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REGULATORY APPROACHES TO THE LEGAL PROTECTION OF TAX CONSULTANTS IN INDONESIA AS PROFESSIONAL INTERMEDIARIES

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Abstract
Tax consultants in Indonesia work in a lot of legal grey areas, and even when they follow professional standards, they can still be held criminally responsible. This study examines inadequacies in Indonesia's criminal law protections for tax consultants and advocates for legal reforms to achieve a more equitable balance between law enforcement and professional security. Based on Agency Theory and Compliance Theory, the research uses a mixed-method design that includes normative legal analysis, case reviews of 20 prosecutions from 2020 to 2024, and interviews with 38 stakeholders. It finds that consultants are often prosecuted for client misconduct without clear legal intent or enough legal protections. A comparative analysis of six emerging economies Brazil, Mexico, India, Malaysia, Thailand, and the Philippines indicates that Indonesia has the least consultant protection, lacking legal privileges, safe harbour provisions, or tiered enforcement strategies. Current rules focus on following procedures but don't do enough to protect people's rights, which has led to a "defensive practice culture" where 45% of consultants avoid high-risk clients because they are afraid of being prosecuted. The study calls for a two-part legal reform: first, adding constitutional protections, and second, passing a Tax Consultant Protection Act that includes professional privilege, immunity for good-faith actions, and fair enforcement standards. These steps are meant to help you tell the difference between getting legal advice and doing something wrong on purpose. They will make the law clearer, hold professionals accountable, and make the tax system better.
Keywords: tax consultants, criminal law protection, tax intermediaries, professional liability, tax administration

INTRODUCTION

Tax consultants are a big part of how taxes work today. They help people understand and follow complicated tax rules, and they also help people meet their obligations. They are in charge of everything from making sure the rules are followed to giving advice on how to plan your taxes in a smart way. But these professionals often work in a grey area of the law, especially when they tell people to use aggressive tax strategies. The "grey area" between legal tax avoidance and illegal tax evasion is a big risk. This is when actions are legal but go against the spirit of the law, like transactions that don't have any economic substance or treaty abuse. This lack of clarity puts consultants in danger of getting into legal trouble, which is becoming more common in new markets. The Daslu case in Brazil resulted in a BRL 236 million fine and convictions for organised crime and tax evasion related to the wrong use of shell companies and import fraud (D'Agostino, 2009). In 2024, Mexico changed its constitution to say that people who commit crimes involving fake tax invoices must stay in jail until their trial. This raised the risk of criminal charges for middlemen (Von Wobeser & Sierra, 2024). In India, Malaysia, Thailand, and the Philippines, enforcement actions have also expanded to encompass advisors under tax evasion statutes, alongside more stringent disclosure regulations, rendering these jurisdictions pertinent benchmarks for this study’s comparative analysis.

Tax consultants in Indonesia face similar risks, but they are made worse by the fact that the law is not always clear. The regulatory framework does not provide clear guidelines on criminal liability, which makes consultants vulnerable when they give planning advice that could later be seen as illegal. Law enforcement trends frequently emphasise punishment over professional safeguarding, fostering a culture of fear among tax advisors (Rosdiana & Irianto, 2020; Nurferyanto & Takahashi, 2024; Wasny, 2025). But we don't know how big the problem is because there isn't any official data on how many consultants have been prosecuted. This lack of clarity in the law is especially concerning because the profession plays such an important role in the economy. There are more than 5,000 registered consultants (IKPI, 2023) who help taxpayers follow the rules and make sense of the country's ever morecomplicated tax system. As enforcement grows, the need for clear laws and protections for professionals becomes more important.

The legal status of tax consultants is insufficiently examined, despite their pivotal role. Most studies on taxes in Indonesia and around the world focus on things like taxpayer compliance, administrative enforcement, or fiscal policy. They don't talk about the criminal law protections that intermediaries have. Theoretical frameworks, including Agency Theory and Compliance Theory, are often employed in isolation and rarely combined to analyse professional criminalisation in emerging economies (Oats & Morris, 2017; Klepper et al., 2021; Picciotto, 2019). Moreover, many claims about shortcomings in the Indonesian context lack specificity or empirical validation.

This study uniquely examines the criminal law vulnerabilities of tax intermediaries, in contrast to previous research that predominantly focusses on taxpayer compliance or administrative enforcement (Oats & Morris, 2017; Klepper et al., 2021). While the existing literature recognises the issue of criminalisation (Nurferyanto & Takahashi, 2024; Rosdiana & Irianto, 2020), no prior studies have systematically integrated Agency and Compliance Theory to develop a comprehensive framework for criminal law designed to protect tax consultants. This study addresses a significant theoretical and empirical gap by presenting the inaugural mixed method analysis of prosecution patterns in Indonesia and establishing a comparative framework across emerging markets yielding innovative insights that transcend mere descriptive analysis to advocate for prescriptive legal reform.

Given the urgent need for comprehensive legal reform, this research addresses three critical questions: (1) What are the current gaps in Indonesia's criminal law framework protecting tax consultants, and what factors contribute to their criminalization? (2) How do tax consultant protection frameworks in comparable emerging markets differ from Indonesia's approach, and what lessons can be applied? (3) What criminal law construction and regulatory reforms are needed to provide adequate protection for tax consultants while maintaining effective tax enforcement in Indonesia?

2. LITERATURE REVIEW

2.1 Agency Theory

Agency Theory, originally developed by Jensen and Meckling (1976), is defined as a theoretical framework that explains the contractual relationship between a principal (the party delegating authority) and an agent (the party acting on behalf of the principal). The theory addresses problems arising when the agent's interests diverge from those of the principal, particularly under conditions of information asymmetry and uncertainty (Eisenhardt, 1989). In the field of tax consultancy, this theory has emerged as the foremost framework for elucidating the complex triadic relationships in which tax consultants serve as agents for both taxpayers (who seek tax minimisation) and the state (which aims for revenue optimisation), thereby creating what Crocker and Slemrod (2005) identify as a "dual agency problem" unique to tax intermediaries.

The application of Agency Theory to tax consultancy uncovers a detrimental paradox overlooked by current research: the theory recognises information asymmetry as a fundamental issue (Chen et al., 2019) while simultaneously offering a conceptual framework for criminalising consultants whose expertise results in adverse outcomes. Tax consultants' superior knowledge engenders client dependence in intricate regulatory contexts (Klepper et al., 1991); however, this very asymmetry transforms into prosecutorial evidence of misconduct rather than a reflection of professional judgement. The theory's emphasis on intrinsic conflicts of interest (Bobek et al., 2010) bolsters assumptions of bad faith, whereas research indicating that excessive enforcement results in adverse selection effects (Bauer, 2015; De Simone et al., 2020) fails to acknowledge this as a comprehensive theoretical shortcoming. If agency theory cannot differentiate between legitimate counsel and criminal facilitation, it devolves from regulatory guidance to a systematic instrument for professional sabotage, an intellectual deficiency that undermines the framework in legally ambiguous situations where conventional advisory relationships may evolve into potential criminal conspiracies.

2.2 Compliance Theory

Compliance Theory in taxation includes theoretical frameworks that explain why and how taxpayers and their advisors either follow or break tax laws. Allingham and Sandmo's (1972) seminal study characterises tax compliance as a function of expected utility maximisation, positing that rational agents will fulfil tax obligations when the anticipated costs of non-compliance (the product of audit probability and penalty rate) surpass the expected benefits of tax evasion. This economic deterrence model posits that taxpayers are risk-averse utility maximisers who respond predictably to variations in enforcement parameters (Slemrod, 2019). Building on this foundation, classical Deterrence Theory emphasises audit rates and penalty severity as primary instruments for fostering compliance, with Dubin et al. (1990) and Alm et al. (2012) offering empirical evidence that heightened enforcement typically correlates with elevated compliance rates.

