

CRIMINAL SANCTIONS IN TAXATION CRIMINALS IN INDONESIA

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ABSTRACT

Every person or official for his actions committing violations or crimes in taxation in Indonesia may be subject to criminal sanctions, not only because of his negligence but also because of his mistakes. From these elements it can also be said that criminal acts in the field of taxation can be categorized as a crime in the field of administration which is not only detrimental to other people or the wider community but also the state because it is detrimental to the state's cash income where the tax is a source of income for the country that aims to fund for development and welfare for the wider community. In the tax law there are many provisions where violations are threatened with criminal sanctions, this has a major psychological impact on taxpayers and the public, even more so if criminal sanctions are imposed in prison, or a fine plus a prison sentence which with the application of this criminal sanction will reduce the number of violations and crimes in tax regulations. So that it gives an influence for taxpayers to be more careful not to make their actions in taxation categorized as criminal acts in the taxation field.

Keywords: criminal acts, tax, criminal law

INTRODUCTION

In the life of the nation and state, peace, order and security become very important in achieving social welfare. Therefore, legal norms must be arranged in such a way as to be able to provide a sense of security and peace in people's lives (Rahajo; 2001). Likewise, the existence of positive law in Indonesia, which contains legal rules and aims to achieve a prosperous nation and state life.

What is meant by the latter above is reasonable, because Indonesian society is plural and that arena really needs a legal order that is able to protect the lives of Indonesian people. One legal norm that is considered capable of providing protection and firmness is public law such as criminal law. It is said so, because criminal law is a set of legal rules that contain a prohibition accompanied by sanctions in the form of a criminal offense (Saleh; 1978).

Judging from its division, criminal law is classified into general criminal law and special criminal law. General criminal law is criminal law that applies to all groups without exception, which contains legal rules that are prohibitive and must, which if violated will be subject to sanctions in the form of a criminal. While the special criminal law is a criminal law that specifically applies to special circles, such as the military and / or criminal law governing certain norms because it is not found in the Criminal Code (KUHP).

Arrangements regarding criminal law outside the Criminal Code are indeed possible, because according to Article 103 of the Criminal Code that "the provisions in Chapters I through Chapter VIII of this book also apply to acts that are subject to other laws which are threatened with crime, except if by law determined others ". Such affirmation is reasonable, because the community will continue to develop and be followed by the development of crime, which may not necessarily be able to use the provisions as stipulated in the Criminal Code, so that regulation is needed beyond the current Criminal Code, whether the regulation is through special criminal law or administrative criminal law, provided the regulation is not contrary to the provisions as regulated in the First Book of the Criminal Code, which among others contain the principles of criminal law, doctrine or teachings of criminal law, criminal sanctions that are still declared applicable to criminal law provisions that are regulated outside the Criminal Code (Brotodiharjo; 2008).

Deviations from the rules as stipulated in the Criminal Code have been recognized through its regulation in the Ordinance since May 16, 1927. This is possible, because in reality administrative regulations require sanctions that can guarantee public observance (Muladi, 1990). This is also the case with regard to taxation, in addition to administrative sanctions, criminal sanctions are also known as special sanctions which are regulated separately in the legislation.

Crime or so-called offense is an act (including consequences) that is prohibited and threatened with sanctions in the form of a crime for whoever commits (Kartanegara; 3). In the tax law literature, tax crime is often interpreted as an event or act that violates the law or tax law committed by someone whose actions can be held accountable by tax laws that have been declared a criminal act (Sarwirini, 1999).

Moeljatno (2002) defines criminal law as part of the overall applicable law in a country, which establishes the basics and rules for:

- 1) Determine which actions should not be carried out, which are prohibited, accompanied by threats or sanctions in the form of certain penalties for those who violate the prohibition.
- 2) Determine when and in what cases those who have violated the prohibition and may be subject to criminal sanction or sentence.
- 3) Determine in what manner the imposition of the crime can be carried out if there is a person who is suspected of violating the prohibition.

Based on the principle of legality that a person can only be blamed for having committed a crime if the person has been proven guilty by fulfilling the elements of the relevant crime as formulated in the law. This is in line with tax criminal acts or other criminal acts which must first create regulations that legalize or not legalize an act so that it is clear that an action is included in a criminal act or not.

Perpetrators of crime are distinguished between the perpetrators according to the doctrine and the perpetrators according to the Criminal Code. Perpetrators of criminal offenses according to the doctrine are those who have fulfilled all elements of the alleged criminal offenses, while perpetrators according to the Criminal Code are in accordance with the provisions contained in the Criminal Code, so it is possible that someone who does not fulfill the elements of a criminal offense can be classified as perpetrators (Putra; 2009). An act that can be declared a criminal offense, the act must be in accordance with the formulation contained in the provisions of the law and include criminal liability. In the book *Rondom Composite en Crompomis*, van der Poel (Director of Tax at the Royal Netherlands and Director and Professor of the Rotterdam Tax Academy) writes (Santoso; 1995), "... as much as possible tax criminal law must comply with general criminal law. Of course there are still special differences, because the tax law really needs it in the details. After all, even though the basic thoughts are the same, in history the growth has been somewhat distorted. Before half a century ago, tax violations were considered too simplistic and too formal, while the latest theories and philosophies about them no longer distinguish between "theft" of the state and theft of individuals.

