

## Tax Criminal Acts Which Damage To State Finance As Criminal Acts Of Corruption In Indonesia

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### ABSTRACT

A crime in the field of taxation is an act that violates tax laws and regulations that causes losses to state finances where the perpetrator is threatened with criminal penalties. Criminal acts that can harm state finances or the country's economy should and should be categorized as a criminal act of corruption, as defined in the definition of criminal acts of corruption according to the law on the eradication of criminal acts of corruption. Problems, 1) How is criminal law enforcement in the tax sector, 2) Why can criminal acts in the tax sector be categorized as criminal acts of corruption. Based on the problems studied, the type of research is normative legal research methods. Normative legal research methods are carried out by examining existing library materials. The research conducted is also descriptive in nature. In the normative legal research method, there are three kinds of library materials used by the authors, namely: primary legal materials, secondary legal materials and tertiary legal materials. The results of the study show, first, the enforcement of criminal law in the field of taxation in Indonesia is currently carried out based on laws and regulations in the field of taxation that apply as a Special Law (*Lex Specialist*) in the field of Taxation, but if not sufficiently regulated in laws and regulations in the field of taxation, then the provisions stipulated in the Criminal Code as General Law (*Lex Generalis*) are applied based on Article 103 of the Criminal Code (KUHP), secondly, Tax crimes can be categorized as corruption, due to the characteristics criminal acts in the tax sector are the same as criminal acts of corruption, in which both tax crimes and corruption crimes both harm state revenues, state finances or the country's economy.

**Keywords:** Tax, Tax Law, Tax Crime

### ABSTRAK

Tindak pidana di bidang perpajakan adalah suatu perbuatan yang melanggar peraturan perundang-undangan pajak yang menimbulkan kerugian keuangan negara dimana pelakunya diancam dengan hukuman pidana. Perbuatan pidana yang dapat merugikan keuangan negara atau perekonomian negara sudah seharusnya dan tepat bila dikategorikan sebagai suatu tindak pidana korupsi, sebagaimana Pengertian Tindak Pidana Korupsi Menurut Undang-Undang Tentang Pemberantasan Tindak Pidana Korupsi. Permasalahan, 1) Bagaimanakah penegakan hukum pidana di bidang pajak, 2) Mengapa tindak pidana di bidang pajak dapat dikategorikan sebagai tindak pidana korupsi. Berdasarkan permasalahan yang diteliti maka jenis penelitian adalah metode penelitian hukum normatif. Metode penelitian hukum normatif dilakukan dengan cara meneliti bahan pustaka yang ada. Penelitian yang dilakukan juga bersifat deskriptif. Di dalam metode penelitian hukum normatif terdapat tiga macam bahan pustaka yang dipergunakan oleh penulis yakni : bahan hukum primer, bahan hukum sekunder dan bahan hukum tersier. Hasil penelitian menunjukkan, *pertama*, Penegakan hukum pidana di bidang pajak di Indonesia saat ini dilakukan berdasarkan pada peraturan perundang-undangan dibidang perpajakan yang berlaku sebagai Hukum yang Khusus (*Lex Spesialis*) dibidang Perpajakan, namun jika tidak cukup diatur dalam peraturan perundang-undangan dibidang perpajakan, maka diberlakukan ketentuan sebagaimana diatur dalam Kitab Undang-Undang Hukum Pidana sebagai Hukum yang Umum (*Lex Generalis*) berdasarkan Pasal 103 Kitab Undang-Undang Hukum Pidana (KUHP), *kedua*, Tindak pidana di bidang pajak dapat dikategorikan sebagai tindak pidana korupsi, dikarenakan karakteristik tindak pidana dibidang pajak adalah sama dengan tindak pidana korupsi, yang mana baik tindak pidana pajak maupun tindak pidana korupsi sama-sama merugikan pendapatan negara, keuangan negara atau perekonomian negara.

**Kata Kunci :** Pajak, Hukum Pajak, Tindak Pidana Pajak

## Background

In tax practice, errors and irregularities are often committed by tax agency employees and citizens (taxpayers) who fall into the realm of administrative law and criminal law. Violations of tax obligations committed by taxpayers, as long as these violations are included in tax administration actions, sanctions will be imposed in the form of administration, whereas if those involving criminal acts, criminal sanctions can be imposed.