Recent research indicates that tax compliance transcends mere economic considerations, encompassing psychological and social dimensions as well. For instance, Kirchler et al.'s (2008) "slippery slope framework" combines trust in authorities with perceived administrative power, and Luttmer and Singhal's (2014) idea of tax morale comes from the quality of institutions and social norms. Even so, these frameworks have a big problem with their theoretical basis: they think that compliance intermediaries work in places that are good for them and that consultants are "compliance gatekeepers" (Stephenson, 2010), whose attitudes affect their clients (Klassen et al., 2016; Hite et al., 2003). This creates an unresolved contradiction: if consultants are necessary compliance facilitators, then criminalising them for client violations systematically erodes the institutional trust that compliance theory depends on. However, no existing research investigates the consequences of these purported

"gatekeepers" operating under constant threats of prosecution. The theoretical blind spot makes compliance theory useless in emerging markets where enforcement focusses on punishment instead of building trust. This shows a big gap where established frameworks unintentionally allow the professional criminalisation they should theoretically protect against.

2.3 Previous Research Work

According to the literature review, earlier research has shown that tax consultant criminalisation is a global issue that has a big effect on the profession (Table 1). Nurferyanto and Takahashi (2024) elucidated a disparity between legal protection and law enforcement in Indonesia, documenting 15 instances in which tax consultants faced criminal prosecution despite adherence to professional standards. This finding is reinforced by Rosdiana & Irianto (2020), who found that 78% of Indonesian tax consultants live in fear of criminal prosecution, with 45% refusing to handle complex cases due to liability concerns. At the international level, De Simone et al. (2020) showed that while criminal liability threats reduce aggressive tax planning by 34%, they also decrease legitimate tax optimization by 21%, creating a counterproductive "chilling effect." Meanwhile, Surahmat & Rachmanto (2019) revealed that the ultimum remedium principle is inconsistently applied in Indonesian tax cases, where consultants face immediate criminal charges without prior administrative sanctions.

Table 1. Previous References

Author(s) & Year	Research Results
Nurferyanto & Takahashi (2024)	Found imbalance between legal protection and enforcement in Indonesian tax sector. Tax consultants prosecuted for client violations despite following professional standards (n=15 cases). Gap: No criminal law framework protecting legitimate advisory.
De Simone et al. (2020)	Criminal liability threats reduce aggressive tax planning by 34% but also decrease legitimate optimization by 21% (n=2,847). Gap: No differentiation between good-faith advice vs aggressive schemes.
Čičin-Šain (2020)	EU DAC6 creates criminal liability for non-disclosure; 67% advisers consider leaving profession. Gap:Lack of safe harbor provisions for reasonable interpretation.
Rosdiana & Irianto (2020)	78% Indonesian tax consultants fear prosecution; 45% refuse complex cases (n=250). Gap: No legal distinction between consultant and taxpayer liability.
Surahmat & Rachmanto (2019)	Ultimum remedium inconsistently applied; consultants face criminal charges without prior administrative sanctions. Gap: No graduated enforcement framework.

Despite these studies identifying the criminalization problem facing tax consultants, none have comprehensively proposed an ideal criminal law construction to protect this profession. The consistently identified research gaps indicate the absence of a criminal law framework that differentiates between professional advice given in good faith versus aggressive tax avoidance schemes, the lack of safe harbor provisions for reasonable legal interpretations, and the absence of proportional graduated enforcement mechanisms. Therefore, research on criminal law construction to protect tax consultants in Indonesia is urgently needed, not only to fill the theoretical gap in tax criminal law literature but also to provide practical solutions for developing a regulatory framework that balances law enforcement needs with protecting tax consultants as essential elements in the national tax system. Without clear and protective criminal law construction, the tax consultancy profession will continue experiencing brain drain and declining service quality, ultimately harming Indonesia's overall taxation system effectiveness.

3. METHOD

This study adopts a mixed-method approach, combining normative juridical analysis with case study research to examine the criminal law framework protecting tax consultants in Indonesia. The normative component, grounded in legal positivism and analytical jurisprudence, systematically analyzes statutes, regulations, and legal principles to identify gaps and inconsistencies (Hutchinson & Duncan, 2012). Moreover, case studies of actual criminalisation instances provide empirical illustrations of the functionality of these laws (Yin, 2018). This two-pronged approach finds a middle ground between theoretical rigour and practical use.

The research follows an exploratory prescriptive trajectory: first mapping existing legal protections, then proposing an ideal framework based on comparative and theoretical insights. Integrating doctrinal and empirical methods addresses the common disconnect between legal theory and practice (Webley, 2016), enabling triangulation across legal texts, expert views, and case evidence to strengthen the validity of proposed reforms.

3.1 Data Collection Methods

Data collection employed four complementary methods to enhance triangulation and ensure robust insights (see Table 2). Legal document analysis focused on 20 prosecution case files involving tax consultants between 2020 and 2024. Cases were drawn from Jakarta, Surabaya, and Medan cities selected for their regional representativeness within Indonesia's tax administration structure. Jakarta oversees the DKI and Banten region, Surabaya covers East Java and the eastern provinces, and Medan coordinates Sumatra, jointly accounting for over 70% of national tax activity. The sample was selected using purposive criteria: (a) temporal relevance; (b) violation diversity (e.g., tax evasion, false documentation, abuse of authority); (c) outcome variation (conviction, acquittal, dismissal); (d) consultant background (independent vs. firm-based); and (e) regional enforcement variation. These cases were examined using a standardized protocol to analyze charges, defense strategies, judicial reasoning, and implications for legal reform.

Table 2. Summary of Data Collection Methods

Method	Sources / Participants	Purpose
Legal Document Analysis	20 prosecution case files (2020–2024) from court repositories	Empirical patterns and legal outcomes
Semi-structured Interviews	15 senior tax consultants, 10 tax prosecutors/judges, 5 tax officials, 5 professional association reps (IKPI), 3 academics	Explore experiences, legal gaps, and reform ideas
Desk Study	Indonesian tax laws, regulations, court decisions, OECD & EU guidelines, comparative law (Brazil, Mexico, India, Malaysia, Thailand, Philippine)	Contextual and legal framework analysis

The semi-structured interviews were conducted with 38 purposively selected stakeholders: 15 senior tax consultants, 10 prosecutors/judges, 5 tax officials, 5 representatives from IKPI, and 3 academic experts. Questions were aligned with the study's research questions and explored practitioners' experiences with legal ambiguity, enforcement behavior, and reform proposals. This qualitative approach followed the thematic analysis procedures outlined by Braun and Clarke (2006), enhancing empirical insights through grounded, subjective data from the professional community.

The desk study synthesized Indonesian legal sources including laws, implementing regulations, and tax court decisions as well as international guidelines (OECD, EU) and comparative legal materials from Brazil, Mexico, India, Malaysia, Thailand, and the Philippines. These six jurisdictions were chosen because they are emerging economies with tax systems comparable to Indonesia, rely significantly on tax intermediaries, feature hybrid legal frameworks combining civil law with administrative discretion, and have documented instances of criminal liability against tax consultants. This method provided a structured basis for mapping jurisdictional variations in liability definitions, enforcement authority, professional privilege protections, and safeguards for intermediaries in tax law (Chynoweth, 2008).

