FUNCTIONALIZATION OF CRIMINAL SANCTION ON TAXATION IN INDONESIA BASED ON JUSTICE VALUES

Bambang Ali Kusumo
Sri EndahWahyuningsih
Gunarto
I Gusti Ayu Ketut Rachmi Handayani

ABSTRACT

The Tax Law currently regulates criminal sanctions, but not yet justice. Therefore, the purpose of this study is to examine criminal sanctions in the field of taxation formulated in legislation, to analyze the application of criminal sanctions to criminal acts in the field of taxation and disclose the constraints and efforts to overcome the problem so as to realize the functionalization of criminal sanctions based on the value of justice. The research method used was sociological juridical, with primary and secondary data sources. Primary data obtained by conducting interviews with taxpayer respondents and tax officials at the Directorate General of Taxes Regional Office of Central Java, while secondary data both primary legal materials and secondary legal materials was obtained from the documents of the Supreme Court Judgment on tax crime cases, treaties of tax law, research results and views or opinions of some experts. Furthermore, after all the data has been collected, they were verified and analyzed by qualitative method. The results of the research indicate that in the tax law has been regulated criminal acts and penal sanctions, but in the functionalization of criminal sanctions or criminal law enforcement has not run in accordance with the value of justice. This is because the perpetrators of individual tax crimes can be sanctioned and punished in accordance with his mistakes. However, the perpetrators of corporate or corporate tax crime are not touched by criminal sanctions consequently he cannot be sentenced. This is due to the weaknesses of the material law (legal substance) and formal law (the civil law). In order for such a condition not to occur for the future, it is necessary to reconstruct or amend the law.

Keyword: Tax Law, Functionalization of Criminal Sanctions, Justice.

A. Background

Financial source of national development is based on domestic sources, in addition to oil and natural gas, exports of non-oil and gas goods and from the tourism sector. The taxation sector increasingly plays a very large and decisive role. This can be seen from the State Budget Year 2014/2015 state revenues of Rp 1667.1 trillion. Of these revenues from the tax sector was Rp 1.280.4 trillion, from non-tax state revenue was Rp 385.4 trillion and receipted from grants of Rp 1.4 trillion. Then the State Budget and Revenue is experiencing a change, it changed into Rp 1635.4 trillion. Of the country's income from the tax sector amounted to Rp 1,246.1 trillion, from non-tax state revenues of Rp 386.9 trillion and from grant income of Rp 2.3 trillion[1]. Furthermore, in the State Budget of 2015/2016, state revenue was to Rp 1,793.6 trillion. Of the income from the tax sector was Rp 1,201.7 trillion, from non-tax state revenues wasRp 588.6 trillion and from grant was of Rp 3.3 trillion[2]. Then in the State Budget of 2016/2017, state revenues amounted to Rp 1,822.5 trillion. Of the income from the tax sector amounted to Rp 1,546.7 trillion, from non-tax state revenues of Rp 273.8 trillion and from the grant receiving sector of Rp 2.0 trillion.[3]

Looking at the State Budget of the past three years and even past years shows that the tax sector is very dominant in determining development budget in Indonesia. This indicates that the tax serves as a budgeter, which is a tool or a source to put as much money into the state treasury. In addition to budgetary functions, taxes have other functions, namely regulating or regulatory functions or non-budgeter, the tax can be used as a tool to regulate or implement state policies in economic and social fields[4]. With this function tax is used as a tool to achieve certain goals that are located outside the financial field and much aimed at the private sector.

[1]APBN 2014 Ministry of Finance of the Republic of Indonesia.
[2]APBN 2014 Ministry of Finance of the Republic of Indonesia.
[3]APBN 2014 Ministry of Finance of the Republic of Indonesia.
[4]S. Munawir, 1992, *Perpajakan,* Yogyakarta: Liberty, page. 5

Given the tax functions that are so important, especially the function of budgeters, it is necessary to increase public awareness to pay taxes. Paying taxes is an obligation for the people or society in order to support the continuity of national development. Development and funding/cost are two things that are mutually binding and cannot be separated from one another. Experiences show that many developing countries are unable to carry out their development smoothly due to lack of funds/expenses. Therefore, Minister of Finance BambangBrodjonegoro asked the members of the House of Representatives in Commission XI, to push the Bill of Tax Amendment (Tax) Amnesty can be immediately discussed and legalized into Law. He requested so by reason of tax revenue that has been still not optimal, it is marked by a relatively low tax ratio, which is in the range of 12 percent. This value is still lost by neighboring countries such as Singapore, Malaysia, Philippines and Thailand[5]. The request of the Minister of Finance indicated a great expectation to obtain funds/expenses from the tax sector to secure future developments.