In this tax matter, the state is face to face with the taxpayers, as the ruler in carrying out his duties to regulate his relationship with his citizens.<sup>1</sup>

Tax elements, including:<sup>2</sup>

1. Legislation that forms the basis for tax collection, both central and regional taxes;
2. Tax subjects;
3. Tax object;
4. Tax collectors
5. Tax assessment letter

A crime in the field of taxation is an act that violates tax laws and regulations that causes losses to state finances where the perpetrator is threatened with criminal penalties.<sup>3</sup> Criminal acts that can harm state finances or the country's economy should and should be categorized as a criminal act of corruption, as defined in the definition of criminal acts of corruption according to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 Regarding the Eradication of Corruption Crimes, included in the criminal act of corruption is Everyone who is categorized as against the law, commits acts of self-enrichment, benefits himself or other people or a corporation, abuses authority or opportunities or facilities available to him because of his position or position. can be detrimental to state finances or the country's economy.

From a legal point of view, corruption in general fulfills the following elements:

- Act against the law
- abuse of authority, opportunity, or means
- enrich themselves, others, or corporations, and

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<sup>1</sup> KMS. Herman, *Hukum Pajak "Penyelesaian Sengketa Pajak di Pengadilan Pajak"*, FP Aswaja, NTB, Cet. 1, 2020, hal. 70

<sup>2</sup> KMS. Herman, *Pajak Daerah dan Retribusi Daerah Sebagai Sumber Pendapatan Asli Daerah*, FP Aswaja, NTB, Cet. 1, 2020, hal. 49

<sup>3</sup> T.N. Syamsiah, *Tindak Pidana Perpajakan*, Penerbit PT. Alumni, Bandung, 2011, hal. 3

- detrimental to state finances or the country's economy

Article 2 paragraph (1) of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes:

*"Anyone who unlawfully commits an act of enriching himself or another person or a corporation that can harm the state's finances or the country's economy, shall be punished with life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a minimum fine of Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah)"*

then Article 3:

*"Anyone who, with the aim of benefiting himself or another person or a corporation, abuses the authority, opportunity or facilities available to him because of his position or position which can harm the state's finances or the country's economy, shall be punished with imprisonment for life or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and/or a fine of at least Rp. 50,000,000 (fifty million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah)"*.

The criminal act of corruption has been recognized even before the formation of the United Nations Convention Against Corruption (Republic of Indonesia Law No. 7 of 2006 concerning Ratification of the United Nations Convention Against Corruption, 2003) through Law Number 31 of 1999 concerning Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption (Criminal Acts of Corruption).

Currently criminal acts in the field of taxation are still Lex Specialist in nature, because the provisions governing tax crimes are contained in the tax criminal law which contains regulations regarding:

1. What actions can be punished
2. Who can be punished, and
3. What penalties can be imposed.

So this tax crime is an act that violates tax laws and regulations that cause losses to state revenues where the perpetrator is threatened with criminal penalties. Violations of tax obligations committed by taxpayers as long as they involve tax administration actions are subject to administrative sanctions, while those involving criminal acts in the field of taxation are subject to criminal sanctions. In order to find out that a criminal act in the field of taxation has occurred, it is necessary to carry out an examination to seek, collect, process data and or

other information to test compliance with tax obligations and for other purposes in the context of implementing the provisions of tax laws and regulations. The legal basis and location of tax crime arrangements in Indonesia are contained in Article 103 of the Indonesian Criminal Code, as follows

*"The provisions in Chapters I to Chapter VIII of this book also apply to acts which are punishable by other laws and regulations, unless otherwise determined by law."<sup>4</sup>*

Article 103 of the Criminal Code is often referred to or termed as a bridge article for regulations or laws that regulate criminal law outside the Criminal Code. Article 103 of the Criminal Code is in book I of the General Rules, containing terms that are often used in criminal law. This article bridges that all the terms/understandings contained in chapter I up to chapter VIII of the first book of the Criminal Code can be used if it is not regulated otherwise in the law or regulations governing criminal law outside the Criminal Code, it means that as long as the Law in the field of Taxes regulates criminal acts committed which must be used, but if there is no tax law that regulates it, then the provisions in the Criminal Code as the Lex Generalis, that will be used.