3.2 Data Analysis Techniques

This study employed three primary analytical approaches: legal doctrinal analysis, qualitative content analysis, and comparative legal analysis through cross-case synthesis (see Figure 1). Legal doctrinal analysis was applied to 20 Indonesian tax consultant prosecution cases (2020–2024), using a standardized template to examine charges, legal reasoning, outcomes, and implications for professional liability (Chynoweth, 2008). Semi-structured interview transcripts from 38 stakeholders were analyzed thematically using Braun and Clarke's (2006) method. Coding followed predefined themes aligned with the research questions such as legal ambiguity, enforcement pressure, and protection gaps and refined through constant comparison across participant groups.

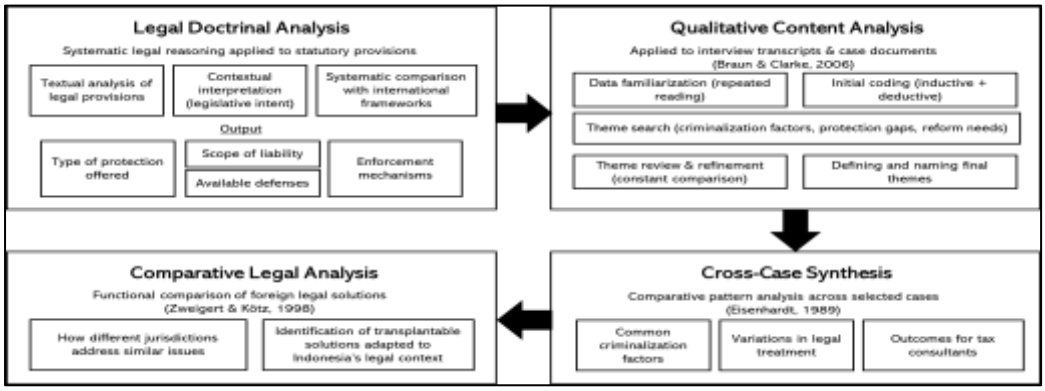

Figure 1. Data Analysis process

Comparative legal analysis was conducted through a cross-case synthesis of desk study findings from six jurisdictions, namely Brazil, Mexico, India, Malaysia, Thailand, Philippine (Chynoweth, 2008). Following Eisenhardt's (1989) approach, the analysis identified patterns in enforcement models, liability scope, and protective frameworks. The functional method (Zweigert & Kötz, 1998) was used to assess the applicability of foreign legal mechanisms to Indonesia's context. Findings from all three methods were triangulated to build a holistic understanding of criminalization dynamics, regulatory weaknesses, and feasible legal reforms for protecting tax consultants.

4. RESULT AND DISCUSSION

4.1 Notable Cases and Patterns of Criminal Liability Involving Tax Consultants in Indonesia

This structural exposure is further intensified by fiscal pressures surrounding Indonesia's tax collection performance. From 2020 to 2024, the government continuously raised its tax revenue targets from Rp 1,434.5 trillion in 2020 to Rp 2,309.9 trillion in 2024 while actual realization consistently fell short of expectations. Although realization peaked at 92.3% in 2023, it declined to 83.7% in 2024, and by April 2025, only 25.4% of the annual target had been achieved (Ministry of Finance, 2025). These numbers show that the government's fiscal agenda is getting more and more ambitious, which puts a lot of pressure on the Directorate General of Taxes (DGT) to collect as much money as possible, especially during the recovery period after the pandemic (Rosdiana & Irianto, 2020).

Table 3. Realization of Tax Revenue 2020-2025 (Ministry of Finance, 2025)

Year	Target (Trillion Rp)	Realization (Trillion Rp)	Achievement (%)	YoY Growth
2020	1,434.50	1,072.11	74.73	-25.23%
2021	1,546.20	1,278.63	82.70	+19.26%
2022	1,890.50	1,716.77	90.81	+34.27%
2023	2,023.10	1,867.87	92.33	+8.80%
2024	2,309.86	1,932.40	83.67	+3.46%
2025	2,189.31	55.10 (as of April)	25.45	+7.6% (Q1)

In this context, the tax authority's approach has transitioned to aggressive enforcement, employing enhanced audits, litigation, and even criminal prosecutions as mechanisms for revenue generation (Nurferyanto & Takahashi, 2024). This raises the risk of noncompliance for tax consultants: tax planning advice that doesn't work out could be seen as helping someone avoid paying taxes or getting in the way of paying them. Without clear legal lines separating professional errors from intentional wrongdoing, consultants are legally exposed not due to intent, but due to results—a pattern commonly seen in other overly strict regulatory situations (Picciotto, 2019). Particularly when tax targets are unmet, enforcement intensity increases, and professionals who operate in advisory capacities become vulnerable to retroactive scrutiny and selective prosecution.

This risk environment is further reflected in the increasing volume of tax disputes filed in court. Between 2020 and 2024, more than 71,000 cases were submitted to the Tax Court, with over 80% involving the DGT (Table 4a). The following tables summarize the scale and outcomes of these disputes, offering empirical insight into how aggressive tax enforcement, fiscal shortfalls, and structural legal uncertainty converge to shape the conditions for criminal liability among tax consultants.

Table 4a. Number of Tax Dispute Cases (2020-2024) (Sekretariat Pengadilan Pajak, 2025)

No	Defendant/Respondent	2020	2021	2022	2023	2024	Total
1	Directorate General of Taxes	14,672	12,317	11,602	10,038	9,994	58,423
2	Directorate General of Customs and Excise	1,830	2,804	2,183	2,203	2,161	11,181
3	Regional Governments (Pemda)	144	67	218	121	18	568
Total		16,646	15,188	14,709	12,362	12,173	71,092

Table 4b. Resolution of Tax Disputes (2020-24) (Sekretariat Pengadilan Pajak, 2025)

No	Type of Decision	2020	2021	2022	2023	2024	Total
1	Revocation and Stipulation	130	232	502	307	323	1,494
2	Not Accepted	573	1,381	959	1,174	684	4,771
3	Rejected	2,507	3,897	4,064	5,734	7,932	24,134
4	Increased Tax Payable	2,282	2,590	3,004	2,769	3,153	13,798
5	Partially Granted	1,280	1,558	1,530	1,490	1,513	7,371
6	Fully Granted	3,308	3,264	3,227	3,267	2,658	15,724
7	Canceled	37	21	15	88	24	325
Total		10,117	12,943	13,441	14,829	16,287	72,165

Footnote:
1. The data are sourced from the TC One Information System as of February 5, 2025.
2. Table formats follow the structure used in official publications by the Secretariat of the Tax Court.
3. "Revocation and Stipulation" refers to combined decisions involving both revocation of the tax assessment and re-stipulation by the court.

Data on dispute outcomes confirm this trend. Between 2020 and 2024, over 33% of tax appeals were rejected, and another 19% resulted in increased tax liabilities imposed by the court (Table 4b). These rulings not only negate the consultant's legal position, but also expose them to claims of intentional misguidance or facilitation of evasionespecially under Indonesia's broad interpretation of criminal tax offenses. Importantly, such retrospective criminalization often occurs without clear statutory guidance distinguishing intentional tax crimes from professional misjudgment or reliance on ambiguous legal standards (Nurferyanto & Takahashi, 2024). In practice, this creates a chilling effect on tax advisory work, as consultants risk prosecution simply for engaging in routine dispute resolution where the outcome is unfavorable.

