

Legal Responsibilities of Taxpayers Intentionally Not Reporting SPT Correctly

Rogantino Sampetua Pasaribu

Faculty of Law, Narotama University Surabaya, Indonesia

*Corresponding author E-mail: rogantino.rt@gmail.com

Article History: Received: February 20, 2023; Accepted: April 22, 2023

ABSTRACT

The source of revenue in Indonesia was divided into two: domestic revenue and foreign revenue. In this regard, tax was one of the sources of domestic revenue. The tax was also one of the largest revenue sources for Indonesia. The tax collected by the state on its citizen included income tax, value added tax, sales tax on luxury goods, revenue stamp, and certain land and building tax. Likewise one of the cases that would be analyzed by the recent research was how was the legal sanction given to the taxpayers who intentionally not reporting tax return properly. Thus, it could reduce state income and hamper public welfare. Such problem was really unfortunate and unexpected since this problem could lead state losses in terms of infrastructure development or national or international economy. The research design used in arranging this recent research was normative research. Article 39th of Tax Law has regulated that whoever deliberately failed to submit his tax return, or submit the tax return, but the information and content was false and incomplete, which might harm state revenue, would be subject to criminal sanction. The fulfillment in tax payment was really required, but when this thing was not fulfilled by those taxpayers, they would be subject to legal sanction, since they did not fulfill what they were supposed to do. The sanction would be in form of administrative sanction and also criminal sanction. Those legal sanctions were more prioritized for the taxpayers who deliberately failed to submit their tax return properly, which might subject them to legal sanction.

Key Words : Individual, Country, Law

1. INTRODUCTION

Source of revenue in Indonesia is divided into two: domestic revenue and foreign revenue. In this regard, tax plays as one of domestic revenue sources. The tax is also one of the biggest domestic revenue for Indonesia. The taxes collected by the state on its citizen comprise of income tax, added-value tax, sales tax on luxury goods, revenue stamp, and certain land and building tax. Taxes are an inflow of funds that have the potential through population growth and economic stability. Regarding to those matters, the management of tax should be the priority of government (Rizka Novianti Pertiwi et al., 2014).

Feldman has stated that tax is an accomplishment owed by the authorities and imposed unilaterally according to the norms determined by the authorities themselves, without hoping for any return service and solely to cover all general expenditures (Muhammad Djafar Saidi., 2007).

(Mulyo Agung., 2007) has asserted that the ongoing and sustainable national development so far is aimed to prosper society materially or spiritually. To realize this aim, it really needs a great development budget. One of attempts to realize the improvement of development revenue is

to cultivate domestic resources, in this matter refers to the tax. In perspective of economy, tax collection is the state revenue that is used to develop human life quality.

Since tax reform in Indonesia in 1984, the tax system in Indonesia has been shifted into self-assessment system and is valid until currently. This tax collection system is based on the activity of taxpayers, it means that the taxpayers are demanded to be aware of their obligation to count and pay their tax owed, and the revenue officers will only do verification or supervision over the implementation of obligation of the taxpayers (Priyanto, A, 2017).

Fulfillment of tax payment is really important, but when this matter is not fulfilled by the taxpayers, they will be subject to any legal sanction, as they do not accomplish what they are supposed to do. The sanction can be in form of administrative sanction and also criminal sanction. The sanctions put more priority on the taxpayers, so they will not repeat their mistakes until obtaining the sanctions. Tax evasion can be categorized as an illegal activity, a tax evasion is said to be legal if the transaction is carried out solely for good business purposes. Therefore, to prevent the practice of evasion by multinational companies, most countries have anti-tax evasion provisions (Kevin G. Inkiriwang, 2017).

As recently, we can find that the issue of tax crime often occurs from the taxpayers or the counterpart. Therefore, this issue can bring very harmful impacts on state financial, it needs government firmness on that criminal act that should be well-handled and solved, so it will not harm society or state. The source of state revenue from the tax is the most likely source of funds and at the same time it demonstrates the development independence of a state. Moreover, the targeted tax revenue is always increasing from year to year. To achieve that aim, it is not only depended on the factor of economic growth, but it is also depended on the public awareness to fulfill their obligation as good citizen.

Tax has strategic aspect which is not solely as the source of state revenue, but also as an embodiment of responsibility and unity of all citizens for the sake of state sustainability. Definitely, the citizens here refer to all people who aware and concern about carrying tax obligation.

The government surely expect for an amendment to the previous tax law to create public compliance level in paying tax is improving from year to year. The revenue increase from tax sector is expected to contribute relatively great state revenue within the framework of amended state budget. To realize that huge target, it is not an easy thing. A variety of problems and constraints encountered and so much complex, starting from national and international economic problems, tax bureaucratic service problems, up to taxpayer compliance and awareness problem, and the worst problem is deviation problem or corruption of tax money in terms of receiving or



depositing tax money into treasury fund. Those problems have made people committing a tax crime that is not in accordance to the tax regulation.