Tax Crimes in the perspective of material criminal law discusses 3 (three) main issues, namely the formulation of tax crimes, tax criminal liability and tax criminal solutions. Formulation policies regarding tax crimes are formulated in Articles 38, 39, 39A, 40, 41, 41A, 41B, 41C, 43 and Article 43A of the Law on General Provisions and Tax Procedures. From the formulation of these articles, the types of criminal acts of taxation in the form of violations (culpa) are unintentional acts and tax crimes in the form of crimes (dolus) are acts committed intentionally. The subjects of tax crimes are humans and corporations (legal entities). Tax criminal responsibility by humans is based on culpability (errors). For corporations as perpetrators of tax crimes, the principle of tax liability is based on the theory of identification, vicarious liability, and strict liability. Criminal sanctions against perpetrators of criminal acts of taxation, only use criminal sanctions in prison and confinement. In order to maintain state revenues, the formulation of fines against tax offenders by taxpayers becomes the main sanction (premmum remedium), while imprisonment is formulated as an ultimum remedium sanction (ultimate weapon).

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<sup>4</sup> Kitab Undang-Undang Hukum Pidana, Pasal 103

## Research Methods

Research in the preparation of this paper is carried out using normative juridical research which is also often referred to as doctrinal research<sup>5</sup> with research objects or targets in the form of regulations, laws and other legal materials. The results of this legal research are not to find new legal theories but to look for alternative arguments, namely by examining the subject matter as mentioned above. In addition, this research will also complement other relevant aspects based on the scope and identification of the problems formulated.

## Formulation Of The Problem

The formulation of the problem in this study is about tax crimes that are detrimental to state finances as criminal acts of corruption in Indonesia. The research focus is limited to the following studies:

1. How is the enforcement of criminal law in the tax sector?
2. Why can a criminal act in the tax sector be categorized as a criminal act of corruption?

## Finding & Discussion

### A. Criminal Law Enforcement in the Tax Sector

If the legal system is viewed schematically, then three law enforcement systems can be distinguished, namely the civil law enforcement system, the criminal law enforcement system and the administrative law enforcement system. In line with that, there is successively a civil law sanction system, a criminal law sanction system and an administrative legal sanction system (state administration).

The three law enforcement systems are each supported and implemented by state apparatus or commonly called law enforcement apparatus (tools), which have their own rules as well.<sup>6</sup>

Anyone who deliberately violates a rule of law will be subject to sanctions (as a result of violating the rule of law) in the form of a crime.<sup>7</sup> The criminal court, which is a non-tax court, has the authority to examine criminal acts in the field of taxation. The judiciary that examines criminal acts in connection with tax collection is carried out by district courts. The

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<sup>5</sup> Soerjono Soekanto, *Pengantar Penelitian Hukum*, Penerbit Universitas Indonesia (UI-Press), 1984, hal. 12

<sup>6</sup> Sudarto, *Kapita Selekta Hukum Pidana*, (Bandung: Alumni, 1981), hal. 111.

<sup>7</sup> Abdullah Sulaiman, *Pengantar Ilmu Hukum*, CV. Mutiara Galuh, Jakarta, 2021, hal. 21

procedural process is basically the same as other criminal cases other than criminal acts taxation. In this case, it starts from the investigation, pre-trial and prosecution and examination of cases before the court and finally from the implementation of court decisions (execution). Regarding the legal basis within the framework of explaining criminal acts in the field of taxation, apart from being based on the KUP Law, the PBB Law and Law no. 8 of 1981, along with the legal instruments for its implementation. In order to add to the completeness of the discussion, criminal acts related to stamp duty are also described, as stipulated in Law no. 13 of 1985 and the Criminal Code.

## **B. Criminal Acts in the Field of Taxes as Corruption Crimes**

### **1. Tax Crime**

That what is called a crime is an act which is prohibited by law and is punishable by punishment, where the meaning of the act here is in addition to an active act (doing something that is actually prohibited by law) as well as a passive act (not doing something that is actually required by law).<sup>8</sup>

Criminal law, in simple terms, can be stated that criminal law is a law that regulates actions that are prohibited by law along with criminal sanctions that can be imposed on perpetrators.<sup>9</sup>

Crimes in the Field of Taxation or Tax Crimes are incorrect information regarding reports related to tax collection by submitting notification letters (SPT), but whose contents are incorrect or incomplete or attaching incorrect information so that it can cause state losses and crimes. other stipulated in the tax law.<sup>10</sup>

### **2. Corruption Crime**

#### **1) Definition of criminal acts of corruption**

Corruption offenses are defined as acts that are prohibited and punishable by criminal sanctions in Law Number 31 of 1999 concerning eradication of criminal acts of corruption jo. Law Number 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning eradicating criminal acts of corruption (anti-corruption law).<sup>11</sup>

