

Implementation of Restorative Justice Law in the Field of Tax Law, to Achieve Certainty, Utilities, and Value of Justice

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Abstrak

Pajak adalah salah unsur penting dalam menopang pendapatan negara saat ini, karena itu pemerintah sangat dalam mengatur tata laksana penerapan perpajakan kepada masyarakat. Sejak ditetapkannya pembaharuan ketentuan pajak dengan Undang-Undang No. 28 Tahun 2007 tentang Ketentuan Umum Tata Cara Perpajakan telah mengatur berbagai hal yang berkenaan dengan penerapan pajak kepada masyarakat, yang selanjutnya diatur dengan Undang-Undang No. Tahun 2021 tentang Harmonisasi Peraturan Perpajakan sebagai langkah dalam optimalisasi penerapan pajak kepada masyarakat. Penelitian ini diharapkan agar dapat diketahui bagaimana pentingnya penerapan pajak dari penerapan pajak yang bersifat pemaksaan dengan pendekatan restorative justice. Pendekatan dalam penelitian ini dilakukan dengan memberikan pendalaman berdasarkan kepustakaan dan rujukan peraturan perundang-undangan yang terkait dengan objek penelitian. Hasil penelitian ini adalah pendekatan restorative justice dalam penerapan pajak merupakan alternative terbaik dari penerapan pajak yang bersifat pemaksaan.

Kata Kunci : Hukum Pajak, Pemaksaan, Restorative Justice.

Abstract

Tax is one of the important elements in supporting state revenues today, therefore the government is very involved in regulating the implementation of taxation to the community. Since the enactment of the renewal of tax provisions with Law No. 28 of 2007 concerning General Provisions for Tax Procedures, it has regulated various matters relating to the application of taxes to the community, which are further regulated by Law No. 2021 concerning Harmonization of Tax Regulations as a step in optimizing the application of taxes to the community. This study is expected to determine how important the application of taxes is from the application of taxes that are coercive with a restorative justice approach. The approach in this study was carried out by providing in-depth study based on literature and references to laws and regulations related to the object of research. The results of this study are that the restorative justice approach in the application of taxes is the best alternative to the application of taxes that are coercive.

Keywords: Tax Law, Coercion, Restorative Justice.

A. Background

The application of restorative justice in the context of taxation presents several challenges and questions about its effectiveness in achieving long-term goals, especially in the economic context. This is due to the consideration of costs and benefits for violators of the rules who often choose to avoid taxes because the fines imposed are not always commensurate with the profits obtained, especially when the consideration of criminal penalties in the form of subsidiary fines with imprisonment according to the fact that the repayment for state revenue is still less valuable, criminal penalties tend to alienate perpetrators from society without addressing the root of the problem of tax evasion and giving rise to high costs for the justice system and the allocation of prison costs (Sulistiyono & Isharyanto, 2018).

It is necessary to change the form of law enforcement in a direction that focuses more on resolving criminal conflicts in order to create social justice in a more humane way, this approach to law enforcement is called *restorative justice* or known as restorative justice. With the increasing awareness of the importance of a more holistic approach in handling conflicts, through this writing, it is hoped that it can provide insight into how the application of restorative justice in the context of tax law, especially those listed in Article 40B Paragraph (3), Article 44B Paragraph 2a and Article 64 Paragraph (2) of the HPP Law is an important legal basis in organizing the tax system as a whole.

By providing opportunities for voluntary fulfillment of tax obligations and encouraging the peaceful resolution of conflicts between taxpayers and tax authorities, *restorative justice* can explain the potential economic benefits in terms of additional state revenue. *Restorative justice* offers a more focused approach to restoration and reconciliation, while justice and legal certainty remain key principles in the legal system. Based on these things, it is necessary to explain how the description of legal values containing benefits, justice and legal certainty plays a role in the implementation of *restorative justice*.

B. Problems Formulation

From the background mentioned above, the problem is formulated as follows:

1. How is the application of *restorative justice* law in Tax Law, for the achievement of legal certainty, legal benefits and justice?
2. What are the obstacles in the application of *restorative justice* law in achieving legal certainty, legal benefits and justice?

C. Literacy References

1. Law Restorative Justice

The *restorative justice* approach exists as an effort to expand the paradigm of retributive justice theory which is more oriented towards imposition. Restorative justice, aims to expand the principles applied in mediation beyond the limits of business dispute resolution. The restorative justice approach emphasizes more on resolving individual conflicts, which are often handled through a punitive approach. The more holistic and holistic approach offered by restorative justice aims to provide true healing for individuals and the rebuilding of communities in a more positive way (Sahputra, 2022).

The *restorative justice* method focuses on restoring and repairing damaged relationships between perpetrators, victims, and society. As Howard Zehr has defined the most important of restorative justice, it comes from sincere consideration of the victims and their welfare. So that it can repair damage in a real way, as well as a symbol of resolution. (Chang, 2017).