In order to support the above tax policies, several laws and regulations have been enacted in the field of taxation and in enforcement of these regulations, the provisions of criminal sanctions are provided. Functionalization of criminal sanctions or criminal law is a means of supporting the enforcement of legislation in the field of taxation. SoehardjoSastrosoehardjo said that the nature of criminal law is as a law of accompaniment. It is accompanying and guarding the norms that exist in other areas of law, namely the law of state administration and state law.[6]

The criminal law as a supporter, escort or other bodyguard through sanction of crime has a dual function, namely as *ultimumremedium* and serves as a deterrent factor. As an *ultimumremedium*, criminal law is the last drug against a possible criminal offense, when other drugs are no longer able to cope with a crime. In other word, it can be said criminal sanctions or criminal law function subsidiary, criminal law should be applied only if other means (efforts) is no longer adequate[7]. Then as a deterrent factor, it is a deterrent factor to prevent the perpetrator from committing any further criminal acts (prevention special) and preventing others, potential perpetrators of criminal acts will discontinue their intention to commit a crime because they are afraid of a threat in the regulation (general prevention).

In practice, there are many cases of tax crimminal that escaped from the prevailing law, such as cases of tax criminal that occurred in Solo, Surakarta District Court to free (Supreme Court Decision No. 54K / PID.SUS / 2014), Supreme Court with the verdict No . 2239 K / PID.SUS / 2012 punish a Tax Manager of fourteen companies belonging to the Asian Agri Group, while the corporation has not been processed since the beginning of the investigation.

Based on the above description, it indicates that the losses that befell the state finances are very large, so it is unfair if such cases are allowed, while cases that cause small losses are snared with criminal sanctions or criminal law. Given this, it seems that there is a problem with criminal sanctions in the Tax Law. The Solo court acquitted the defendant, but in the Supreme Court the defendant was sentenced (PN solo wrong to enforce the rules). Then for the case of Asian Agri Group, the Supreme Court did not entrap the corporation as the perpetrator of the tax crime since the beginning of the investigation. In Law no. 28 of 2007 on General Provisions and Procedures of Taxation regulated on criminal sanctions in Article 38, 39, 39A, 40, 41, 41A, 41B, 41C, 43, 43A. Actually in this Law, it is stated that the taxpayer is an individual and an entity or corporation (Article 1 point 2), but the regulation on punishment of a corporation or corporation is not regulated. That matter can actually follow the guidelines contained in the Criminal Code (Article 103), but the Criminal Code does not regulate the corporation or legal entity as the subject of criminal law.

Furthermore, when looking at the formulation of criminal sanctions in Law no. 28 Year 2007 the formulation of criminal sanctions is cumulative, namely imprisonment and fine. The cumulative formulation requires the law enforcers to impose joint sanctions or cannot choose between the two. This is when the sanctions are applied to the perpetrator of a corporation or corporate crime cannot be done, because it is unlikely that the perpetrator of a corporate or corporate crime can be imprisoned. In the end, since the law says so, then the perpetrator of a corporation or corporate crime will not entangle with this criminal sanction.

Besides the above description, in the handling of criminal acts of taxation found many criminal acts that have met the requirements in the investigation and prosecution, but not delegated to the court, on the grounds by the Attorney General terminated under the pretext of state losses resulting from the criminal acts of taxation has been met by the taxpayer. The Attorney General shall terminate the investigation at the request of the Minister of Finance for the benefit of state revenues. Termination of the investigation may be made by the Attorney General no later than 6 (six) months from the request. This provision is governed in Article 44 B of Law no. 28 Year 2007 regarding General Provisions and Tax Procedures. Seeing this

[5]Republika, 13 April 2016.
[6]Soehardjo Sastrosoehardjo, 1995, *Politik Hukum dan Pelaksanaanya Dalam Negara Republik Indonesia,* Buku Pegangan Kuliah Magister Ilmu Hukum (S2) Undip Semarang, page 13.
[7]Sudarto, 1986, *Hukum dan Hukum Pidana,* Bandung: Alumni, page 22.

condition seems that the perpetrators of tax crime are highly privileged by this regulation. Meanwhile, when looking at small cases or criminal offenses-criminal acts that inflict losses are not great it is difficult to avoid criminal lawsuits.

Seeing the problems that the authors describe above, in order to end the enormous losses and injustice in law enforcement caused by the continuity of taxation criminal, considering there are perpetrators of tax crimes that are untouchable and there are privileges of the perpetrators of tax crimes because of termination investigation by the Attorney General, although elements of the unlawful nature have been fulfilled. It is necessary to have the functionality of criminal sanctions in Law no. 28 Year 2007 on General Provisions and Procedures of Taxation based on the value of justice. So far, when examined the rules of criminal sanctions in the Tax Law has not been functioning properly. This can be seen from the cases that appear not applied criminal sanctions stipulated in the tax law. As a result of the absence of criminal sanctions, legal uncertainty and injustice arise. Therefore, through this research the authors want to reveal the constraints of what causes it and how to overcome it so as to realize the functional model of criminal sanctions based on the value of justice in the field of taxation.