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<sup>8</sup> Teguh Prasetyo, *Hukum Pidana*, Edisi Revisi, Divisi Buku Perguruan Tinggi, PT. RajaGrafindo Persada, Jakarta, cetakan ke-5, Mei 2014, hlm. 50

<sup>9</sup> Bambang Waluyo, *Pidana dan Pemidanaan*, Sinar Grafika, Jakarta, Ed.1 Cet.4, 2014, hlm. 6

<sup>10</sup> Undang-Undang Nomor 25 Tahun 2007 tentang Penanaman Modal

<sup>11</sup> Mahrus Ali, Deni Setya Bagus Yuherawan, *Delik-delik Korupsi*, cet. 1, Sinar Grafika, Jakarta, 2021

The criminal act of corruption according to Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes, is regulated in Article 2 and Article 3, namely as follows:

a. Article 2

Anyone who unlawfully commits an act of enriching himself or another person or a corporation that can harm the state's finances or the state's economy, shall be punished with life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah).

b. Article 3

Any person who, with the aim of benefiting himself or another person or a corporation, abuses the authority, opportunity or means available to him because of his position or position or the means available to him because of his position or position which can harm the state's finances or the state's economy, shall be punished with a crime life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and or a fine of at least Rp. 50,000,000.00 (fifty million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah).

Based on the description of the criminal act of corruption above, it can be concluded that the criminal act of corruption is an act that is contrary to morals and against the law that aims to benefit and/or enrich himself by abusing the authority that is in him which can be detrimental to society and the state.

### **3. Criminal acts in the tax sector can be categorized as criminal acts of corruption**

Crimes in the Field of Taxation or Tax Crimes are incorrect information regarding reports related to tax collection by submitting notification letters (SPT), but whose contents are incorrect or incomplete or attaching incorrect information so that it can cause state losses and crimes. other provisions stipulated in the tax law.

#### **a. Criminal Elements in the Field of Taxation**

##### **Subject Element**

Perpetrators of criminal acts: Everyone

- 1) Private person
- 2) Legal entity (Management, Representative, Power of Attorney & WP Employee)

Including :

- who ordered
- who participated in doing



- who advocated
- that helps do

### **Elements of Action**

- 1) Fulfill the formulation of Articles 38, 39, 41A, 41B, 41C and 43 of the Law on General Provisions and Tax Procedures
- 2) Comply with the formulation of Article 24.25 of the Law on Land and Building Tax, 13.14 of the Law on Stamp Duty, 41A of the Law on Collection of Taxes by Forced Letter
- 3) The act is punishable by criminal sanctions
- 4) The act was committed in the field of taxation

### **Consequence Elements**

Can cause losses to state revenues

### **Element of Error**

- 1) Oversight
- 2) Intentional

## **b. Elements of Corruption Crime**

Elements of Corruption Crime, i.e. Everyone who unlawfully commits an act of enriching himself or another person or a corporation that can harm state finances or the country's economy, as follows:

- a. Act against the law
- b. Abuse of authority
- c. Abusing the opportunity
- d. Enrich yourself, others, and your own corporation
- e. Harming state finances or the country's economy

Regarding the loss of state finances or the country's economy,<sup>12</sup> according to the provisions of the general elucidation of Law Number 31 of 1999 concerning eradicating criminal acts of corruption, what is meant by state finances is all state assets in whatever form that are separated or not separated including all parts of state assets and all rights and obligations arising from:

- 1) Being under the control, management and accountability of state officials both at the central and regional levels;

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<sup>12</sup> K.P. Henry Indraguna, Kayaruddin Hasibuan, *Memahami Tafsir Pasal Tindak Pidana Korupsi, Kaidah Hukum Doktrin-doktrin Dalam Tindak Pidana Korupsi*, Tras Mediacom, Jakarta, 2020, hal. 20



- 2) Being under the control, management and accountability of State Owned Enterprises/Regional Owned Enterprises, Foundations, Legal Entities and Companies that include State capital or companies that include third party capital based on an agreement with the state.

