

CRIMINAL SANCTIONS AND THE POSITION OF CIVIL LAW IN TAX LAW

Hamdani Tjahjadi¹, Hanry Soegiharto Hogiono², Harry Barli³

hamdanitjahjadi88@gmail.com, hanrysh@gmail.com, sibarli@gmail.com

^{1,2,3}Student of Law Faculty of Pamulang University, South Tangerang City, Indonesia

ABSTRACT

Tax laws are a set of rules governing rights and obligations and relationships between taxpayers and the government as tax collectors. Taxes are enforced in almost everything countries in the world as the main source of state revenue. Taxes are held for the sake of sustainability country life. In Indonesia, taxes actually have 4 functions, namely the budget function, regulatory function, stability function, and income redistribution function.. The people as tax subjects are charged with the obligation to pay taxes accordingly with the conditions that apply. If it violates the provisions of the tax law, it can be terminated to acts against civil law or acts against criminal law.

Keywords: Tax Law, Civil Law, Criminal Law

ABSTRAK

Undang-undang perpajakan adalah seperangkat aturan yang mengatur hak dan kewajiban serta hubungan antara wajib pajak dengan pemerintah sebagai pemungut pajak. Pajak diberlakukan di hampir semua negara di dunia sebagai sumber utama penerimaan negara. Pajak diadakan demi kelangsungan kehidupan negara. Di Indonesia sebenarnya pajak memiliki 4 fungsi yaitu fungsi anggaran, fungsi regulasi, fungsi stabilitas, dan fungsi redistribusi pendapatan. Masyarakat sebagai subjek pajak dibebankan kewajiban untuk membayar pajak sesuai dengan ketentuan yang berlaku. Jika melanggar ketentuan undang-undang perpajakan, maka dapat diakhiri dengan perbuatan melawan hukum perdata atau perbuatan melawan hukum pidana.

Kata Kunci : Hukum Pajak, Hukum Civil, Hukum Pidana.

A. BACKGROUND

Tax law is a law that is public in nature in regulating the relationship between the state and the person/legal entity that is obliged to pay taxes. In relation to Civil Law, Tax Law is always looking for a basis for possible collection of taxes based on acts of civil law, for example in the form of agreements, terms of income (income), wealth, inheritance, and so on. In relation to Criminal Law, Tax Law regulates the existence of criminal threats to Taxpayers who violate the provisions of tax regulations and in their enforcement must refer to Criminal Law regulations.

B. RESEARCH METHODOLOGY

The research focuses on aspects of law enforcement, especially in the field of tax law. The tax law enforcement process tends to prioritize criminal law, not administrative law. This study uses a normative juridical method, meaning that it is based on primary legal materials. The results of the study incriminating criminal aspects in enforcing tax law will only harm the main goal, namely tax administration in collecting tax revenues, where the state really needs it for public spending such as building schools, bridges, hospitals, toll roads, fuel subsidies and so on. The administrative aspect approach will maximize tax revenue which will make taxpayers and tax officials feel safe whenever they face a tax dispute.

C. FINDING & DISCUSSION

Tax administration sanctions consist of fines, interest and increase sanctions. Tax sanctions in the form of fines are aimed at violations related to reporting obligations. The penalty in the form of imposition of interest is intended for taxpayers who pay their taxes after the due date and will be subject to a fine of 2% (two percent) per month from the due date to the payment date. And finally, increased sanctions are aimed at taxpayers who commit certain violations, such as acts of

falsifying data by understating the amount of income on the SPT (Yearly Tax Report) after 2 (two) years have passed before the issuance of the SKP (Tax Assessment Letter)

Meanwhile, criminal sanctions are regulated in Article 39 paragraph (1) letter i Law Number 28 of 2007 concerning General Provisions and Tax Procedures, which states that any person who intentionally does not deposit taxes that have been deducted or collected so that it can cause losses to income state is punished with imprisonment for a minimum of 6 (six) months and a maximum of 6 (six) years and a fine of at least 2 (two) times the amount of tax payable that is not paid or underpaid and a maximum of 4 (four) times the amount of tax payable not or underpaid.

Sanctions related to taxation can be in the form of decisive action in the form of hostage taking or gijzeling. The act of gijzeling is the last step of legal action that the government can take against naughty taxpayers. Gijzeling is carried out when the taxpayer is really stubborn. Gijzeling is not the only way to deter taxpayers and is the last anticipatory step which is an effort to seek a deterrence effect so that tax arrears are afraid and immediately pay off their tax obligations.

