

## The Urgency of Regulation of Tax Criminal Actions in Preventing Loss of State Revenue in the Tax Sector

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### ABSTRACT

This article examines the urgency of regulating tax crimes in preventing loss of state revenue in the tax sector. The research method used in writing this article is a normative juridical paradigm or doctrinal legal research. The basis for writing this article is literature with a focus on analyzing primary legal materials and secondary legal materials. That is, this research will refer to the legal norms contained in the laws and regulations related to criminal law legislation policies in the tax sector. The results of this study are that the regulation of tax crimes has an important role in preventing or overcoming the occurrence of fraud and crime in the field of taxation. In addition, the regulation of tax crimes as an effort to overcome crime in the tax sector can be carried out preventively and repressively so that the state avoids losses to income in the tax sector.

**Keywords:** *Regulations, Crimes, Taxes, Losses, State Income*

### INTRODUCTION

The existence of taxes in a country is the main source of income, so it has a very important position in the welfare development process launched by the government. In the Unitary State of the Republic of Indonesia (NKRI), taxes are a significant contribution in supporting the development of social welfare in various sectors. Hector de Leon (1993) said as in Wirawan B. Ilyas, that taxes are a proportional contribution made by the people from their assets on the basis of the law to support the government in meeting the needs of the community (Wirawan B. Ilyas & Richard Burton; 2018; 46) .

The urgency of taxes in a country in the implementation of development can be seen from the State Budget (APBN) and the draft APBN every year submitted by the government, namely the increase in the percentage of tax contributions from year to year. Sources of State Revenue based on the State Budget Law consist of Tax Revenue, Non-Tax State Revenue (PNBP), and Grants. Government policies in the field of state revenues and grants are directed at supporting sustainable fiscal policies through efforts to optimize state revenues and grants, especially domestic revenues (Gabrila Christy Mumek & Wasis; 22).

In that context, tax collection in general is intended to meet the needs of the people from various aspects such as the economy, infrastructure, education and national security, and so on. Therefore, taxes are referred to as reciprocal contributions from the people to the state in order to support government programs in meeting the needs of the people, so that through taxes, people are entitled to get facilities and protection as well as security guarantees from the state. Thus, the position of tax is very important in the process of national development as a means to achieve people's welfare because it is one of the main sources of state treasury revenue.

A country's development agenda is a development process that takes place continuously which includes a society, the state, and the entire existence of the state to fulfill the goals outlined in the

implementation of the 1945 Constitution, (Anggi Kania Putri & Taun Taun; 2023). Therefore, the welfare of society is a complex thing that must be realized because it is one of the objectives of the establishment of the State of Indonesia. Improving people's welfare is the essence of national development. The quality of the successful development of a country by empowering its people is a reflection of the level or measure of people's welfare. Welfare can be measured through public health, economic situation, happiness and quality of life.

In Indonesia, the types of taxes that are a source of state revenue include; Income Tax, Value Added Tax, Sales Tax on Luxury Goods, Land and Building Tax, Export Tax, Regional Tax and Retribution, International Trade Tax and Import and Excise Duty. However, the problem in taxes is the regulation of criminal acts in the field of taxation. In fact, the position of taxes in the state is the element that most determines the sustainability of government programs, so that legal instruments are needed that can protect the interests of the state and society.

These various tax resources, if properly managed, have an impact on the growth of national income which can be used to finance all competitions, including development spending. On the other hand, if it is managed incorrectly, it will result in state losses. For this reason, regulation of tax laws must be supported by regulation of criminal acts. This is to overcome deviations and avoidance of taxes by taxpayers and tax managers. This is because crimes in the field of taxation are not only related to national issues but are also related to international crimes.