Tax crime has been specifically regulated in Article 38 – 43th of Laws of Republic of Indonesia 6th, 1983 on General provisions and tax procedures as it has been changed into the Laws of the Republic of Indonesia 28th, 2007 on the Third Amendment to the Laws of the Republic of Indonesia 6th, 1983 on General Provisions and Tax Procedures. Each point of laws has regulated about any act that is categorized into tax crime either committed by the taxpayers or state officials.

One of tax crime cases that have attracted public attention is the case of tax invoice falsification committed by one of taxpayers. Quoted from the online newspaper, *kompas*, stated that Directorate General of Taxes, Ministry of Finance has won the case of tax crime over RW, Operational Director of DC Inc., the taxpayer who cheat in fulfilling added-value tax. Through online trial on August 05, 2020, the Panel of Judge of District Court of South Jakarta, chaired by Yosdi SH. has sentenced him to five years and six months in prison and a fine of 20,5 billion rupiah, twice the amount of state losses, to RW over the criminal case in the field of taxation and money laundering. Director of Outreach, Service, and Community Relations, DJP Hestu Yoga Saksama has explained that the tax crime committed by the defendant during 2010-2012 by applying invalid tax invoice (Kompas, 2021).

The term of criminal act as derived from *strafbaarfeit* refers to the understanding on human behavior. This criminal act term arouses and develops from the Ministry of Justice that is often used in the legislation, although it is shorter from the deed, but the criminal act has indicated an abstract meaning like action, but solely indicates concrete meaning (Wiryono Prodjodikoro, 2003). *Strafbaarfeit* refers to a form of norm violation that is not only committed deliberately but also committed accidentally.

2. RESEARCH METHOD

The method is a way or way with respect to scientific work, where the method concerns how to work to understand the object that is the target of the science in question (Koentjaraningrat, 1997). Legal research is a scientific activity based on certain methods, systematics, and thoughts by analyzing them. In addition, an in-depth examination of the legal facts was carried out. To then seek a solution or problems that arise in the symptoms concerned.

This research used normative juridical research method. The normative juridical research method referred to a procedure of scientific study that was aimed to find the truth of scientific logic, in which the normative legal research was developed based on scientific disciplines and the way of normative legal science was that the law whose object was the law itself (Moeljatno, 1993).



This study uses the normative legal method, in relation to the approach used in solving the problem in this study is the statute approach and the conceptual approach. The statutory approach is carried out by examining all laws and regulations related to the legal issues being studied. The results of the study are an argument to solve the problem being studied (Peter Mahmud Marzuki, 2005).

The legal materials used in this study are primary legal materials, secondary legal materials (Bambang Sunggono, 2010) and tertiary legal materials, namely:

a. Primary Legal Materials

Primary legal materials are legal materials that have binding power,²⁵ including:

1. The 1945 Constitution of the Republic of Indonesia.
2. The Criminal Code (KUHP)
3. The Criminal Procedure Code (KUHAP)
4. Law Number 28 of 2007 concerning the Third Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures.
5. Law Number 16 of 2009 concerning Stipulation of Government Regulations in Lieu of Law Number 5 of 2008 concerning the Fourth Amendment to Law Number 6 of 1983 concerning General Provisions and Procedures for Taxation Becomes Law.\

b. Secondary Legal Materials

Secondary legal materials are materials that provide an explanation of primary legal materials (Soerjono Soekanto, 2010), which include books or literature, writings or expert opinions as outlined in articles and journals on tax crimes and other related documents. with the discussion to be written, which is obtained directly from related agencies or institutions, as well as through websites or the internet.

c. Tertiary Legal Materials

Tertiary legal materials are materials that provide information on primary legal materials and secondary legal materials, including books, writings, scientific papers, legal dictionaries and Indonesian language dictionaries.

3. RESULTS AND DISCUSSION

General Review of Tax Crime

According to Said Sampara & H.M. Insan, tax crime was defined as an act that could be subject to criminal sanction, as this act referred to the form of violation and crime according to the tax law and the act was committed mistakenly by the responsible taxpayers, tax authorities, and

third parties. The emphasis was on the act, mistake, and sanction as the main shaper to define criminal act. The tax crime provisions were ruled in the Law 28th, 2007 on the Third Amendment to the Law 6th, 1983 on the General Provisions and Tax Procedures. In Chapter VIII, criminal provisions in this legislation have ruled about tax crime. As written in about seven articles: Article 38, Article 39, Article 39a, Article 40, Article 41, Article 41a, and Article 41b.