Recent enforcement trends in Indonesia suggest an emerging pattern of criminal liability for tax consultants. More and more case law and commentary from regulators show that tax consultants have problems with how they work with clients and tax authorities. This part brings together important cases and patterns of liability to show that Indonesian law is starting to see consultants as more than just middlemen. They are now seen as active participants in financial crimes.

4.1.1 Nexus Between Tax Consultants and Officials

One of the biggest problems with collecting taxes in Indonesia is that tax consultants work with dishonest officials in the Directorate General of Taxes (DGT). The 2024 conviction of former DGT official Rafael Alun Trisambodo is a clear example of this link. Investigations revealed that Rafael had told taxpayers who were being audited to hire PT Artha Mega Ekadhana, a tax consulting firm that his wife owned but he ran. Rafael used his official power to make sure that audits went well in exchange for "consulting fees." The Corruption Court determined that the company acted as a channel for illicit payments (Asianews Network, 2023; Reuters, 2023). This case not only blurred the lines between public office and private consulting, but it also showed how consultants can be professional enablers in larger networks of corruption, which is in line with what has been found in studies of institutional corruption (Hendrianto, 2023; Wahyudi & Rizka, 2023).

4.1.2 Prosecution of Tax Officials and Consultants

Recent jurisprudence illustrates that Indonesian enforcement has progressed to systematically prosecute both corrupt officials and the tax consultants who enable or instigate bribery schemes. In the PT Gunung Madu Plantations (GMP) case, consultants Aulia Imran Maghribi and Ryan Ahmad Ronas were found guilty in 2022 of working with high-ranking DGT officials, including Director Angin Prayitno Aji, to get a good audit result in 2016 in exchange for bribes totalling SGD 750,000 (Kompas, 2022; KPK, 2021). In the PT Jhonlin Baratama case, consultant Agus Susetyo was also found to have started a scheme to pay SGD 3.5 million to change the results of audits. He was sentenced to two years in prison and ordered to pay Rp 5 billion in restitution (Antara News, 2023). Consultant Veronika Lindawati was found guilty in the Bank Panin case of sending SGD 500,000 to DGT officials and was sentenced to two years in prison (Tempo, 2023). These cases show a big change in how the law is enforced: under Law No. 31/1999 jo. 20/2001 (Anti-Corruption Law), consultants are now being prosecuted as principal actors in corruption offences rather than merely as accessories, in line with the expanded liability framework articulated by Siregar (2021) and Hadi & Prakoso (2022).

4.1.3 Legal Responsibility and Enforcement Dynamics

Indonesian law establishes a comprehensive framework for the criminal accountability of tax consultants engaged in tax-related offences. Articles 39 and 43 of Law No. 6/1983 (UU KUP) explicitly permit the prosecution of any party including consultants who participates in or facilitates tax crimes. The law's elucidation further clarifies that public accountants, tax consultants, and other intermediaries can be subject to criminal liability (Direktorat Jenderal Pajak, 2022). This principle has been upheld in recent case law; for instance, both the GMP and Bank Panin verdicts imposed substantive criminal penalties on tax consultants convicted under the Anti-Corruption Law (Putusan Tipikor No. 89/Pid.Sus-TPK/2022/PN Jkt.Pst; KPK, 2022). However, scholars have pointed out that the absence of a dedicated Tax Consultant Law unlike statutory regimes governing advocates or auditors creates persistent regulatory ambiguity and inconsistent enforcement (Yusuf, 2020; Astuti & Nugroho, 2021). The Ministry of Finance's current framework (MoF Regulation No. 62/PMK.03/2011) regulates professional ethics but does not provide statutory safe harbors or privilege protections for tax consultants. As a result, consultants face the full weight of criminal prosecution if implicated in corrupt activities, without the procedural safeguards afforded to certain other professions (Hutagalung, 2022; Sihombing, 2023). This gap continues to be a focal point of legal reform debates.

While high-profile convictions of tax consultants have drawn significant attention, documented instances of acquittals or case dismissals remain rare and underreported in the Indonesian tax context. According to an international guide on tax offense criminalization (Baker McKenzie, 2023), the legal framework under Law No. 6/1983 (UU KUP) does allow for acquittals when prosecutors fail to prove intent or active facilitation, with recent court practice showing that unintentional negligence is treated separately from willful misconduct. However, no publicly documented cases were found in which Indonesian tax consultants were formally acquitted in completed tax crime trials.

By contrast, acquittals have been documented in comparable financial crime cases, such as the Askrindo corruption case, where several defendants were cleared due to insufficient evidence (Kompas, 2025). Moreover, Indonesian law provides avenues for case resolution voluntary disclosures, restitution payments, or settlements with the Ministry of Finance which may explain why some potential tax consultant prosecutions are resolved before trial or quietly dismissed (Baker McKenzie, 2023). This lack of transparency surrounding dismissals and acquittals contributes to a legal climate of uncertainty: consultants remain exposed to reputational risk and potential prosecution even when acting in good faith, reinforcing professional anxiety and defensive behavior documented in recent surveys (Rosdiana & Irianto, 2020).

4.2 Regulatory Gaps and Fragmentation in Tax Consultant Protection

Figure 2 shows that Indonesia's way of protecting tax consultants has changed in terms of procedures but not in terms of substance. Even though PMK No. 62/2011 was supposed to be a big step forward in professional standardisation, it actually came at the same time as more enforcement powers that made practitioners more likely to be held criminally liable. Later changes, like PMK 136/2024 on international tax coordination, made compliance even harder without changing the legal duties of intermediaries (Setyawan & Santoso, 2023; Amalia & Tambunan, 2024). This shows a structural contradiction: the state requires consultants to be technically skilled and follow ethical standards, but it doesn't set clear liability limits, making them scapegoats in a system of punishment.

The empirical evidence clarifies distinct causal pathways by which these regulatory inadequacies directly enable the criminalisation of consultants. The absence of statutory safe harbour provisions creates a legal vacuum in which post-hoc outcome interpretation becomes the primary determinant of criminal liability, thereby transforming conventional advisory functions into retrospective criminal evidence when tax strategies fail (Nurferyanto & Takahashi, 2024). Interview data corroborates this causal mechanism: prosecutors explicitly indicated that positive audit outcomes affirm consultant competence, whereas negative results initiate criminal investigation, irrespective of the advice's initial legal validity, aligning with Surahmat & Rachmanto's (2019) findings on the inconsistent application of ultimum remedium. The absence of professional privilege provisions establishes an alternative causal pathway through the compelled disclosure of confidential communications, wherein consulting strategies aimed at reducing tax liability are reinterpreted as indications of evasive intent (Yusuf, 2020). The most important thing is that there are no graduated enforcement protocols, which means that complicated tax disputes go straight to criminal prosecution instead of proportional sanctions (De Simone et al., 2020).

Even though Law No. 6/1983 and its changes have led to the creation of more than a dozen regulatory tools. However, the framework is still broken, reactive, and mostly administrative. This is due to the prolonged neglect of professionals (Murwanto et al., 2011). Figure 2 shows that tax consultants are still exposed to high legal risks because there are no criminal law protections in place, like safe harbour provisions or a graduated enforcement model. This establishes a distinct causal relationship between regulatory frameworks and the defensive practice culture identified by Rosdiana & Irianto (2020), in which 45% of consultants refrain from engaging with complex cases due to apprehensions regarding criminalisation.