It must be acknowledged that the abuse and evasion of taxes has the potential to harm state revenues, thus requiring a more accommodative legal formulation and construction of criminal offenses in the tax sector. In Indonesia, the phenomenon of abuse by tax officials is related to taxpayer objections and appeals in 2011 by Gaius H. Tambunan as a reviewer of objections in the section on objections and appeals at the regional office of the Directorate of Taxes. The other cases are those of Dhana Widyatmika, Bahasyim Assifie, Muhammad Dian Irawan, Nuqisra with Eko Darmayanto, Tommy Hendanto, Pargono Riyadi, and finally Herry Setiadji and his cronies.

These perpetrators generally abuse the power they have to extort taxpayers. This shows that the taxation system in Indonesia is still prone to irregularities, especially the lack of supervisory control over the tax system (Rudi Kurniawan, & Didik Endro Purwoleksono; 2019). This happened due to weak criminal arrangements in the tax law. In the tax law, criminal sanctions are *ultimum remedium*. On this basis, several problem formulations emerged including; How is the regulation of tax crimes? And what is the urgency of regulating tax crime

## METHOD

This research paradigm is classified as normative juridical or doctrinal legal research. The main basis of normative juridical research is the literature which focuses on the analysis of primary legal materials and secondary legal materials (Dyah Ochtorina Susanti & Aan Efendi; 2014; 11). That is, this research will refer to the legal norms contained in the laws and regulations related to criminal law legislation policies in the tax sector. According to Peter Mahmud Marzuki, legal research is a process to find a rule of law, legal principles, and legal doctrines to answer the legal issues at hand (Peter Mahmud Marzuki; 2010; 35).

The use of this type of research aims first, to study laws and regulations and judges' decisions with the intention of finding law, second, to find consistency and legal certainty, and third, to examine existing legal objectives and policies (Dyah Ochtorina Susanti & Aan Efendi; 2014; 11). Thus, the type of normative juridical research used in research is aimed at studying and analyzing statutory regulations or positive law, the relationship between one legal rule and another law.

## RESEARCH RESULTS AND DISCUSSION

### 1. An overview of the concept of domestic taxes

Constitutionally, tax collection in Indonesia refers to the constitutional mandate, namely the 1945 Constitution of the Republic of Indonesia Article 23A with the words "Taxes and other levies that are coercive for state needs are regulated by law" (Adrian Sutedi; 2016; 7). Tax collection is essentially the sovereignty of the state to carry it out, because taxes are intended as the main capital of the state in carrying out its duties to provide general welfare and educate the nation's life as stated in the opening mandate of the fourth paragraph of the 1945 Constitution of the Republic of Indonesia. However, tax collection is required to pay attention to several things which include; the principle of fairness and proportionality based on ability, and the principle of development or sustainable economic activity (taxes should not kill the business world), (Mudzakkir; 2011).

Existence of Taxes, in having an important role in the economy of a country. Because, in carrying out development in the field of economy and people's welfare depend on income in the field of taxes. In administering government, the state has an obligation to safeguard the interests of its people, in the areas of welfare, security, defense, and educating the nation's life (Wirawan B. Ilyas & Richard Burton; 2013; 5). Tax payments help create social welfare. Certain tax objects and subjects can contribute more taxes than others. The results of the tax collection are then used to provide facilities for the poor, thereby reducing social inequality.

In line with that, taxes are operationally used by the government to carry out state responsibilities and are very influential in regulating, stabilizing, and developing a country's economic activities. In a country, tax is a source of income derived from the contribution of the people's taxpayers, where the collection regulations are regulated in the law stated in article 23A of the 1945 Constitution Amendment III. Article 23A of the 1945 Constitution reads "taxes and other levies that are coercive for state needs are regulated by law"

In terms of taxes, S.I. Djajadiningrat stated that; "Tax is an obligation to hand over wealth to the State treasury which is caused by a situation, event, and action that gives a certain position, but not as a punishment, according to regulations set by the government and can be enforced, but there is no reciprocal service from the State directly to maintain welfare in general" (Official Site; 2009; 1).