The definition of criminal law, the notion of civil law is associated with tax law. Tax criminal sanctions are a type of sanction that can be imposed on taxpayers and officials. These sanctions can be in the form of tax fines or result in corporal punishment such as imprisonment or confinement.¹

The following is an explanation of fines, imprisonment and confinement in tax crimes:

1. Criminal fines. This sanction is imposed on taxpayers/tax officials as well as third parties who
2. violate norms. An example of a norm violation is a tax official who doesn't maintain the confidentiality of their own taxpayer data so that they can be subject to criminal tax sanctions in the form of a fine of IDR 4 million.
3. Confinement This sanction is in the form of deprivation of the freedom of the taxpayer/tax official and third parties who violate tax regulations. A taxpayer/official taxes or third persons may also be subject to a combination of tax sanctions such as fines and imprisonment.

¹ Pajak, Online (2018, 14 Agustus) Penyebab seseorang dijatuhi sanksi pidana pajak dikutip 6 November dari website online pajak : <https://www.online-pajak.com/sanksi-pidana-pajak>

However, it depends on the level of norm violations committed and the amount of loss generated country.

4. Imprisonment. Imprisonment is not the same as confinement. The difference is visible from period of time. If the confinement is generally short, the punishment imprisonment for deprivation freedom can be years to a lifetime. Tax crimes are intended for taxpayers and tax officials who commit crimes.

1. CRIMINAL SANCTIONS IN TAX LAW

In legal doctrine, laws and regulations regarding taxes are included in the domain state administrative law so that the problems that arise are related to violations of regulations taxation and law enforcement is carried out through a settlement mechanism administrative law. Even though it includes administrative law, statutory regulations regarding taxes has different characteristics from other administrative laws, because of its nature tax law is to give broad authority to the state to collect taxes from taxpayers. The state has the authority to determine the taxpayer and impose to taxpayers to fulfill their obligations. Although the state has that authority area, the style of administrative law and laws and regulations on taxation provide space for taxpayers to file objections to tax charged to the taxpayer because there is an allegation of an error in calculating the amount of tax to be paid. If it cannot be completed, then there is a dispute regarding the calculation. Such taxes are known as tax disputes, can be submitted to the Tax Court.

Mechanism the settlement of the tax dispute shows the strong nature of administrative law from tax disputes so that legal issues of tax administration are resolved through administrative legal mechanisms with Criminal Law Regulation officials in the Sector Taxation and Public Relations is concerned and if it cannot be resolved, it can submitted to the Tax Court.

The existence of a Tax Court which is authorized to resolve tax disputes, serves as:

- a. prevent and control the possibility of abuse of authority in tax calculations;
- b. ensure legal certainty for taxpayers regarding taxes to be paid; and
- c. Increasing awareness of taxpayers regarding taxes that must be paid

For taxpayers who have good faith in paying taxes according to their obligations, the existence of a Tax Court can provide guarantees of legal certainty regarding the amount of tax to be paid, otherwise taxpayers who do not have good faith pay taxes, through the Tax Court can be used as a form of effort to reduce the amount of tax to be paid. Taxpayers who do not pay taxes accordingly with laws and regulations in the field of tax may be subject to sanctions in accordance with the level of violations, namely from administrative sanctions, administrative criminal sanctions, to with general criminal sanctions. Meanwhile, tax officers who abuse their authority may be subject to sanctions based on laws in the field of taxation and legal sanctions general crime. There are some various of violation of tax law such as:

1. Everyone who intentionally:

Not registering or abusing without rights the Taxpayer Identification Number or the Confirmation of a Taxable Entrepreneur; Not submitting notification letters; Delivering notification letters and or information whose contents are incorrect or incomplete; Refusing to carry out the inspection as referred to in Article 29; Showing false or forged books, records or other documents as if they were real; Not keeping books or records, not showing or not lending books, records or other documents; or Do not deposit taxes that have been deducted or collected, causing losses to state revenues. Maximum imprisonment of 6 (six) years and a maximum fine of 4 (four) times the amount of unpaid or underpaid tax.

Legal Basis: Article 39 paragraph 1 of Law Number 28 of 2007.

2. Committing another tax crime before the expiration of 1 year, starting from the completion of the prison sentence. The penalty is doubled.

Legal Basis: Article 39 paragraph 2 of Law Number 28 of 2007.

3. Any Person who attempts to commit a criminal act without rights, abuses Taxpayer Identification Number or Taxable Entrepreneur Confirmation or Submits Tax Returns and/or Statements whose contents are incorrect or incorrect in order to apply for restitution or make tax compensation. Maximum imprisonment of 2 (two) years and a maximum fine of 4 (four) times the amount of restitution requested and or compensation made by the taxpayer.

Legal Basis: Article 39 paragraph 3 of Law Number 28 of 2007.

4. Officials who intentionally do not fulfill their obligations or someone who causes the officials' obligations to not be fulfilled as referred to in Article 34.

Maximum imprisonment of 2 (two) years and a maximum fine of IDR 10,000,000 (ten million rupiah).

