submit a Warrant to Commence an Investigation (SPDP) and Investigation Files Directly to the Prosecutor

In Indonesia’s CJS, investigators are required to submit an SPDP to the prosecutor prior to initiating an investigation. Once the investigation is completed, the investigation dossier—referred to as P21 in Indonesian investigative procedures, indicating it has been declared complete by the prosecutor—must be promptly submitted to the prosecutor to proceed to court.

In the context of tax investigations, the GTP Act, Article 44, Paragraph (3), stipulate that tax investigators must notify the prosecutor of the commencement of the investigation and submit the results of their investigation through police investigators, following the provisions set out in the CP Code. This requirement is further supported by the Police Act, Article 16, Paragraph (1), Letter k, which authorizes the police to provide guidance and assistance to the PPNS and to receive the results of PPNS investigations for submission to the public prosecutor. Indonesian National Police Regulation No. 6 of 2010 on Investigation Management by PPNS, Article 21, Paragraph (1) reinforces this by stating that when an investigation commences, the PPNS must notify the public prosecutor through the police investigator with an SPDP, unless otherwise stipulated by law. Furthermore, Article 38, Paragraph (3) specifies that the submission of case files to the prosecutor must be performed by the police investigator.

Based on the explanation above, it is evident that tax investigators do not have the authority to submit SPDPs and investigation files directly to the prosecutor. Instead, they must submit all such documents to police investigators, who then forward them to the prosecutor. Therefore, the process of submitting investigation files is carried out indirectly by the DGT, as illustrated in Figure 1.

In contrast, when comparing the investigation processes between the DGT and the DGCE, it is evident that the DGCE does not face the same limitations. The DGCE possesses the authority to submit the SPDP and investigation files directly to the prosecutor, only needing to provide a copy of the SPDP and investigation files to police investigators. This authority is stipulated in the Customs Act, Article 112, Paragraph (3); the Excise Act, Article 63, Paragraph (3); and Government Regulation No. 55 of 1996 concerning customs and excise investigations, Articles 5, Paragraph (1) and (2). These provisions state that DGCE investigators must notify the commencement of investigations and submit investigation results directly to the prosecutor, with copies sent to police investigators (Government Regulation Number 55 of 1996 Concerning Customs and Excise Crimes Investigation, 1996). This arrangement operates under the principle of *lex specialis derogat legi generali*, meaning the specific provisions in Articles 112, Paragraph (3) of the Customs Act and 63, Paragraph (3) of the Excise Act override the general provisions in Article 7, and Paragraph (2) of the CP Code, which states that PPNS have authority according to their respective legal bases and are under the coordination and supervision of national police investigators (Mardana et al., 2021).

The process is illustrated in Figure 2 below.