2. The Principle of Legal Certainty

Gustav Radbruch expressed his views on the concept of law. According to him, the law has three main aspects. First, the law exists to provide a structure and framework for human life so that it can run smoothly and in an orderly manner. Second, the law also plays a role in realizing justice. And third, the law promotes legal certainty (Ratnapala, 2009). In his argument, Radbruch emphasized that the law not only functions to achieve practical goals in social life but also to realize justice and provide certainty for individuals and society. This highlights the importance of considering these three aspects in creating and enforcing effective laws. Gustav Radbruch further emphasized the importance of the aspect of legal certainty. Legal certainty is a very important value in the legal system. This reflects the clarity and consistency of the legal regulations so that everyone can understand what is expected of the regulations and how the law will be applied in a given situation. Legal certainty eliminates uncertainty and allows individuals to plan and regulate their behavior with confidence, since they know the consequences of their actions in accordance with the applicable law.

Radbruch emphasized that the law should be understandable to everyone regardless of legal background or expertise. That means that the law should be explained in an easy-to-understand way so that everyone can understand it without difficulty. Legal transparency ensures that the law is not only understood by legal experts, but also accessible and understood by the general public. Legal certainty also provides a foundation for legal compliance and public trust in the legal system. When the law is clear and consistent, individuals will be more likely to comply with it because they know what is expected of them and the consequences if they break the

law. In addition, legal certainty also builds public confidence in the justice of the legal system, which is very important for maintaining social and political stability.

3. The Principle of Legal Benefits

Economic Analysis in Law which is another term of *Economic Analysis of Law* which is an approach using economic principles to understand and explain legal phenomena, according to him the economic analysis approach is something that can maximize efficiency. In this case, it is the theory of efficiency in *the Economic Analysis of Law* according to Richard A. Posner who understands the relationship between the legal system, especially in countries that apply *common law* that has the goal of maximizing the wealth of their people. In addition, according to Posner, economic elements can also be considered and found in various fields of law (Diamond, 2024).

4. Principles of Justice

The theory used in elaborating the value of justice refers to the statement of John Rawls (1971) in his book *A Theory of Justice*, which states the importance of the principle of social justice in shaping the structure and function of a just society, as well as in determining the distribution of benefits and the burden of social cooperation. Rawls stated that a just society must ensure that everyone has equal access to basic opportunities, as well as reduce existing disparities. Rawls' theory of social justice aims to create a moral foundation for a more equitable and equitable society structure. By applying social justice principles such as fundamental equality, reducing inequality, and equal opportunities, conflict resolution based on restorative justice in the field of taxation can be an effective instrument in creating a fairer and more equitable society in the context of fulfilling tax obligations (Jimly Ashiddiqie, 2019)

D. Research Methods

In accordance with the title and problems that will be discussed in this study and in order to provide useful results, this research is carried out with normative juridical research (normative legal research method). The normative juridical research method is a literature law research conducted by researching literature materials or secondary data. This research was carried out in order to obtain materials in the form of: theories, concepts, legal principles and legal regulations related to the subject.

The scope of normative law research includes:

- a. Research on legal principles.
- b. Research on legal systematics.
- c. Research on the level of legal synchronization vertically and horizontally.

- b. Comparison of laws.
- a. Legal history. (Surjono Sukanto : 2003)

E. Results & Discussion

1. Application of Restorative Justice Law

a. Legal Certainty

In the context of tax law, there is a high level of complexity in determining sanctions or restorative obligations that are compatible with criminal violations in the field of taxation. This process may involve the return of misused assets, reimbursement of state losses, or other steps that may require careful financial assessments and complicated procedures (Sarwirini, 2014). Radbruch points out that there is no clear boundary between legalized cases of injustice and laws that remain in force even if they are not aligned with justice. However, he emphasized that more defined boundaries can be set when justice is not the main focus in the formation of positive law, and the principle of equality that is the basis of justice is deliberately taken into account in the legal legislation process (Manullang, 2022).

In the description of rational considerations of the value of benefits and justice to the law for perpetrators of criminal acts in the field of taxation, it occurs when taxpayers who commit criminal acts are forced to consider costs and profits due to the condition of criminal fines, the criminal subsidiary of confinement for tax criminal violations committed by them becomes more persuasive law enforcement compared to material and immaterial losses from repressive actions. This results in the *restorative justice law enforcement approach* being considered relevant and even reaffirmed in the HPP Law which is the basis of legal certainty.

b. Legal Benefits

The implementation of *restorative justice* in tax provisions is implied in Law Number 28 of 2007 concerning General Provisions and Tax Procedures (KUP Law) and Law Number 19 of 1997 concerning Tax Collection with Compulsory Letters (PPSP Law) which regulates the implementation of Tax Collection, Tax Audit, and Tax Investigation which always prioritizes persuasive actions to taxpayers. Tax law enforcement is carried out by prioritizing the principles of *restorative justice*, through persuasive actions while still being guided by legal norms with the aim of increasing state revenue (Sarwirini, 2014).