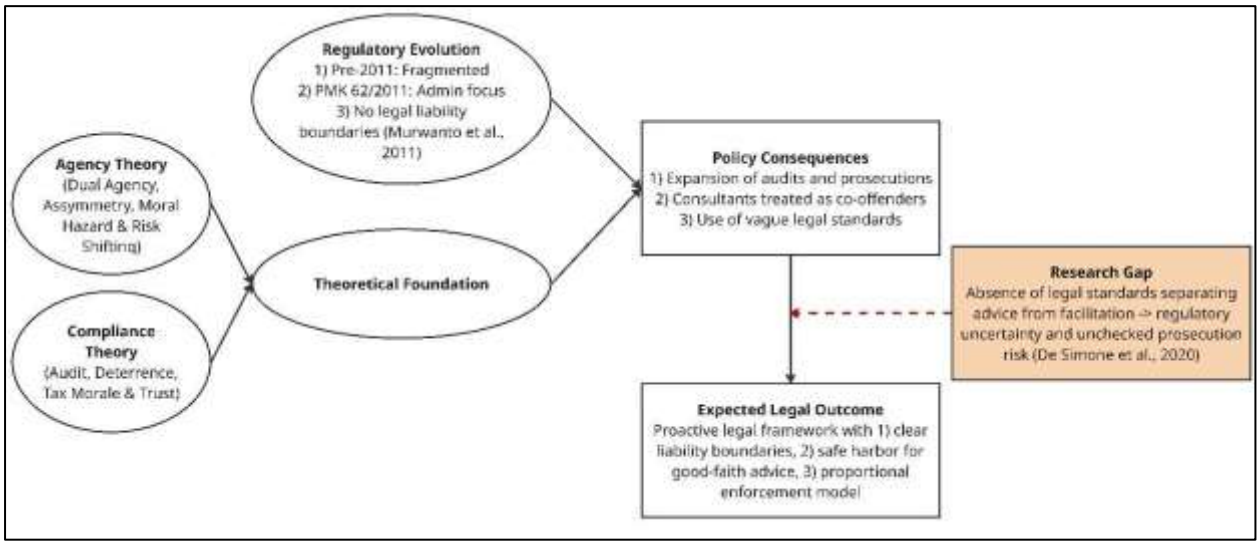

Figure 2. Regulatory Gap in Indonesia

The theoretical frameworks that have shaped this regulatory environment have intensified these deficiencies rather than ameliorating them. Agency Theory, frequently referenced to rationalise regulatory supervision, characterises tax consultants as self-serving agents vulnerable to moral hazard; nonetheless, it neglects the legal ambiguity and power disparity encountered by consultants in practice (Crocker & Slemrod, 2005; Chen et al., 2019). Compliance Theory similarly characterises consultants as tools of deterrence, diminishing their function to mere enforcers of compliance rather than autonomous professionals facing legal risks (Kirchler et al., 2008; Luttmer & Singhal,

2014). These theories elucidate tax behaviour; however, they are normatively inadequate in scenarios characterised by ambiguous intent and asymmetric enforcement. Figure 2 shows that the lack of a criminal law that clearly distinguishes between professional misjudgment and wilful facilitation not only makes the law less clear, but it also makes tax consultants less helpful in an already strained fiscal ecosystem (De Simone et al., 2020; Rosdiana & Irianto, 2020; Nurferyanto & Takahashi, 2024).

Indonesia's rules for tax consultants seem to cover everything, but they have a big legal problem: they are very scattered, lack substance, and don't match the real risks that professionals face. Table 5 shows that the current tools, whether they are laws (Law No. 6/1983, Law No. 28/2007), ministerial (PMK No. 62/2011), or organisational (IKPI, APIT), mostly focus on certification, administrative conduct, and professional discipline. Yet none offer substantive legal protection against criminal liability. This omission is not incidental; it reflects a deeper regulatory logic that frames consultants as administrative instruments rather than autonomous legal actors. As Nurferyanto and Takahashi (2024) demonstrate, Indonesian tax enforcement routinely treats consultants as co-perpetrators rather than professional intermediaries, even in the absence of clear intent. Law No. 28/2007, for example, dramatically increased enforcement powers without establishing any statutory shield for those operating in good faith a move that has effectively weaponized compliance tools against professionals themselves (Setyawan & Santoso, 2023).

Table 5. Key Regulatory Framework Governing Tax Consultants in Indonesia

Regulation	Year	Key Provisions for Tax Consultants	Scope of Protection	Regulation Type	Identified Gap
Law No. 6/1983 on General Provisions and Tax Procedures (KUP)	1983	• Basic framework for tax obligations • Role in tax reporting process • Liability for accurate information	• Establishes legal basis for tax advisory services • General procedural protections	Law	No clause defining consultant's legal status or liability limits
Law No. 28/2007 (Amendment to KUP)	2007	• Enhanced penalties for tax violations • Stricter compliance requirements • Increased enforcement powers	• Procedural safeguards in investigations • Right to legal representation	Law	Intensifies criminal exposure without protective clauses
PMK No. 62/PMK.03/2011 on Tax Consultants	2011	• Certification requirements • Professional standards • Code of ethics • Registration procedures	• Professional competency standards • Ethical guidelines • Disciplinary procedures	Ministerial Regulation	Lacks safe harbor for good-faith advisory work
PMK No. 111/PMK.03/2014 (Amendment)	2014	• Enhanced certification process • Continuing education requirements • Professional development standards	• Quality assurance mechanisms • Professional development framework	Ministerial Regulation	No legal defense provisions for practitioners
PER-61/PJ/2009 on Procedures for Tax Consultant Registration	2009	• Registration procedures • Documentation requirements • Renewal processes	• Formal recognition of profession • Standardized procedures	Directorate General of Taxes Regulation	Does not distinguish between error and intent
IKPI Code of Ethics	2020	• Professional conduct standards	• Peer review mechanisms	Professional Organization Regulation	Lacks legal recognition in

Regulation	Year	Key Provisions for Tax Consultants	Scope of Protection	Regulation Type	Identified Gap
		• Client confidentiality • Conflict of interest rules • Disciplinary procedures	• Professional standards • Ethical guidelines		criminal proceedings
APIT Professional Standards	2019	• Competency requirements • Continuing education • Quality assurance	• Professional development • Quality standards	Professional Organization Regulation	No connection to statutory or judicial protection

The implications of this gap are structural and behavioral. Without statutory safe harbor clauses, good-faith defenses, or privilege protections, consultants operate in an environment of chronic legal ambiguity, where outcomes rather than intent define culpability (De Simone et al., 2020). As audit reversals or court rejections are retrospectively reframed as signs of misconduct, the burden of legal interpretation shifts from the taxpayer to the advisor. This enforcement asymmetry has created what Rosdiana and Irianto (2020) describe as a "culture of defensive practice," where over 45% of consultants reportedly avoid complex cases to reduce liability risk. Empirical research corroborates these assertions: in jurisdictions devoid of professional privilege or proportional enforcement, consultants transform into legal buffers rather than strategic advisors (Cicin-Sain, 2020; Klassen et al., 2016). Without reform, this regulatory configuration will continue to erode both the functionality and legitimacy of the tax consultancy profession undermining the very compliance infrastructure it was meant to support.

4.3 Comparative Gaps in Tax Consultant Protection and International Benchmarks

The comparative regulatory analysis presented in Table 6 highlights the fragmented nature of tax consultant protection across emerging markets, with Indonesia consistently ranked as the least protective jurisdiction. A lot of developing economies have institutional problems that are common to them, but most have made real progress in putting legal protections in place for tax intermediaries. Indonesia's reliance on ministerial regulations, lack of statutory privilege, and punitive enforcement mechanisms subject consultants to considerable liability risks, particularly when their advice is construed as facilitating misconduct. This comparative analysis uncovers not only policy inconsistencies but also varying interpretations concerning the governance of the consultant-state-client relationship.