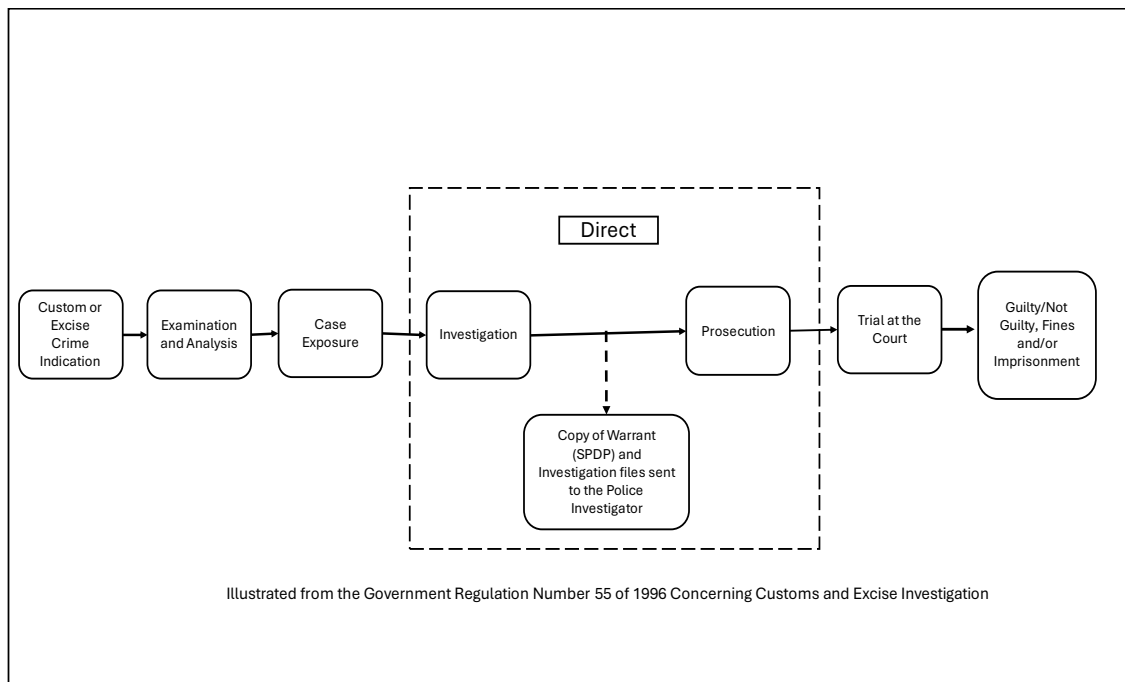


Figure 2: The Flow of Customs and Excise Investigation in DGCE

Figure 2 illustrates the streamlined process within the DGCE, where investigators communicate directly with the prosecutor while keeping the police informed, in contrast to the more indirect process employed by the DGT.

Based on this explanation and Figure 2, the DGCE's investigation process is more straightforward, independent, concise, and cost-effective. DGCE investigators submit the SPDP and investigation files directly to the prosecutor and provide copies to police investigators. This direct communication and coordinate with the prosecutor allow DGCE investigators to effectively manage the investigation material without relying on police intermediaries, as both the DGCE investigators and the prosecutor are deeply familiar with the case details. The prosecutor can directly guide the DGCE investigators if any data or files are incomplete. This approach aligns with the CP Code and the Police Act, which mandate that Police Investigators coordinate and oversee investigations conducted by the PPNS, as DGCE investigators still fulfil the requirement to provide copies of the SPDP and investigation files to police investigators.

To streamline bureaucratic processes, expedite case resolution, and reduce operational costs, the DGT should adopt the authority to submit the SPDP and investigation files directly to the prosecutor, similar to the DGCE's practice. This approach has also been implemented by several other tax authorities, including the NTA of Japan (OECD 2021b; National Tax College 2022, p. 155), HMRC in the UK, IRS-CI in the US, and NTCA in the Netherlands (OECD, 2021b). These examples further justify and support granting similar authority to the DGT.

Regarding the power to submit the SPDP and investigation files directly to the prosecutor, the Director of Law Enforcement stated:

"We collaborate and synergize with the Police, the Attorney General's Office, the Supreme Court, and the Ministry of Law and Human Rights as a form of mitigation against the absence of certain authorities that Tax Investigators do not possess, such as the power to submit SPDP and investigation files directly to the prosecutor and other related authorities." (R1)

Tax investigators expressed their opinions as follows:

"The power to submit the SPDP and investigation files directly to the prosecutor without going through police investigators, as DGCE investigators do, should also be granted to DGT investigators. This reduces bureaucracy and unnecessary costs. Police investigators should receive only a copy of



the SPDP and file transfer from the tax investigators to the prosecutor, without the need for a cover letter from the police investigators.” (R9)

“The power to submit SPDP and investigation files directly to the prosecutor is highly feasible to streamline bureaucracy and save time, as the investigators themselves and the file-reviewing prosecutors are the ones who understand the investigation material. Prosecutors are responsible for charges and indictments presented in court, rendering the role of police investigators unnecessary. However, we respect and acknowledge the police investigators for providing them with copies of the SPDP and investigation files.” (R16)

5. CONCLUSIONS

Combating tax crimes in Indonesia is a crucial duty for the government to ensure legal certainty and justice for society. Although there may be occasional doubts about prioritizing tax revenue and tax law enforcement (Nurferyanto & Takahashi, 2024). The Indonesian government is expected to continue supporting and strengthening the DGT in its efforts to combat tax crimes by enhancing its investigators’ investigative powers.