According to the Law and Tax Procedures, taxes are contributions of taxpayers to the state that are owed by individuals or entities that are payable by individuals or entities whose nature can be forced and collected by law, and do not receive compensation in kind. directly and used for the needs of the State for the greatest prosperity of the people, (Mardiasmo; 2010; 22).

The urgency of taxes in a country can be seen from the Indonesian state budget posture data from the last few years which include; The 2019 State Budget is set with a total state revenue of IDR 2,165.1 trillion. This amount consists of tax receipts of IDR 1,786.4 trillion, PNB of IDR 378.3 trillion, and receipt of grants of IDR. 0.4 trillion (Yoserwan; 2020). This APBN is prepared by considering the tax potential that the government can receive in 2019, including the realization of the tax amnesty program and revenue from new tax sources. Meanwhile, for 2020 the government is targeting state spending of IDR 2.461.1 trillion (Yoserwan; 2020).

Then in the 2020 State Budget, state revenue was corrected from IDR 1,760.9 trillion to IDR 1,699.1 trillion, and tax revenue from IDR 1,462.6 trillion fell to IDR 1,404.5 trillion (2020 APBN Posture). For the 2021 State Budget, state revenue is targeted at IDR 1,743.6 trillion, which includes income in the tax sector reaching 1,444.5 trillion and non-tax 298.2 trillion (2021 APBN Post). Revenue from the tax sector is indeed a top priority in the state budget. Because this APBN is allocated for the operational costs of state development in the fields of socio-economic, political, infrastructure, health education,

social welfare and others.

The existence of taxes is due to being needed as a function of the state treasury and a regulatory function), because the state must provide protection and services for its people, so that the state creates taxes to collect funds, so that it can protect and serve its people. That the position of taxes is a pillar (support) of the State. So that the Indonesian people from Sabang to Papua have great potential as a support for the country's economy through tax collection (Mustaqiem; 2014).

## 2. Criminal Acts in the field of Taxation

The problem of criminal acts in the field of taxation is an important issue, especially in the context of law enforcement which must be implemented so that legal provisions can be implemented properly, especially in fulfilling this sense of justice for the community in terms of legal certainty itself. Falsifying a tax invoice is an act of using a tax invoice that does not match the actual transaction (Nendy Damayanti, Puspita Adhy Surya Ningsih, Andi Ersandhi Ramadhan; 2022).

Criminal acts in the field of taxation or taxation crimes are incorrect information regarding reports related to tax collection by submitting notification letters (SPT), but the contents of which are incorrect or incomplete or attach incorrect information so that it can cause state losses and crimes. other provisions stipulated in the tax law.

In line with that, Fidel argues that, a tax crime is an act that violates tax laws and regulations which causes losses to state finances where the perpetrator is threatened with criminal penalties (Fidel; 2015; 140). The emphasis point in tax crimes is on the aspect of state losses. Therefore, tax payments in Indonesia use a self-assessment system in which taxpayers are entrusted with registering, calculating, calculating, paying and reporting their own taxes owed. The consequence of this system is that taxpayers have a big responsibility in paying tax compliance (Fidel; 2015; 140).

A crime in the field of taxation is an act that violates tax laws and regulations which results in losses to state finances, and the perpetrator may be subject to criminal sanctions. The most common tax crime cases in Indonesia are cases of illegitimate Value Added Tax (VAT) invoices. In Indonesia there are still many tax evaders with the tax invoice mode which is not based on the actual transaction value. This causes the possibility of loss of state revenue of up to trillions of rupiah (Bambang Ali Kusumo; 2009; 96).

Based on the description above, a tax crime can be defined as an act that violates tax laws and regulations that causes losses to state finances and the perpetrator is threatened with criminal penalties (Fidel; 2015; 140). For this reason, as an act that violates the provisions of laws and regulations in the tax sector, it will undoubtedly bring legal consequences to the perpetrators. The legal consequences of this can be in the form of administrative sanctions, fines, criminal penalties and even tax disputes in court.