Law Number 6 of 1983 concerning General Provisions and Tax Procedures (Tax Law) does not explain what is meant by a tax crime, however it can be assumed that a criminal act in the field of taxation is an act that violates taxation laws, which can result in state financial losses where the perpetrators who do so are threatened with crimes in the form of imprisonment, confinement and fines.

As an administrative law, the taxation law is related to the provisions in the Criminal Code, such as criminal acts: bribery (Article 209; providing false testimony on oath (Article 242 of the Criminal Code); falsification of seals (Article 253 of the Criminal Code); falsification of Letters (Article 209) 263 of the Criminal Code), disclose secrets (Article 322 of the Criminal Code), extortion and threatening (Article 368 of the Criminal Code), embezzlement (Article 372 of the Criminal Code); commit deception (Article 387 of the Criminal Code), crime of position in Article 415, 416 417, 419, 241 and Article 425 of the Criminal Code.

Likewise, this tax crime is related to corruption as regulated by Law No. 31 of 1999 concerning Eradication of Corruption Act amended by Law Number 20 of 2001 (hereinafter abbreviated as the Anti-Corruption Act), in which Article 14 states that: "... everyone who violates the provisions of the law expressly states that violation of the provisions of the law as a criminal act of corruption applies the provisions stipulated in this law. The articles relating to Taxation Crimes in Article 2,3,4,5,6,7,8,9,10,11,12,13 and 18.

Thus it becomes clear that taxation crimes only include acts that are related to tax. Law No. 11 of 2016 concerning Tax Amnesty, states that a criminal offense in the taxation field is a criminal offense as regulated in the Law concerning General Provisions and Tax Procedures (Article 1 paragraph 8). Meanwhile, a clear definition of tax crime can be seen in the explanation *Article 33 section (3)* Law of The Republic of Indonesia Number 25 of 2007 Concerning Investments states as follows: "Where an investor who carries out business activities by virtue of an agreement or a cooperation contract with the Government has committed corporate crimes in the forms of criminal tax offense, recovery cost markup, and other forms of cost markup which diminish profits resulting in losses to the state upon findings or audits by authorized officials, and who has obtained a final and binding court decision, the Government shall terminate the agreement or the cooperation contract with the investor concerned".

Elucidation of Article 33 section(3): "Criminal tax offense" means information regarding reports in connection with tax collection by submission of tax returns, the content of which is untrue or incomplete, or appending false statements that may lead to the state's loss and other crimes as provided for by the laws governing taxation. "Recovery cost markup" means an expense incurred in advance by an investor, the amount of which is unreasonable and will subsequently be calculated as expenditure for investment activities at the time of determining the Government's share. Findings by authorized official means findings with indications of criminal elements upon results of examination made by the Audit Board or other parties authorized to examine, after which the findings are followed up in accordance with laws and regulations.

The existence of the taxpayer in the country is very important for life and diversity. Remembering the church has a strategic function in realizing the ideals of many people. The tax office has a number of functions (budgeters) which allow money to the country as much as possible for the needs of the country. Tax as one of the state revenues / revenues is an income that is used as a source of funding for activities and needs of the state in the context of national development. What is meant by state revenue or the receipt of state or government money which includes taxes, levies, profits of state enterprises, fines, community contributions etc. (Ibnu; 1995). In this case, state revenue is derived from tax and non-tax. In this study, it will be discussed in relation to the State of the Regional Government Declaration of Regional Government Tax Disasters.

DISCUSSION

Tax Criminal Acts in the Taxation Law

Moeljatno (2002) put forward the term criminal action which is an act that is prohibited by a prohibited legal rule which is accompanied by threats (sanctions) in the form of certain crimes, for anyone who violates the prohibition. In other words, all acts that are contrary to the provisions of the law will be punished (sanctions) according to those contained in the provisions of the

law itself. The tax law divides criminal acts committed by taxpayers in 2 (two) types, namely criminal violations and criminal crimes.

1. Violation.

Violations in the teachings of criminal law are often paired with minor crimes, in this case there are similarities with violations in the field of taxation. Criminal threats imposed namely, imprisonment for a maximum of 1 (one) year or a fine of 2 (two) times the tax due, may even be subject to administrative sanctions only if the violation committed is only related to administrative measures (explanation of Article 38 of the Law Number 6 of 1983).