Given the current limitations in the DGT’s investigative authority, it is essential for stakeholders in Indonesia to consider strengthening this authority in line with the OECD guidelines, and specific tax investigation powers in Indonesia. These powers should include the following.

- 1) Power to Intercept Mail and Telecommunications: This would enable investigators to gather crucial evidence and uncover organized tax crimes.
- 2) Power to Arrest a Person: This enables investigators to arrest or detain suspects directly, which is critical for effective enforcement.
- 3) Power to Submit SPDP and Investigation Files Directly to the Prosecutor: This would streamline the process by eliminating unnecessary bureaucratic steps and accelerating case processing.

These powers would significantly enhance the effectiveness and efficiency of tax crime investigations in Indonesia.

To intercept mail and telecommunications, the DGT could adopt the authority currently held by the CEC. Although there are differing opinions and controversies regarding the utilization of interception powers in Indonesia, the evidence obtained through interception has proven to be highly reliable. Meanwhile, the powers to arrest individuals and submit SPDP and investigation files directly to the prosecutor could be adopted from the powers held by the DGCE, which operates under the Ministry of Finance and is responsible for collecting state revenue from taxes as well as both customs and excise duty. These authorities can also be adopted from agencies in other countries, such as the NTA, HMRC, IRS-CI, and NTCA, while adapting them to Indonesia’s legal framework. To do this, the DGT must persuade stakeholders to amend tax laws and ensure that the necessary personnel and resources are available for effective implementation.

Furthermore, with the planned establishment of the SRA, which aims to integrate the DGT and the DGCE into a single institution, the DGT’s investigative powers need to be aligned and strengthened to at least match those held by the DGCE. The addition of these powers to the DGT is expected to enhance the accuracy of criminal evidence required in investigations, streamline bureaucracy, reduce processing time, and lower operational costs through more independent operations.

This study encountered two limitations. First, the guidelines were based on an OECD principle regarding adequate tax investigative power and specific power in Indonesian tax laws and the CP Code. Second, the comparison and discussion of proposed enhancements to the DGT’s investigative powers were limited by Indonesia’s legal system and CJS, which may differ significantly from those in other countries. Future research could compare how countries implement tax investigative powers using the OECD’s principles or similar benchmarks, offering insights into their successes and failures. Further studies could also explore the economic impact of tax crimes globally and domestically, highlighting the need for world leaders to treat tax crimes as extraordinary offenses requiring decisive measures for eradication.



This study serves as a reference for Indonesian policymakers to enhance the DGT's tax investigative powers, offering new insights into law, criminology, taxation, and policymaking. As the first to explore adopting powers from the DGCE, CEC, and international tax authorities, this proposal may spark debate, but it is crucial for enhancing sustainable development and legal certainty. We hope it inspires future research on combating tax crime.


ACKNOWLEDGEMENT


This study was supported by the Lembaga Pengelola Dana Pendidikan (Indonesia Endowment Fund for Education) under reference letter S-1217/LPDP.4/2021.

We are grateful to all who contributed to and supported this research, especially the anonymous reviewers, who provided valuable comments and constructive feedback that improved this paper.