Types of tax crimes are divided into two which include; first, tax avoidance (Tax Avoidance) is a transaction scheme aimed at minimizing the tax burden by exploiting loopholes in tax provisions (utilizing legal loopholes). Its characteristics are trying to minimize the tax burden by not clearly violating tax provisions, and tend to interpret tax provisions not in accordance with the intent and purpose of legislators.

Second, tax evasion is an attempt to smuggle taxes, a scheme to reduce the tax owed by violating tax regulations (illegal), for example; failing to report some sales, exaggerating expenses by fictitious means and collecting taxes but not depositing them. Based on the qualifications of tax violations, there are 2 (two) models of law enforcement in the field of taxation, namely; light law enforcement (soft law enforcement) is imposed on administrative violations, namely in the form of fines and/or interest (general administrative sanctions), for example late reporting of an individual's annual SPT is subject to a fine of Rp. 100,000, - and Hard Law Enforcement is imposed on tax crimes, the sanctions imposed

are special administrative sanctions and criminal sanctions.

Criminal acts in the field of taxation are divided into criminal acts of taxation in the form of violations (*culpa*) as unintentional acts and criminal acts of taxation in the form of crimes (*dolus*) as acts committed on purpose. R. Soesilo in his book explains about Article 359 of the Criminal Code, which says that "because of his fault" is the same as being careless, negligent, very inattentive (R. Soesilo; 1994; 248).

### 3. The Functions of Criminal Law and Punishment

In general, law has a function as a tool to maintain order in people's lives. Likewise in relation to criminal law, which is paradigmatically functioning to maintain public order and legal interests. Such a function is necessary in every society, including developing societies. Because, in this developing society, there are results that must be maintained, protected and secured. However, in a society that is developing, which is characterized by change, the law is not enough to have a conservative function, but must also be able to assist the process of social change, so that the change takes place in an orderly and orderly manner (Mukhtar Kusumaatmadja; 10-12).

In legal theory, John Austin said that law is an order from the ruler, in the sense of an order from those who have the highest authority or who hold sovereignty, (Lili Rasyidi & Ira Rasyidi; 2001; 58). However, Sudarto provides a limitation in the formation of criminal sanctions that in using criminal law one must pay attention to the goals of national development, which is to realize a just, prosperous society that is evenly distributed materially and spiritually based on Pancasila, (Sudarto; 1983; 35).

The obligation to obey the law, not because it is good or fair, but because it has been determined by a legitimate authority. Thus, criminal law as part of the public legal system has the function of channeling the achievement of the objectives of law, namely creating order and protecting society from acts that violate the law. Historically, the term criminal law was first used to refer to all the provisions that stipulate what conditions are binding on the state, if the state wishes to issue a criminal law, as well as rules that define what kind of punishment can be permitted, (Fitri Wahyuni; 2017; 1).

Accordingly, H.L.A. Hart argues, as quoted by Eddy O.S. Hiariej, that the function of criminal law is to maintain public order and decency as well as protect citizens from what is called immoral or harmful and to provide protection against exploitation by other parties, especially for those who are weak, either because they are young, physically weak, mentally or inexperienced. , (Eddy O.S. Hiariej; 2016; 34). In this connection, there are at least two keywords that can be understood from the function of criminal law; The first is to maintain order in society from behaviors that can harm other people, so that an orderly living system will be created. Second, is to protect society from deviant behaviors, so that discredited and exploitative actions do not occur.

In line with that, criminal law in essence also has the goal of maintaining public order from criminal disturbances. By convicting the perpetrators of crimes, it is hoped that other members of the community will not commit crimes. Meanwhile, the theory of special prevention emphasizes that the purpose of the crime is so that convicts do not repeat their actions again. In this case, the criminal function is to educate and improve convicts so that they become good and useful members of society.