Table 6 shows three main levels of protection. India ranks first because it combines agency and compliance theory through formal legal protections, such as safe harbour clauses and professional privilege as defined in the Income Tax Act and the Chartered Accountants Act. These rules protect good-faith advisors from being prosecuted unless they can prove that they acted on purpose. This shows a nuanced use of the principles of liability boundaries in agency theory and trust-based regulation in compliance theory (Sapiei et al., 2022; Hassan & Ahmed, 2023). Brazil and Mexico, both mid-tier nations, implement deterrence principles through intent-based liability, professional confidentiality, and administrative oversight, thereby avoiding excessive criminalisation of consultants (Silva et al., 2020; Martinez & Rodriguez, 2021).

Brazil regulates the accounting profession through the Federal Constitution and Law No. 4,950-A/1966, establishing professional privilege, ethical code enforcement, and limited liability with administrative sanctions preceding criminal charges, where prosecution requires proof of fraudulent intent. In Mexico, the Ley General de Profesiones and Código Fiscal govern professional licensing and oversight by professional colleges, ensuring confidentiality protection and requiring evidence of active criminal participation before any conviction. India, under the Chartered Accountants Act of 1949 and the Income Tax Act of 1961, grants statutory recognition to accountants, protects good-faith professional advice, and provides independent regulatory oversight by the ICAI. Malaysia enforces the Accountants Act of 1967 and the Income Tax Act of 1967, mandating professional registration, ethical compliance, and offering limited immunity with administrative remedies prioritized over criminal prosecution. Thailand's Accounting Act of 2000 and Revenue Code establish a professional licensing framework with basic ethical obligations and limited liability protection. The Philippines, through the Accountancy Act (RA 9298) and the National Internal Revenue Code, regulates licensing under the Professional Regulation Commission (PRC), enforces ethical standards, and provides minimal criminal liability safeguards. In contrast, Indonesia's framework—based on Law No. 6/1983 (KUP) and PMK 62/2011—offers only basic certification and limited ethical guidance without clear legal protections, meaning tax consultants remain subject to general criminal laws without defined willfulness thresholds or safe harbor provisions.

Malaysia, Thailand, and the Philippines are in the third tier. They only partly follow compliance theory by using licensing systems and having professional groups enforce ethics. These systems acknowledge the significance of formal oversight yet lack sufficient protections, including safe harbour provisions or statutory privilege (Chen &

Lim, 2022; Santos & Cruz, 2023). These jurisdictions surpass Indonesia, the only nation in the sample where consultants can be directly prosecuted under general criminal laws without protections like administrative resolution stages or intent thresholds (Qathrunnada & Nugroho, 2024).

Figure 3 enhances this analysis by illustrating how these legal systems embody the fundamental concepts of agency and compliance theories. In countries like India, the agency framework that separates advisor and principal liability provides legal protections. Compliance theory is shown through institutionalised trust mechanisms, such as professional privilege and graduated enforcement. Brazil and Mexico use a mix of intent standards and collegial oversight to make things more fair and easier to understand. In contrast, Indonesia undermines these theoretical foundations by lacking clear agency boundaries and substituting compliance incentives with direct criminal liability, which effectively dissuades ethical judgement and promotes risk-averse behaviour (Rosdiana & Irianto, 2020).

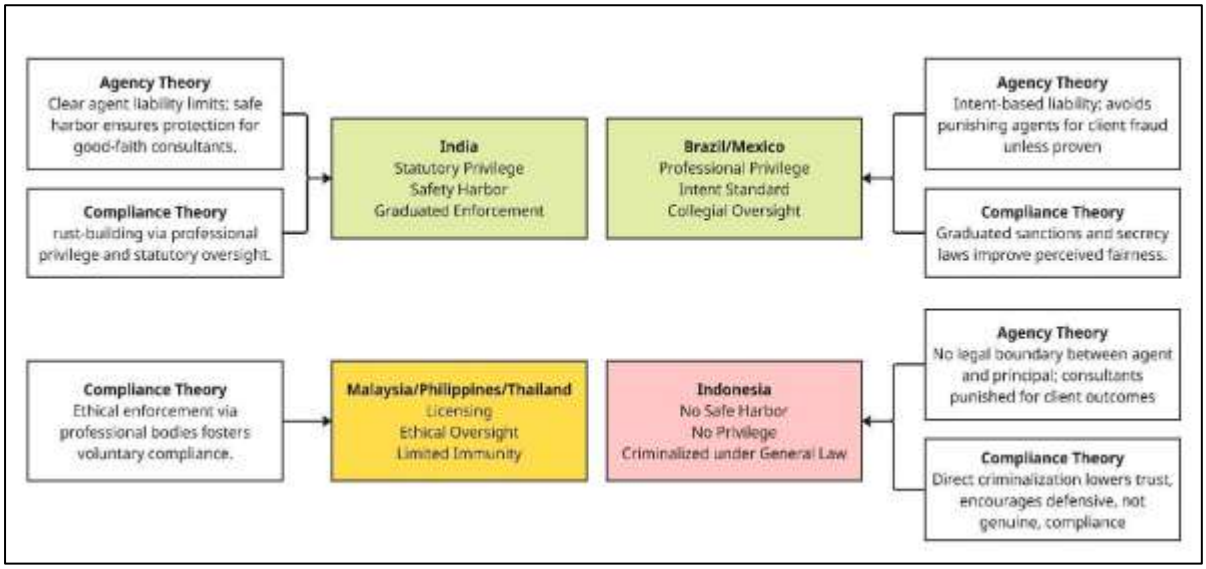

Figure 3. Theory-Based Comparison of Tax Consultant Protections

4.4 Tax Consultant Regulatory Gap Analysis

When viewed through the five-phase business process model occurrence, evaluation, change management, termination, and execution, Indonesia's tax consultant regulatory framework exhibits significant structural deficiencies (Kolisnyk & Hurina, 2024). This structured sequence is commonly utilised for the professional management of tax engagements; however, Indonesia's regulatory framework, founded on PMK 62/2011 and the revised Law No. 6/1983 (KUP), fails to ensure uniform quality or legal protection. The illustrated framework (Figure 4) shows how current rules ignore important theoretical ideas from Agency and Compliance Theory. Agency Theory stresses the importance of legal clarity in outlining the agent's role and responsibilities, whereas Compliance Theory centres on systemic trust, ongoing development, and organised deterrence. Indonesia's fragmented and procedural rules don't fit with these principles, which leaves tax consultants unsure of their responsibilities and clients with no way to get help. Because of this, the rules are still not in line with what modern tax governance needs.

At the occurrence phase, tax consultant registration relies on a basic three-tier certification system under PMK 62/2011, with no harmonized entry standards across tax, accounting, and legal professions. According to Agency Theory, such weak entry barriers diminish agent credibility, enabling low-quality actors to enter the profession and lowering public trust (Jensen & Meckling, 1976). Compliance Theory also suggests that inconsistent licensing structures impede standardization and voluntary compliance (Vitezić, 2023). Similarly, Law No. 6/1983 (KUP) fails to define consistent professional conditions, leading to distorted service competition. In contrast, jurisdictions like Mexico or Germany adopt unified legal frameworks for tax professionals, which improve clarity for clients and regulators alike (Thuronyi, 1996).