Based on this, the implementation of *restorative justice* can provide great benefits, such as efficiency in the use of resources, reducing administrative burdens, recovering losses for victims, and preventing repeated violations in the future as well as the

ultimate goal of increasing state revenue. This is in line with economic principles that emphasize the importance of using resources efficiently and achieving the best results for society as a whole. The current affirmation of the implementation of *restorative justice* is explicit and implicit in the explanation of Article 40B Paragraph (3), Article 44B and Article 64 Paragraph (2) of Law Number 7 of 2021 concerning the Harmonization of Tax Regulations (HPP Law). This can be an important step in unifying the approach to tax law enforcement, providing fairness and legal certainty for the tax system as a whole

c. Justice

The principle of justice contained in Article 40B Paragraph (3), 44B paragraph 2a and 64 Paragraph (2) of the HPP Law emphasizes the importance of ensuring that law enforcement in the field of taxation not only pursues the recovery of state financial losses, but also prioritizes the restoration of the rights or conditions of the victim (state) fairly, in line with *the restorative justice* approach. *Restorative justice* is further seen as not only a consequence of criminal acts, but also a characteristic of Indonesian society in resolving legal problems in various aspects of social life (**Pradityo, 2016**). Therefore, the principle of *restorative justice* should be further studied and applied in positive law that applies in Indonesia, especially in resolving criminal problems (**Manalu, 2022**). By leveraging a restorative justice approach, governments can achieve the goal of harmonizing tax regulations while providing opportunities for restoration of disrupted relationships and the prevention of future tax violations. In addition, this approach can also help maintain a balance between law enforcement and state financial recovery, as stated in the explanation of Article 40B Paragraph (3), 44B paragraph 2a and Article 64 Paragraph (2) of the HPP Law.

2. Obstacles in its application

The use of criminal law in tackling crime is included as one of the efforts to overcome social problems, including in the field of law enforcement policy. Likewise in tackling crime in the field of taxation. Criminal provisions regulated in the tax law can be treated in accordance with the provisions stipulated in the first book of the Criminal Code unless the tax law stipulates otherwise. If the Criminal Code specifies otherwise, then what applies is the tax law as *lex specialis*. That is, if there are two legal regulations that regulate the same thing, then the last legal regulation is enforced based on the substance contained in the legal principle "*lex*

specialis derogat legi generali". This shows that the imposition of criminal sanctions regulated in the tax law overrides the imposition of criminal sanctions regulated in the Criminal Code.

Criminal sanctions are the last step taken by law enforcement if the use of administrative legal means is no longer effective and administrative actions must be taken sequentially. In principle, legal efforts are carried out to provide guidance and deterrent effects, and there must also be coercive elements such as the imposition of fines or compensation. There is transparency and social control that is open to the process of making and enforcing laws, so that the weaknesses and shortcomings contained in the official institutional mechanism can be complemented by the direct participation of the community in order to ensure justice and truth (Yoyon; 2019: 139).

F. Closing

1. Conclusion

Restorative justice in the context of tax law is the settlement of criminal violations in the field of taxation with law enforcement involving the government through tax authorities and taxpayers as perpetrators of violations, so as to create a settlement agreement that benefits all parties and helps make a comprehensive recovery. The application of restorative justice in tax law enforcement can provide significant benefits in line with economic principles that emphasize the importance of efficient use of resources and achieving the best results for society as a whole. The *restorative justice* approach is more efficient in utilizing resources such as time, energy, and money compared to the conventional judicial process.

In handling tax cases, a faster and cost-effective restorative process can reduce the burden of government administration related to the legal process. For taxpayers, the implementation of *restorative justice* can also be useful in maintaining their good reputation. The restorative process allows the settlement of cases without going through an open court process, thus avoiding negative public exposure for taxpayers. The law enforcement approach in the field of taxation through *restorative justice* aims to provide justice and legal certainty. In the overall tax system, legal certainty is created through the enactment of the HPP Law, the hope for social justice is to be able to improve the welfare of the wider community through the recovery of state losses.

Dogmatically, criminal crime is seen as reward or retribution for the mistakes of the maker, while the action is intended to protect the public against the crimes committed by the maker. The provision of criminal sanctions like this is expected to build an early warning system for tax criminals, and can provide a deterrent effect with the severity of the sanctions given. To

maintain state revenue, the formulation of the penalty of fines for the perpetrators of tax crimes is the main witness (*premiu remedium*), while the prison sentence is formulated as a sanction that is an *ultimatum remedium* (ultimate weapon).

2. Recommendation

To ensure that the enforcement of restorative justice is carried out correctly and effectively, the Government can identify cases of tax violations that may be resolved through a *restorative justice* approach. This includes situations where violations occur due to the taxpayer's ignorance or administrative errors. The evaluation of the severity of each case is assessed based on the level of damage caused, the intention of the perpetrator, and the impact on society and the state. This can be done using the valuation scale set by the tax authority.

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