Whereas what is meant by the State Economy is economic life that is structured as a joint venture based on the principle of kinship or community business independently based on government policies, both at the central and regional levels in accordance with the provisions of the applicable laws and regulations aimed at providing benefits, prosperity and welfare to all people's lives.<sup>13</sup>

## Conclusion

After conducting the research, the conclusions that can be drawn from this research are:

1. Enforcement of criminal law in the field of taxation in Indonesia is currently carried out based on the laws and regulations in the field of taxation that apply as a Special Law (Lex Specialist) in the field of Taxation, but if it is not sufficiently regulated in the laws and regulations in the field of taxation, then provisions are enforced as regulated in the Criminal Code as General Law (Lex Generalis), based on Article 103 of the Criminal Code (KUHP);
2. Criminal acts in the tax sector can be categorized as criminal acts of corruption, because the characteristics of criminal acts in the tax sector are the same as criminal acts of corruption, in which both tax crimes and corruption crimes both harm state revenues, state finances or the country's economy.

## Suggestion

The suggestions or recommendations from this study are as follows:

1. In order for criminal law enforcement in the tax sector to be more effective, criminal acts in the tax sector should be made criminal acts of corruption;
2. In order for criminal acts in the tax sector to be categorized as criminal acts of corruption, a legal umbrella must be made which expressly states that criminal acts in the tax sector which are detrimental to state revenues, state finances or the state economy are criminal acts of corruption.

## References/Bibliography :

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<sup>13</sup> K.P. Henry Indraguna, Kayaruddin Hasibuan, *ibid*, hal. 21

## A. Books

Abdullah Sulaiman, *Pengantar Ilmu Hukum*, CV. Mutiara Galuh, Jakarta, 2021

Bambang Waluyo, *Pidana dan Pemidanaan*, Sinar Grafika, Jakarta, Ed.1 Cet.4, 2014

KMS. Herman, *Hukum Pajak “Penyelesaian Sengketa Pajak di Pengadilan Pajak”*, FP Aswaja, NTB, Cet. 1, 2020

-----, *Pajak Daerah dan Retribusi Daerah Sebagai Sumber Penadapatan Asli Daerah*“, FP Aswaja, NTB, Cet. 1, 2020

K.P. Henry Indraguna, Kayaruddin Hasibuan, *Memahami Tafsir Pasal Tindak Pidana Korupsi, Kaidah Hukum Doktrin-doktrin Dalam Tindak Pidana Korupsi*, Tras Mediacom, Jakarta, 2020, Soerjono Soekanto, *Pengantar Penelitian Hukum*, Penerbit Universitas Indonesia (UI-Press), 1984

Sudarto, *Kapita Selektta Hukum Pidana*, (Bandung: Alumni, 1981)

T.N. Syamsiah, *Tindak Pidana Perpajakan*, Penerbit PT. Alumni, Bandung, 2011

Teguh Prasetyo, *Hukum Pidana*, Edisi Revisi, Divisi Buku Perguruan Tinggi, PT. RajaGrafindo Persada, Jakarta, cetakan ke-5, Mei 2014

Mahrus Ali, Deni Setya Bagus Yuherawan, *Delik-delik Korupsi*, cet. 1, Sinar Grafika, Jakarta, 202

Mitra Wacana Media. *Undang-undang Pajak Dilengkapi dengan UU Pajak daerah dan Retribusi daerah, PIKP 2010*. Yogyakarta 2010

Soerjono Soekanto, *Pengantar Penelitian Hukum*, Penerbit Universitas Indonesia (UI-Press), Jakarta, 1984

Wirawan B. Ilyas dan Richard Burton, *Hukum Pajak*. Penerbit SALEMBA EMPAT. Jakarta, 2008.

John Hutagaol, Darussalam, Danny Saptriadi, *Kapita Selektta Perpajakan*, Penerbit Salemba Empat, 2007.

## Regulations :

Undang-Undang Dasar 1945

Kitab Undang-Undang Hukum Pidana

Undang-Undang Republik Indonesia Nomor 19 Tahun 2000 Tentang Perubahan atas Undang-Undang Nomor 19 Tahun 1997 Tentang Penagihan Pajak dengan Surat Paksa

Undang-Undang Nomor 25 Tahun 2007 tentang Penanaman Modal

Undang-Undang Republik Indonesia Nomor 28 Tahun 2007 Tentang Perubahan Ketiga Atas Undang-Undang Nomor 6 Tahun 1983 Tentang Ketentuan Umum dan Tata Cara Perpajakan

Undang-Undang Republik Indonesia Nomor 28 Tahun 2009 Tentang Pajak Daerah dan Retribusi Daerah