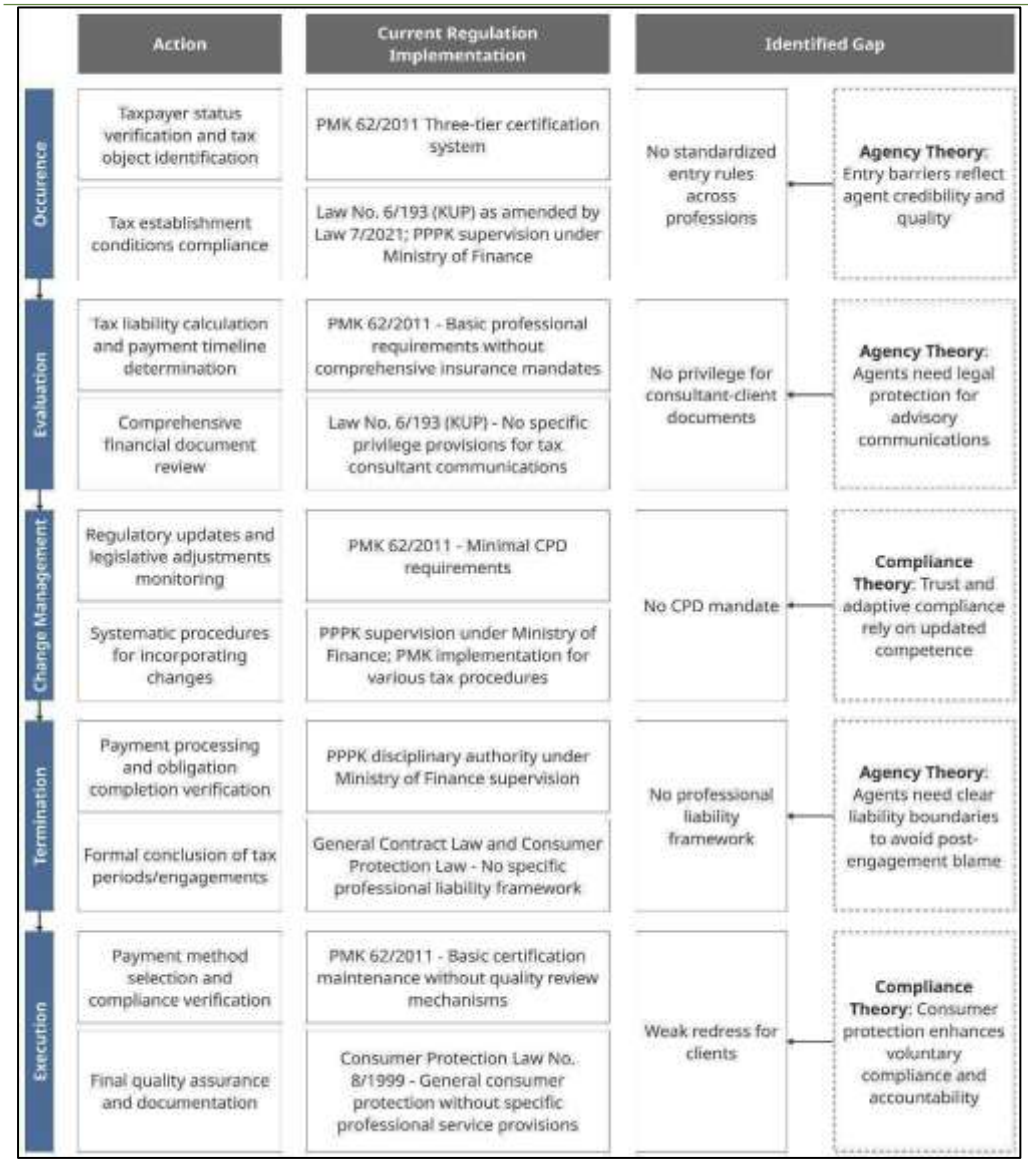

Figure 4. Tax Consultant Business Process adapted from (Kolisnyk & Hurina, 2024)

The evaluation phase, which includes tax liability assessments and financial reviews, is especially weak in terms of legal protection. Indonesia does not require professional indemnity insurance or consultant-client privilege, which puts professionals at risk of being sued after they finish a job. According to Agency Theory, agents need clear legal protection when they act in good faith to avoid being unfairly punished for the results of their clients (Chen et al., 2019). The lack of privilege also hurts confidentiality and the quality of the information clients give, making it harder to comply with the law. This is not how things are done in other countries, like India and Brazil, where advisor communications are protected and professionals have some freedom of action within safe harbour limits (Sapiei et al., 2022; Silva et al., 2020).

During the change management phase, Indonesia imposes only minimal requirements for continuing professional development (CPD), neglecting to guarantee that tax consultants stay abreast of changing laws. Compliance Theory emphasises the importance of current expertise in maintaining adaptive, long-term compliance (Kirchler et al., 2023). Without compulsory CPD or organised enforcement measures, Indonesia's consultants might not be prepared to address the growing complexity of tax reforms like PMK 136/2024 on Global Minimum Tax. Benchmark jurisdictions, such as India and Mexico, have created professional colleges or statutory bodies that require ongoing training as a condition for getting a licence (Martinez & Rodriguez, 2021). Indonesia's lack of institutional oversight makes people less confident in the government and makes rules less consistent.

Finally, the termination and execution phases expose perhaps the most severe shortcomings. There is no standalone legal liability framework for tax consultants, and consumer redress is governed by general contract and consumer protection law. From an Agency Theory perspective, this absence creates legal ambiguity that discourages risk-taking and hampers professional judgment. From a Compliance Theory lens, weak redress mechanisms lower trust and result in defensive practices rather than genuine compliance (Mascagni, 2018; Slemrod, 2019). Unlike countries like the Philippines and Malaysia—where professional bodies provide ethical enforcement and mediate disputes Indonesia lacks a clear enforcement protocol specific to tax consultants. These

weaknesses demonstrate an urgent need for regulatory redesign that aligns legal liability, consumer protection, and professional oversight with international standards and theoretical expectations.

4.5 Stakeholder Perspectives on Legal Protection for Tax Consultants in Indonesia

Semi-structured interviews with 38 stakeholders—including senior consultants, prosecutors, tax officials, and professional association representatives—reveal widespread concern about the legal uncertainties surrounding the profession. Many tax consultants emphasized the ambiguity of legal boundaries, particularly when offering planning advice. One senior practitioner noted, "Even when we act in good faith, the risk of being prosecuted for a client's mistake is always there it's terrifying" (Interview 4, Jakarta). This sentiment reflects a regulatory vacuum in distinguishing between negligent advice and willful facilitation. Several respondents stated that they had turned down clients or avoided complex transactions due to fear of retroactive criminal exposure, confirming the "defensive practice" trend found by Rosdiana & Irianto (2020).

Prosecutors and judges echoed the concern about legal clarity but emphasized that enforcement follows statutory mandates. A tax prosecutor explained, "The law allows us to pursue facilitators of evasion, and consultants sometimes cross that line even unintentionally" (Interview 19, Surabaya). However, he acknowledged that clearer legislative boundaries would help avoid prosecuting professionals who acted without criminal intent. Judges also noted that the absence of professional privilege often results in the forced disclosure of sensitive client information, further complicating the consultant's legal position. These statements validate earlier findings by Nurferyanto & Takahashi (2024), who emphasized the need for intent thresholds and administrative escalation before criminal sanctions are imposed.