Elucidation of Article 38 of the Taxation Law states that the qualifications rather than negligence itself are unintentional, negligent, inadvertent, and do not care about their obligations so that their actions result in losses to the state. Regarding the offense referred to in article 38 paragraph (1) of the KUP Law Number 6 of 1983 as amended by the third amendment to the KUP Law Number 28 of 2007 namely; Whoever is due to negligence: did not submit notification letter; or submit a notice but the contents are incorrect or incomplete, or attach an incorrect statement so that it can cause harm to the State, be sentenced to imprisonment for one year or a maximum of 2 (two) times the tax due (Waluyo; 1994).

2. Crime.

If the violation is a minor crime, then the crime can be prosecuted as a serious violation because the criminal threat is far more severe than the threat of violation, namely imprisonment for up to 3 (three) years and a maximum of 4 (four) times the amount of tax owed. And for perpetrators of crime repeat (residue), the criminal threat is doubled, with the provisions that it has not been over a year.

As stated in the article 39 of KUP Law No. 6 of 1983 which has been amended from the third amendment to KUP Law No. 28/2007, confirms that: (1). Whoever intentionally did not register themselves or misused or used or used without the right of the Taxpayer Tax Number as referred to in article 2; or not submitting SPT; and / or submit SPT or information whose contents are incorrect or incomplete; and show fake, or falsified books, records or other documents as true; and does not show or lend books, records or other documents; and not depositing tax that has been deducted or levied so that it can cause losses to the state, be sentenced to imprisonment for up to 3 (three) years and a maximum of 4 (four) times the tax due.

The criminal threat referred to in paragraph (1) shall be doubled if someone commits another criminal act in the taxation field before the end of one year, counting from the completion of part or all of the imprisonment imposed. The difference between the offender and the crime here is whether or not there is an intention to commit a violation. If it has a real intention not to fulfill tax obligations, then it is a crime, and if it is committed many times, the perpetrators can be said to be recidivisional.

The imposition of tax sanctions on taxpayers as regulated in articles 38 and 39 of the KUP Law Number 6 of 1983 which was amended from the third amendment to the KUP Law Number 28 of 2007, turned out to have a range in addition to preventing the occurrence of criminal acts (residue)) in the field of taxation, it is also a preventive measure for taxpayers not to commit such prohibited acts, in order to foster a sense of discipline and legal awareness to carry out tax obligations as a State obligation (Waluyo; 1994).

Law of the Republic of Indonesia Number 28 of 2007 concerning the Third Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures, states that criminal liability is determined based on the subject or perpetrators of the crime. The 3 categories of criminal liability include:

1) Criminal liability for taxpayers who commit tax crime

Taxpayers who due to their negligence did not submit a Notification Letter or submit a Notification Letter, but the contents are incorrect or incomplete, or attach information that is not true so that it can cause a loss in state revenue, not subject to criminal sanctions if the negligence is first carried out by the Taxpayer and the taxpayer is obliged to pay the underpayment of the amount of tax owed along with administrative sanctions in the form of an increase of 200% (two hundred percent) of the amount of underpaid tax determined through the issuance of the Underpayment Tax Assessment Letter.

The criminal referred to is added once to 2 times criminal sanctions if someone commits another criminal act in the taxation field before the passing of 1 (one) year, counting from the completion of serving the prison sentence imposed. Any person who tries to commit a criminal offense misusing or using without the right Taxpayer Identification Number or Inauguration of a Taxable Entrepreneur or submitting a Letter of Notification and / or information whose contents are incorrect or incomplete, in order to submit a request for restitution or make tax compensation or credit tax, imposed with imprisonment for a minimum of 6 (six) months and a maximum of 2 (two) years and a fine of at least 2 (two) times the amount of restitution being applied for and / or compensation or crediting carried out and a maximum of 4 (four) times the amount of restitution requested and / or compensation or credit made.

2) Criminal liability for tax employees who commit tax crimes

In the provisions of Law of the Republic of Indonesia Number 28 Year 2007, the second liability is imposed on tax officials who in carrying out their duties carry out:

1. Tax employees who due to their negligence or deliberately calculate or determine taxes that are not in accordance with the provisions of the taxation law are subject to sanctions in accordance with the provisions of the legislation.
2. Tax employees who carry out their duties intentionally outside their authority as stipulated in the provisions of the taxation laws and regulations, can be reported to the internal unit of the Ministry of Finance in charge of examining and investigating and if proven to do so subject to sanctions in accordance with statutory provisions.
3. Tax employees who in carrying out their duties are proven to extort and threaten taxpayers to benefit themselves illegally, are threatened with criminal offenses as referred to in Article 368 of the Indonesian Criminal Code.
4. Tax employees who intend to benefit themselves unlawfully by abusing their power compel someone to give something, pay or receive payment, or do something for themselves, threatened with crime as referred to in Article 12 of Law Number 31 Year 1999 concerning Eradication of Corruption and its amendments.
5. Tax employees cannot be prosecuted, both civil and criminal, if in carrying out their duties based on good faith and in accordance with the provisions of tax legislation.