In that regard, Adolphe Prins, Gerardus Antonius van Hamel, and Franz van Liszt, argue that punishment is one of the most powerful tools for fighting crime. However, criminal sanctions are not the only tool to fight crime, punishment must be integrated with social policies, especially with preventive measures, (Marlina; 2011; 59). In the context of creating order and maintaining peace, punishment is one of the instruments. Because the law functions to protect the public against crime or a crime, the perpetrators who are caught must be given a punishment, where later the punishment will serve as an example that by committing a crime they will get a reward in the form of a penalty so that they are afraid to commit the crime.

The function and purpose of setting penal provisions in the tax law as a means of prevention, both special prevention aimed at perpetrators and general prevention aimed at the public so as not to deviate from taxes which are the main source of state revenue. In addition, the regulation of tax criminal provisions also has a special function, namely to provide legality to the state in realizing the function of protecting legal interests, meaning that what is protected is not only individual interests but also the interests of society and the interests of the state from actions that will harm them with criminal sanctions.

Existentially, criminal law is essentially aimed at creating order and protecting society. Jan Rummelink, argued that criminal law (should) be aimed at upholding the rule of law, protecting the legal community. Humans one by one in society are interdependent, their interests and relations between them are determined and protected by norms. The maintenance of this social order is to a large extent dependent on coercion. If the norms are not adhered to, sanctions will arise, sometimes in an informal form, such as indifference and loss of social status or respect.

Thus, the regulation of criminal law in the field of taxation has the function of providing a deterrent effect and preventing the repetition of criminal acts in the tax sector, (Rudi Kurniawan, Didik Endro Purwoleksono; 2019). Because of this, Waluyo (1994) argues that the regulation of criminal acts in the KUP Law aims to foster a sense of discipline and legal awareness to carry out tax obligations.

#### **4. The Urgency of Regulating Tax Crimes**

Based on the description above, that the substance of the tax collection is in order to prosper and empower the people. It is in this aspect that tax in a country is an entity in the context of public welfare development. Through this tax, a country can realize the ideals of the welfare state conception. Because, historically, the source of state revenue from taxes has been the main element in supporting economic activities, moving the wheels of government and providing public facilities for the community (M. Faruq S; 2018; 127).

Taxes are a source of government funding used to finance all activities, including development costs, so taxes play a very important role in administering the state. In this context, the regulation of tax crimes becomes important. The regulation of tax penalties in this case will function to prevent fraud and crimes in the field of taxation. Because, without a clear legal umbrella, the potential for fraud and tax evasion is enormous. In addition, the existence of clear legal arrangements will strengthen the law enforcement process in the field of taxation, because they already have legal certainty.

Regulations on tax crimes in tax laws both in Indonesia and in countries of the world, are substantially as instruments to provide basis and legitimacy for the state in protecting the interests of state revenue sources. That is, the protection of the interests of this source of state revenue, is the actualization of legal interests in maintaining protected legal interests. The protection of this legal interest is carried out by the state in actions that are very unpleasant, or actions that actually violate the fundamental personal legal interests of the parties concerned.

For this reason, law enforcement on criminal acts in the field of taxation is part of law enforcement which according to Barry Larking is a series of taxation activities to ensure that taxpayers or potential taxpayers have exercised their rights and fulfilled their obligations according to applicable regulations, for example reporting themselves to obtain tax status. as a Taxable Entrepreneur, assesses the tax payable, fills in the Tax Return correctly, completely, and clearly, as well as submits the actual tax data and information.

#### **CONCLUSIONS**

Based on the description above, it can be concluded that regulation of tax crimes has an important role in preventing or overcoming fraud and crime in the field of taxation. Regulating criminal acts does not

only function to provide legal legitimacy, but also serves to protect various interests, both individual, community and state interests. In addition, the regulation of tax crimes as an effort to overcome crime in the tax sector can be carried out preventively and repressively so that the state avoids losses to income in the tax sector.

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