Legal Basis: Article 41 paragraph 2 of Law Number 28 of 2007.

5. Everyone who, according to Article 35 of this Law, is obliged to provide the requested information or evidence but deliberately does not provide information or evidence, or provides incorrect information or evidence. Maximum imprisonment of 1 (one) year and a maximum fine of IDR 10,000,000 (ten million rupiah).

Legal Basis: Article 41A Law Number 28 of 2007.

6. Representative, proxy or employee of the Taxpayer, who orders to commit, who participates in committing, who recommends, or who helps commit criminal acts in the field of taxation as referred to in Article 39. Imprisonment for a term of 6 (six) years and a maximum fine of four times the unpaid or underpaid tax.

Legal Basis: Article 43 paragraph 1 of Law Number 28 of 2007.

7. Ordered to commit, who took part in committing, who suggested or who helped commit criminal acts in the field of taxation as referred to in Article 41A. Imprisonment for a term of 1 (one) year and a maximum fine of IDR 5,000,000 (five million rupiah).

Legal Basis: Article 43 paragraph 2 of Law Number 28 of 2007.

8. Ordered to commit, who took part in committing, who suggested or who helped commit criminal acts in the field of taxation as referred to in Article 41B. Imprisonment for a term of 3 (three) years and a maximum fine of IDR 10,000,000 (ten million rupiah).

Legal Basis: Article 43 paragraph 2 of Law Number 28 of 2007.

2. TAXATION PROBLEMS

In fact, the Fiscal Authority that implements fiscal policy, in this case the Minister of Finance, does not yet have strong legal instruments to execute receivables for tax criminal fines. The Attorney General's Office can only carry out executions of imprisonment for taxpayers who

violate it. 19/2000. , the fines so far have not been able to be collected optimally. The reason is that so far the execution of fines for criminal acts of taxation has been hampered by the limited authority of the Tax Officer. Law Number 28 of 2007 concerning General Provisions and Tax Procedures, the Government only emphasizes inter-jurisdictional billing cooperation.

3. FACTORS CAUSING THE LESS MAXIMUM PAYMENT OF CRIMINAL FINE

There are various factors that cause a lack of maximum payment of tax penalties, including:

1. Payment of losses on state revenue and/or sanctions when the trial or case has been transferred to the Court, does not cancel the prosecutor's demands.
2. Fines are subsidized by imprisonment because the Judge considers Article 30 paragraph 2 of the Criminal Code that if the fine is not paid, it is replaced by imprisonment.
3. The results of the prosecutor's execution of the criminal verdict are not significant.
4. Taxpayers tend not to take advantage of ultimum remedium at the investigation stage with the consideration that fines can be subsidized or fines cannot be executed by the Attorney.
5. There is no deterrent effect for perpetrators and a deterrent effect for potential perpetrators because they will only serve corporal punishment (imprisonment and confinement) without having to pay fines.
6. Tax investigators do not have the authority to confiscate assets and arrest and/or detain which can encourage taxpayers to take advantage of ultimum remedium. Tax investigators do not have the authority to arrest and/or detain in the investigation of criminal acts in the field of taxation, so requests for assistance from other law enforcement officials based on Article 44 paragraph 4 of the KUP Law have legal risks.
7. The need for arrest and/or detention authority because to prevent perpetrators of criminal acts from influencing other suspects or witnesses and there is a risk of escaping by suspects, or suspecting, or to detain perpetrators of criminal acts to prevent them from committing additional crimes.
8. Using a cost and benefit analysis approach, where the costs that can be calculated are greater than the benefits in the form of recovering state revenue losses.

D. CONCLUSIONS AND RECOMMENDATIONS

Based on the description above, it can be concluded that in order to enforce the law in the field of taxation, administrative sanctions and criminal sanctions are required, but in practice administrative sanctions are prioritized compared to criminal sanctions. Bearing in mind that the application of criminal sanctions in the field of taxation is *ultimum remedium*, meaning that criminal law or criminal sanctions will only be applied if other efforts have been made but have had no effect at all or in other words have not had a deterrent effect on either the perpetrator or the potential perpetrator. Suggestions to the Government that tax criminal decisions that are already in force can be executed by the prosecutor's office.

The Government and DPR immediately legalized the execution of fines in the draft KUP by referring to Law no. 19/2000 concerning Amendments to Law no. 19/1997 concerning Collection of Taxes by Enforcement Letter. According to him, the execution could be carried out using the basis of a Distress Warrant contained in Law no. 19/2000. So far, the prosecutor's office has only been able to execute from the criminal point of view, no fines yet. If the taxpayer does not pay, there are no facilities. The enthusiasm of the Government to return state losses due to tax violations through collection is already underway. However, this billing should not only be made on tax receivables in partner countries or jurisdictions, but also within the country.

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