REFERENCES

1. Allingham, M. G., & Sandmo, A. (1972). Income tax evasion: A theoretical analysis. *Journal of Public Economics*, 1(3-4), 323-338. [https://doi.org/10.1016/0047-2727\(72\)90010-2](https://doi.org/10.1016/0047-2727(72)90010-2)
2. Budyatmojo, W. (2013). Penegakkan Hukum Tindak Pidana Illegal Logging (Antara Harapan dan Kenyataan). *Yustisia Jurnal Hukum*, 2(2). <https://doi.org/10.20961/yustisia.v2i2.10192>
3. Burhan, A. U. A., & Gunadi, G. (2022). Optimalisasi Wewenang PPNS DJP dalam Penyitaan dan Pemblokiran Aset untuk Pemulihan Kerugian Pendapatan Negara. *Owner*, 6(4), 4199-4209. <https://doi.org/10.33395/owner.v6i4.1102>
4. Chigbu, U. E. (2019). Visually Hypothesising in Scientific Paper Writing: Confirming and Refuting Qualitative Research Hypotheses Using Diagrams. *Publications*, 7(1), 22. <https://doi.org/10.3390/publications7010022>
5. Cobham, A., & Janský, P. (2018). Global distribution of revenue loss from corporate tax avoidance: Re-estimation and country results. *Journal of International Development*, 30(2), 206-232. <https://doi.org/10.1002/jid.3348>
6. Crivelli, E., Keen, M., & De Mooij, R. (2016). Base Erosion, Profit Shifting and Developing Countries. *FinanzArchiv*, 72(3), 268. <https://doi.org/10.1628/001522116X14646834385460>
7. Dewi, S. (2018). Privacy: An overview of Indonesia Statutes Governing lawful interception. *Central European Journal of International and Security Studies*, 12, 587-597.
8. DGT Annual Report. (2022). *DGT Annual Report 2022*. <https://www.pajak.go.id/id/tahunan-page> (accessed on 28 September 2023)
9. Drumbl, M. A. (2007). *Atrocity, Punishment, and International Law* (1st ed.). Cambridge University Press. <https://doi.org/10.1017/CBO9780511611100>
10. Dubin, J. A. (2007). Criminal Investigation Enforcement Activities and Taxpayer Noncompliance. *Public Finance Review*, 35(4), 500-529. <https://doi.org/10.1177/1091142106295757>
11. Eddyono, S. W. (2014). Mengurai Pengaturan Penyadapan Dalam Rancangan KUHAP. *Teropong Media Hukum dan Keadilan*, 1(1), 22-67.
12. Fadhil, Moh. (2020). The Urgency of the Harmonization of Interception Regulation in the Context of Law Enforcement. *Substantive Justice International Journal of Law*, 3(2), 125. <https://doi.org/10.33096/substantivejustice.v3i2.75>
13. Feld, L. P., & Frey, B. S. (2012). *Deterrence and Tax Morale: How Tax Administrations and Taxpayers Interact*. <https://web.archive.oecd.org/2012-06-15/160289-2789923.pdf> (accessed on 15 December 2023)
14. Ferguson, P. R. (2016). The Presumption of Innocence and its Role in the Criminal Process. *Criminal Law Forum*, 27(2), 131-158. <https://doi.org/10.1007/s10609-016-9281-8>
15. Government Regulation Number 55 of 1996 Concerning Customs and Excise Crimes Investigation (1996). <https://peraturan.bpk.go.id/Details/56755/pp-no-55-tahun-1996> (accessed on 28 September 2023)
16. Harahap, N. (2020). *Qualitative Research/Penelitian Kualitatif* (1st ed.). Wal ashri Publishing.