About four amendments have been made to the Law 6th, 1983 on the General Provisions and tax Procedures. Furthermore, the reference to analyze tax crime was the Law 28th, 2007 on the Third Amendment to the Law 6th, 1983 on the General Provisions and Tax Procedures. In which this legislation has contained the more evident criminal provisions.

The types of tax crime within the Law 28th, 2007 have divided the criminal act committed by the taxpayers and officials into two types: violation and crime. The provisions that ruled about that violation and crime committed by the taxpayers were contained in the Article 38 and Article 39.

Article 38:

Whomsoever, due to his negligence:

- a. Fails to file a tax return; or
- b. Files an incorrect or incomplete tax return, or attaches incorrect information, which may cause losses to the revenues of the state and the act is the second violation as it has been mentioned in Article 13a, shall be punished for a minimum fine of 1 (one) times the amount of tax owed unpaid or underpaid and the maximum fine of twice the amount of tax owed unpaid or underpaid tax, or punished by a imprisonment for a minimum of 3 (three) months and the maximum of 1 (one) year.
- c. A violation of tax obligation by a taxpayer, insofar as it concerns a matter of tax administration, shall be subject to an administrative sanction by issuing tax assessment or tax bill, whereas that connected with a crime in tax matters, is liable to a penalty. An act or deed as referred to under this article is not an administrative violation, but a criminal act in the taxation field (3 Law Number 28, 2007).

Article 39:

- 1) Whomsoever deliberately:
 - a. fails to register to obtain a Taxpayer Identification Number or fails to report the business to be confirmed as Taxable Person;
 - b. Misuses or uses without authority of a Taxpayer Identification Number or a Confirmation of Taxable Person;
 - c. Fails to file a tax return;

- d. Files a tax return with a false or incomplete information;
 - e. Refuses to be audited as referred to in Article 29;
 - f. Shows an account, record, or other document which is false or forged and falsified as it is true, or it does not describe the actual situation;
 - g. Fails to keep books or accounts or records, or documents that are the basis of bookkeeping and recordkeeping and the other documents including to the results of data processing from electronic bookkeeping or organized through online application program in Indonesia as referred to in Article 28 Paragraph (11); or
 - h. Fails to remit tax already withheld or collected, so it can cause losses for state revenue, shall be punished by imprisonment for a minimum of 6 (six) months and maximum of 6 (six) years and a minimum fine of 2 (two) times the amount of tax owed unpaid or underpaid tax and maximum fine of 4 (four) times the amount of tax owed unpaid or underpaid tax.
- 2) The criminal penalties referred to in paragraph (1) shall be multiplied by 2 (two) if an individual commits another criminal tax offence within 1 (one) year after the completion of the previous prison sentence.
 - 3) Whomsoever, in the course of claiming a tax refund or a tax carryover, attempts to commit a criminal tax offence of misuses without authority of a Taxpayer Identification Number or a Confirmation of Taxable Person as referred to in paragraph (1) subparagraph b, or files a tax return and/ or attaches false of incomplete information, as referred to in paragraph (1) subparagraph d, in order to apply for refund or make tax compensation or tax credit, shall be punished by imprisonment for a minimum of 6 (six) months and maximum of 2 (two) years and a minimum fine of 2 (two) times the amount of refund claimed and/ or compensation or credit made and a maximum of 4 (four) times the amount of refund claimed and/ or compensation or credit made.

Meanwhile, the provisions which regulated the violation and crime committed by tax officials have been ruled in Article 39A, Article 41, Article 41A, and Article 41B.

Article 39A:

- a. Issues and/ or uses a tax invoice, proof of tax collection, proof of tax deduction, and/ or proof of tax deposit which are not based on the real transaction; or
- b. Issues a tax invoice unconfirmed by the Taxable Person, shall be punished by imprisonment for a minimum of 2 (two) years and maximum of 6 (six) years and a minimum fine of 2 (two) times the amount of tax in tax invoice, proof of tax collection,

proof of tax deduction, and/ or proof of tax deposit and maximum of 6 (six) time the amount of tax in tax invoice, proof of tax collection, and/ or proof of tax deposit.

Article 41:

- a. An official who, due to his/ her negligence, fails to fulfill the obligation to withhold confidential information as referred to in Article 34, shall be punished by imprisonment for a maximum of 1 (one) year and a maximum fine of Rp. 25.000.000,00 (twenty five million rupiahs).
- b. An official who deliberately fails to fulfill his duties, or anyone who causes the official to fail his duties as referred to in Article 34, shall be punished by imprisonment for a maximum of 2 (two) years and a maximum fine of Rp. 50.000.000,00 (fifty million rupiahs).
- c. A criminal prosecution as referred to in paragraph (1) and (2) shall only be conducted on a suit filed by an individual whose confidentiality has been breached.