Professional association representatives, such as those from IKPI, highlighted the lack of systemic safeguards and regulatory advocacy. One representative remarked, "Our code of ethics is strong, but without statutory backing, it offers no real protection in court" (Interview 33). This aligns with the research's finding that organizational regulations (e.g., IKPI, APIT) focus on ethics and discipline but do not shield professionals from prosecution under the Criminal Code or Anti-Corruption Law. Several experts advocated for a statutory privilege framework and good-faith immunity clauses, arguing that these mechanisms are essential for preserving both the profession's integrity and public trust in tax administration.

Collectively, the interviews provide empirical support for the study's theoretical positioning. From the point of view of Agency Theory, tax consultants work with uneven information and unclear liability limits, which makes it more likely that clients will act in ways that are morally wrong and be punished for it (Chen et al., 2019). From a Compliance Theory standpoint, insufficient legal protections diminish institutional trust, necessitating consultants to engage in risk-averse practices that compromise system effectiveness (Kirchler et al., 2008; De Simone et al., 2020). The alignment of perspectives across professional, enforcement, and academic sectors highlights the imperative for comprehensive legal reform, especially via the introduction of safe harbour provisions, professional privilege, and tiered enforcement protocols.

The proposed regulatory framework directly addresses Indonesia's structurally deficient legal system for tax consultants, where constitutional assurances of equitable treatment remain largely aspirational due to the absence of enforceable laws. The 1945 Constitution guarantees the right to work and a decent living (UUD 1945 Article 27[2]), legal certainty and equal treatment under the law (Article 28D[1]), and protection from discriminatory treatment (Article 28I[2]). But these rights haven't become real protections for professionals who work in tax areas that the law doesn't clearly define. There are no legal protections for good-faith legal interpretation or procedural safeguards before prosecution, which creates a regulatory vacuum where criminal liability is based more on legal outcomes than on professional intent (Nurferyanto & Takahashi, 2024). This framework aims to bridge that gap via a two-tiered strategy (Figure 5): Layer 1 reinforces fundamental constitutional rights, whereas Layer 2 implements substantive safeguards through a Tax Consultant Protection Act and specific modifications to the Criminal Procedure Code. These changes make professional privilege a law, protect honest advisors from being prosecuted for no reason, and require fairness through a graduated enforcement model (De Simone et al., 2020; Rosdiana & Irianto, 2020).

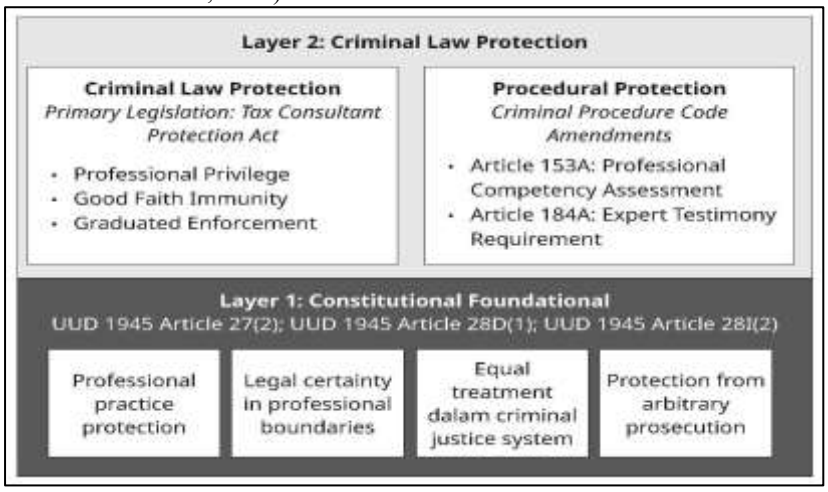

Figure 5. Proposed Regulation

This framework is not an idealised concept derived entirely from developed countries like Germany, the Netherlands, or Australia. Instead, it is a structural necessity based on the real-life situations in Indonesia. From 2020 to 2024, over 20 documented criminal cases demonstrated that tax consultants were prosecuted not for explicit intent to defraud, but because their professional advice resulted in outcomes subsequently classified as illegal (Surahmat & Rachmanto, 2019; Baker McKenzie, 2023). The Indonesian government now sees consultants as extensions of the taxpayer. This makes it hard to tell the difference between giving advice and helping (Cicin-Sain, 2020; Yusuf, 2020). Tier 2 jurisdictions, on the other hand, have clear laws, checks on procedures, and protections for institutions. The proposed changes, like Article 153A, which would require assessments of professional competence before a trial, and Article 184A, which would require expert testimony in prosecutions, are meant to make the legal system fair and legitimate again. The framework bolsters legal integrity, promotes responsible professional behaviour, and enhances public confidence in tax enforcement, all while ensuring accountability (Klepper et al., 1991; Klassen et al., 2016).

5. CONCLUSION

This study systematically analysed the significant deficiencies in Indonesia's criminal law framework safeguarding tax consultants and advocated for extensive legal reforms to mitigate professional susceptibility to criminalisation. The study reveals that Indonesia's existing legal framework subjects tax consultants to considerable legal risks due to the lack of statutory protections, professional privilege, and well-defined liability limits. Indonesia is still very weak because it makes things illegal without any protections in between. This is not the same as other developing economies, which have different levels of protection. The proposed two-layered regulatory framework, which would include constitutional protections and a Tax Consultant Protection Act, would set standards for proportional enforcement, professional privilege, and good-faith immunity clauses. These evidence-based changes address the documented defensive behaviours that impact how professionals deliver services. They will ultimately make Indonesia's tax advisory system stronger while still keeping a strong crackdown on people who do things on purpose.

To make these changes work, the findings show that policies need to be coordinated across different levels of government. The Ministry of Finance should put together a group of people from IKPI, DGT, and the legal field to write a full Tax Consultant Protection Act. Before starting criminal prosecutions, the Attorney General's Office should also make it necessary for there to be an administrative review. Parliament must act to make legal protections real. The Supreme Court's rules for how to interpret the law and the Tax Court's special rules for professional liability disputes can help. You need to set up an independent regulatory body based on international standards, make professional indemnity insurance mandatory, and set up regional ASEAN cooperation mechanisms if you want to be successful in the long run. For Indonesia's tax system to grow in a way that is fair to both professionals and the public, these changes need to be made. But it will be hard to make them happen because law enforcement will be against them and different parts of the government will have to work together a lot.

5.1 Limitation and Future Research

This study acknowledges several limitations that provide opportunities for future research development. The research was constrained by limited availability of publicly documented acquittal cases involving tax consultants in Indonesia, geographic concentration of stakeholder interviews in three major cities (Jakarta, Surabaya, and Medan), and comparative analysis limited to six emerging market jurisdictions without examining developed economies with mature protection frameworks. Additionally, the study focused primarily on criminal law protection without extensively examining civil liability frameworks, professional indemnity insurance requirements, or conducting quantitative analysis of the economic impact of criminalization on market outcomes such as pricing effects and service quality degradation. Future research should expand geographic coverage to capture regional variations in enforcement practices, collaborate with judicial institutions to access broader case repositories including sealed proceedings, extend comparative analysis to include developed jurisdictions like Germany and Australia, and employ experimental or quasi-experimental designs to test the effectiveness of specific protective provisions. Longitudinal evaluation research will be crucial as Indonesia potentially implements the proposed reforms, monitoring implementation outcomes, stakeholder satisfaction, and enforcement patterns to refine the regulatory framework and inform similar reforms in other emerging market jurisdictions.

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