- 
17. Holloway, R. (2014). *CSOs-and-Corruption-in-Indonesia*. <http://www.richardholloway.org/wp-content/uploads/2014/04/CSOs-and-Corruption-in-Indonesia.pdf> (accessed on 28 September 2023)
 18. Hukumonline. (2012, July 5). *Aturan Denda Pajak Kategori Extra Ordinary Crime*. <https://www.hukumonline.com/berita/a/ahli--aturan-denda-pajak-kategori-iextra-ordinary-crime-i-lt4ff4692a23d12/#!>
 19. Ilhamy, A. B. (2024). *How Indonesia's new president aims to boost nationwide tax revenue*. East Asia Forum. <https://doi.org/10.59425/eabc.1712138400>
 20. Indonesian Corruption Eradication Commission Act 2002 as lastly amended in 2019 (2002). <https://peraturan.bpk.go.id/Details/44493/uu-no-30-tahun-2002> (accessed on 28 September 2023)
 21. Indonesian Criminal Procedure Code (1981). <https://peraturan.bpk.go.id/Details/47041/uu-no-8-tahun-1981> (accessed on 28 September 2023)
 22. Indonesian General Provisions and Tax Procedures Act 1983 as lastly amended in 2023 (1983). <https://peraturan.bpk.go.id/Details/246523/uu-no-6-tahun-2023> (accessed on 28 September 2023)
 23. Indonesian National Police Act 2002 (2002). <https://peraturan.bpk.go.id/Details/44418> (accessed on 28 September 2023)
 24. Indonesian Public Prosecution Service Act 2004 as lastly amended in 2021 (2004). <https://peraturan.bpk.go.id/Details/195550/uu-no-11-tahun-2021> (accessed on 28 September 2023)
 25. Junquera-Varela, R. F., Awasthi, R., Balabushko, O., & Nurshaikova, A. (2019). *Thinking Strategically about Revenue Administration Reform*. World Bank, Washington, DC. <https://doi.org/10.1596/33079>
 26. Kasim, A. (2013). Bureaucratic Reform and Dynamic Governance for Combating Corruption: The Challenge for Indonesia. *Bisnis & Birokrasi Journal*, 20(1). <https://doi.org/10.20476/jbb.v20i1.1862>
 27. Keen, M., & Slemrod, J. (2017). Optimal tax administration. *Journal of Public Economics*, 152, 133-142. <https://doi.org/10.1016/j.jpubeco.2017.04.006>
 28. Krisnadi, M. F. (2009). *Mekanisme Penggunaan dan Pembatasan Hasil Penyadapan Sebagai Upaya Pengungkapan Tindak Pidana Korupsi* [Undergraduate Thesis, University of Indonesia]. <https://lib.ui.ac.id/file?file=digital/2016-9/20323599-S22482-M%20Farhan%20Krisnadi.pdf>
 29. Kumalasari, K. P., Haliza, A. N., Alfandia, N. S., & Agusti, R. R. (2023). Comparative Analysis of Tax Administration between Indonesia and New Zealand. *Profit Jurnal Administrasi Bisnis*, 017(02), 231-241. <https://doi.org/10.21776/ub.profit.2023.017.02.7>
 30. Makarim, E. (2014). Indonesia: The controversy over the Bill concerning lawful interception. *Digital Evidence and Electronic Signature Law Review*, 8(0). <https://doi.org/10.14296/deeslr.v8i0.1962>
 31. Mardana, A. T. A., Bachri, S., & Azisa, N. (2021). Koordinasi PPNS Bea Cukai dan Penyidik Kepolisian dalam Penyidikan Tindak Pidana di Bidang Kepabeanan. *Hermeneutika*, 5(1), 40-52. <http://dx.doi.org/10.33603/hermeneutika.v3i2>
 32. Marhuenda, F., & Ortuño-Ortín, I. (1997). Tax Enforcement Problems. *The Scandinavian Journal of Economics*, 99(1), 61-72. <https://doi.org/10.1111/1467-9442.00047>
 33. Marzuki, P. M. (2005). *Legal Reseach/ Penelitian Hukum*. Kencana.
 34. McKerchar, M. A., & Evans, C. C. (2009). Sustaining Growth in Developing Economies Through Improved Taxpayer Compliance: Challenges for Policy Makers and Revenue Authorities. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.1415164>
 35. Mills, M., Van De Bunt, G. G., & De Bruijn, J. (2006). Comparative Research: Persistent Problems and Promising Solutions. *International Sociology*, 21(5), 619-631. <https://doi.org/10.1177/0268580906067833>
 36. Muhaimin. (2020). *Metode Penelitian Hukum*. Mataram University Press.
 37. Muhammad, A. (2004). *Hukum dan Penelitian Hukum*. Citra Aditya Bakti.