3) Criminal liability for tax officials who commit tax crime

Law of the Republic of Indonesia Number 28 Year 2007 also imposes criminal liability on tax officials who in carrying out their duties carry out:

1. Officials who because of their negligence have not fulfilled the obligation to keep confidential matters referred to in Article 34 shall be liable to a maximum imprisonment of 1 (one) year and a maximum fine of Rp. 25,000,000.00 (twenty-five million rupiah).
2. Officials who intentionally do not fulfill their obligations or someone who causes non-fulfillment of official obligations as referred to in Article 34 shall be sentenced to a maximum imprisonment of 2 (two) years and a maximum fine of Rp.50,000,000.00 (fifty million rupiah).
3. Prosecution of criminal acts as referred to in paragraph (1) and paragraph (2) is only carried out on complaints of people whose confidentiality has been violated.

Criminal liability may also be imposed on anyone who is obliged to provide the requested information or evidence as referred to in Article 35 but intentionally fails to provide information or evidence, or provides information or evidence that is not properly sentenced to a maximum imprisonment of 1 (one) year and a maximum fine of Rp. 25,000,000.00 (twenty-five million rupiah). Every person who intentionally obstructs or complicates the investigation of criminal acts in the field of taxation shall be sentenced to a maximum imprisonment of 3 (three) years and a maximum fine of Rp. 75,000,000.00 (seventy-five million rupiah).

3. Criminal Taxation Sanctions in Criminal Law

There are no criminal sanctions for tax crime in the Taxation Law in the form of capital punishment or life imprisonment, but only a prison sentence of no more than 6 (six) years and additional penalties can also be imposed by the judge in the form of revocation of rights.

1. Criminal sanctions that can be imposed on violations and crimes in criminal acts include namely:
 1. Imprisonment
 2. Prison sentence
 3. Penalties for fines, and besides that can be imposed
 4. Additional penalties (Article 40b; article 35 etc. of the Criminal Code)

A person convicted with a sentence of imprisonment is obliged to do the work that was ordered by him in accordance with applicable regulations that are lighter than those required for those sentenced to prison (Article 29 of the Criminal Code), and someone who is sentenced to prison is obliged to carry out the work ordered to him according to applicable regulations (Article 14 of the Criminal Code). Prison sentences by judges can be sentenced temporarily or on probation according to certain conditions.

An act carried out by a taxpayer in the taxation field can be a criminal offense and at the same time be an act in the administration field, such as not submitting a notification letter, or entering a notification letter required by tax law whose contents are incorrect or false. For each act, sanctions can be imposed:

- a. Criminal sanctions for criminal acts, and
- b. Administrative sanctions for acts do not heed administrative provisions.

Criminal sanctions are the authority of the criminal court and are imposed by the criminal judge, if the judge has the conviction that the perpetrator has actually been proven to have committed a criminal act, while the administrative sanctions include the tax administration authority in this case the Directorate General of Taxes, and imposed by the Head of the Tax Service Office, as an executive officer of the Directorate General of Taxes, if the conditions specified by law are met with administrative or criminal sanctions having an impact on taxation. In the tax law there are many provisions where violations are threatened with criminal sanctions, this has a major psychological impact on taxpayers and the public, even more so if criminal sanctions are imposed in prison, or a fine plus a prison sentence which with the application of this criminal sanction will reduce the number of violations

and crimes in tax regulations. So that it gives an influence for taxpayers to be more careful not to make their actions in taxation categorized as criminal acts in the taxation field.

CONCLUSION

Every person or taxpayer for their acts intentionally or knowingly acts carried out aiming at a specific purpose by benefiting himself or others causing harm to another person or society, or the State is threatened with imprisonment for a maximum of 6 (six) years and the highest fine 4 (four) times the amount of tax owed. That it can be concluded that every person or official for his actions committing violations or crimes in taxation in Indonesia may be subject to criminal sanctions, not only because of his negligence but also because of his mistakes. From these elements it can also be said that criminal acts in the field of taxation can be categorized as a crime in the field of administration which is not only detrimental to other people or the wider community but also the state because it is detrimental to the state's cash income where the tax is a source of income for the country that aims to development financing and welfare for the wider community. In the tax law there are many provisions where violations are threatened with criminal sanctions, this has a major psychological impact on taxpayers and the public, especially if criminal sanctions are imposed in prison, or fines plus penalties prison which with the application of criminal sanctions will reduce the number of violations and crimes in tax regulations. So that it gives an influence for taxpayers to be more careful not to make their actions in taxation categorized as criminal acts in the taxation field.

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