Article 41A:

Whomsoever obliged under the Article 35 of this law to provide information or evidence as requested, but deliberately fails to do so, or provides information or evidence that is false, shall be punished by imprisonment for a maximum of 1 (one) year and a maximum fine of Rp. 75.000.000,00 (seventy five million rupiahs).

Article 41B:

Whomsoever deliberately obstructs or hinders a tax criminal investigation shall be punished by imprisonment for a maximum of 3 (three) years and a maximum fine of Rp. 75.000.000,00 (seventy five million rupiahs).

According to the criminal provisions in the Law 28, 2007, the law did not have separation of any criminal acts that might be disqualified as a violation and any criminal acts that might be disqualified as a crime. To set a qualification referred to assess criminal incidents that were considered to have actually occurred including to which law and what law, in the other word; it should find the legal relation for the incidents or phenomena that have been constant. Moreover, to qualify was also referred to search or determine the legal relationship to the proven arguments or events. The judge would assess the proven arguments or events proven or assess the unproven arguments or events by applying legislation that was a material law. To put in another word, it was aimed to seek the law application that was in accordance to the constant arguments or events (Achmad Ali, 2010).

The main purpose of tax legal sanction was not only to sentence an imprisonment for the offender as he/ she did not fulfill his/ her obligation, but it was also a form of reprimand for the



taxpayers to be more obedient in conducting tax return for the sake of state development. In this regard, it was also aimed to develop a good economic stability for the state, as long as the societies were willing to participate in fulfilling their obligation. The sanction was also made, so the societies could comply with all conditions and get punishment as the consequence of violation act.

The sanction in taxation was denoted to be a guarantee (preventive), so the taxable person would not violate the norms. The establishment of tax sanction was enforced to create a compliance of taxpayers in fulfilling their tax obligations.

4. CONCLUSION

Based on the research problem and discussion explained above, the researcher concluded that the compliance in tax payment was an important thing. In the other word, if an individual filed a false or incorrect tax return deliberately, the individual would be subject to criminal sanction. The provisions of tax crime sanction have been regulated in the Law 28, 2007 regarding the Third Amendment to the Law 6, 1983 regarding the General Provisions and Tax Procedures. In the Chapter VIII, the criminal provisions in this law has regulated about tax crime. As mentioned in seven articles: Article 38, Article 39, Article 39A, Article 40, Article 41, Article 41A, and Article 41B.

Suggestion

The taxpayers are expected to actively involve and fulfill their tax obligation, have a high honesty while reporting the tax return or tax return, and realize the importance of tax payment.

REFERENCES

- Achmad Ali,(2010). *Revealing Legal Theory (Legal Theory) and Judicial Theory (Judicial Prudence)*, Kencana, Jakarta, p.21.
- Bambang Sunggono,(2010). *Legal Research Methods*, Jakarta, Rajawali Press, p.194. 3 Law Number 28 of 2007.
- Kompas, "Faking Tax Invoices, This Taxpayer Sentenced to Prison and a Fine of IDR 20.5 Billion", accessed at <https://money.kompas.com/read/2020/08/07/114100226/palsukan-fakturpajak-wajib-pajak-ini-divonis-penjara-dan-denda-rp-20-5-miliar?page=all> on May 20, 2021 at 16:00 WITA.
- Kevin G. Inkiriwang, (2017). *Legal perspective on tax avoidance efforts by a business entity. Journal of Sam Ratulangi University, (Lex et Societatis), Vol.V/No. 4 :17-18.*
- Koentjaraningrat,(1997). *Community Research Methods*, Jakarta, Gramedia, p.16.

Muhammad Djafar Saidi, (2007), Tax Law Reform, Rajawali Press, Depok, p.21.

Mulyo Agung, (2007), Revised edition of Taxation, BPFE, Yogyakarta, p.52.

Moeljatno. (1993). Principles of Criminal Law. PT Rineka Cipta. Jakarta.

Peter Mahmud Marzuki,(2005). Legal Research, Jakarta, Prenada Media Group, p.113.

Priyanto, A. (2017). Fundamentals of Tax Law. Yogyakarta: UNY Press

Rizka Novianti Pertiwi, Devi Farah Azizah, and Bondan Catur Kurniawan,(2014). “Analysis of the Effectiveness of Land and Building Tax Collection (Studies on Revenue Services, Financial and Asset Management Probolinggo City)”, Journal of Taxation, Vol. 3, Numbner 1 November 2014, p.1.

Soerjono Soekanto and Sri Mamuji, (2010). Normative Legal Research A Brief Overview, Jakarta, Raja Grafindo, p. 15.

Wiryono Prodjodikoro, (2003), Certain Criminal Acts in Indonesia, PT. Refika Aditama, Bandung, p. 79