- 
38. Muladi. (1995). *Kapita Selektia Sistem Peradilan Pidana*. Badan Penerbit Universitas Diponegoro.
 39. Narcotics Act (2009). <https://peraturan.bpk.go.id/Details/38776/uu-no-35-tahun-2009> (accessed on 28 September 2023)
 40. National Tax College. (2022). *A Textbook on Japanese Tax Administration*. National Tax College.
 41. Nurferiyanto, D., & Takahashi, Y. (2024). Establishing Boundaries to Combat Tax Crimes in Indonesia. *Laws*, 13(3), 29. <https://doi.org/10.3390/laws13030029>
 42. OECD. (2017). *Fighting Tax Crime - The Ten Global Principles, First Edition: The Ten Global Principles*. OECD. <https://doi.org/10.1787/63530cd2-en>
 43. OECD. (2021a). *Fighting Tax Crime - The Ten Global Principles (Second Edition)*. OECD. <https://doi.org/10.1787/006a6512-en>
 44. OECD. (2021b). *Fighting Tax Crime - The Ten Global Principles (Second Edition) Country Chapters*. OECD.
 45. Ozili, P. K. (2020). Tax evasion and financial instability. *Journal of Financial Crime*, 27(2), 531-539. <https://doi.org/10.1108/JFC-04-2019-0051>
 46. Pomerleau, C. (2008). Reviewed Work: Atrocity, Punishment, and International Law Mark A. Drumbl. *International Journal on World Peace*, 25(2), 118-120. JSTOR.
 47. Rahmawati, N. A. (2013). Hukum Pidana Indonesia: Ultimum Remedium Atau Primum Remedium. *Recidive*, 2(1), 39-44. <https://doi.org/10.20961/recidive.v2i1.32002>
 48. Ratto, M., Thomas, R., & Ulph, D. (2005, August 1). *Tax Compliance as a Social Norm and the Deterrent Effect of Investigations*. Centre for Market and Public Organisation University of Bristol. <https://core.ac.uk/download/pdf/7352654.pdf> (accessed on 24 July 2024)
 49. Regulation of the Head of the National Police of the Republic of Indonesia Number 6 of 2010 concerning Investigation Management by Civil Servant Investigators (2010). <https://pusdikmin.com/perpus/file/Perkap%20No%206%20Th%202010%20ttg%20Manajemen%20Penyidikan%20PPNS.pdf> (accessed on 18 July 2024)
 50. Slemrod, J. (2007). Cheating Ourselves: The Economics of Tax Evasion. *Journal of Economic Perspectives*, 21(1), 25-48. <https://doi.org/10.1257/jep.21.1.25>
 51. Sukardi. (2005). *Illegal Longgong dalam Perspektif Politik Hukum Pidana (Kasus Papua)*. Universitas Atmajaya Yogyakarta.
 52. Syahuri, T., Saleh, G., & Abrilianti, M. (2022). The role of the corruption eradication commission supervisory board within the Indonesian constitutional structure. *Cogent Social Sciences*, 8(1), 2035913. <https://doi.org/10.1080/23311886.2022.2035913>
 53. Tax Justice Network. (2023, July 25). *State of Tax Justice 2023*. <https://taxjustice.net/wp-content/uploads/SOTJ/SOTJ23/English/State%20of%20Tax%20Justice%202023%20-%20Tax%20Justice%20Network%20-%20English.pdf>
 54. Terrorism Eradication Act 2003 as lastly amended in 2018 (2003). <https://peraturan.bpk.go.id/Details/82689/uu-no-5-tahun-2018> (accessed on 28 September 2023)
 55. Transparency International. (2023). *Corruption Perception Index Indonesia 2023*. <https://www.transparency.org/en/cpi/2023/index/idn>. (accessed on 29 February 2024)
 56. Turner, M., Prasojo, E., & Sumarwono, R. (2022). The challenge of reforming big bureaucracy in Indonesia. *Policy Studies*, 43(2), 333-351. <https://doi.org/10.1080/01442872.2019.1708301>
 57. Weston, P. B., & Wells, K. M. (1974). *Criminal Investigation Basic Perspectives* (Second Edition). Prentice-Hall Inc.