B. Problem Formulation

The problems that can be formulated are as follows:

1. How is the formulation of criminal sanctions in the tax laws in Indonesia today?
2. How is the application of criminal sanctions in the field of taxation in Indonesia based on the value of justice?

C. Research Methods

Approach method in this research was sociological juridical, type of data in this research include primary data and secondary data. Primary data obtained by conducting interviews with Officials of Regional Offices of Directorate General of Taxes, the taxpayers both personal tax and corporate tax. Secondary data sources were derived from primary legal materials ie tax regulations, Supreme Court decisions on taxation cases, official records or treatises in legislation; secondary law materials such as legal journals, textbooks, comments on court decisions or opinions of jurists, research results and other scientific activities. While tertiary legal materials are legal materials that provide guidance and explanation of primary and secondary legal materials, such as legal dictionaries and encyclopedias

D.Research Results

1. The formulation of criminal sanctions in the Act no. 6 of 1983 as amended by Law no. 28 of 2007 on the third Amendment to Law no. 6 of 1983 on General Provisions and Procedures of taxation is the imprisonment, fine, and imprisonment.

In the discussion of the draft tax law are draft law No. 6 of 1983, the draft law no. 9 of 1994 and draft no. 16 of 2000 and the draft of Law no. 28/2007 do not appear to be discussed in depth about *strafsoort* types of criminal sanction, the severity of the criminal threat of a criminal offense (*strafmaat*). Generally, the parties (the government and the House of Representatives) consider that it is reasonable if the act has been established as a crime, then accompanied by criminal sanctions (criminal type and severity of criminal threat). The purpose of imprisonment or confinement is to deterrent. On the other hand, the fine penalty has the intention to restore the state losses.

In determining the number or duration of criminal penalties, the legislator uses the indefinite system, namely the maximum penalty for each criminal offense. The use of this system is in terms of advantages, namely:

a. Can show the seriousness of each crime;
b. Provide flexibility and discretion to the power of punishment;
c. Protect the interests of the offender itself by setting limits of freedom from the power of punishment.[8]

From these three advantages mentioned above, they contain aspects of community protection and individual protection aspects. The aspect of public protection seen by the enactment of the maximum size of the criminal is a symbol of the quality of the central norms of the community to be protected. The aspect of individual protection is seen by determining the limits of authority of the apparatus in imposing the criminal. In this case the judge can freely determine how long the criminal sanction imposed on a person guilty below the maximum specified by the legislator. The Judge realizes that the imposed penalty sanction is a penalty or suffering. Therefore, the judge should consider the condition of the perpetrator and also pay attention to the interests of the community. So that the verdict imposed meets the sense of justice. This is what Sri EndahWahyuningsih hopes to report from the National Criminal Law Reform Symposium of 1980 which states that: in accordance with the politics

[8]Barda Nawawi Arief, 1996, *Bunga Rampai Kebijakan Hukum Pidana*, Bandung : PT. Citra Aditya Bakti, page 131 – 132.

of criminal law the purpose of punishment should be directed to the protection of society from crime and the balance and harmony of life in society by taking into account the interests of society / countries, victims and perpetrators.[9]

In Law no. 28 Year 2007 on Article 38, the threat is at least 3 (three) months and maximum 1 (one) year or minimum fine of 1 (one) time the amount of tax payable and maximum 2 (two) times the amount of tax payable. The sanction formula system is optional or alternative. Here the judge is free in determining the punishment on the perpetrator can be a confinement range of three months to a year or in a fine law ranges one time the amount of tax payable to twice the amount of tax payable.

In article 39 of Law no 28 year 2007, the maximum number of prison sentences and the maximum threat of fines is still the same as the previous law. There is only difference in the minimum limit of prison and penalty, the previous law do not set the minimum limit. In the new law the third amendment of Law no. 6 of 1983 adds to Article 39A which regulates the issuance and/or use of tax invoices, tax evidences, proof of tax deductions and/or proof of tax collection are not based on actual transactions and the issuance of tax invoices but not confirmed as taxable entrepreneurs. The threat to this action shall be a minimum 2 (two) years and maximum 6 (six) years imprisonment and a fine of at least 2 (two) times the tax amount and a maximum of 6 (six) times the amount of tax in the tax invoice, tax evidences, and/or proof of tax deposit.

From the above description, if we examined these matters, it will raise the question, why the threat of penalties against taxpayers did not change, while the threat of fines against the tax authorities changed. The existence of this difference cannot be separated from the improvement of the tax service, so taxpayers do not hesitate in providing data and information to tax officers/officials tax officers or tax officials including expert staff appointed by the Director General of Taxes to assist in the implementation of the provisions of the law tax-invited. In addition, the tax officers are careful in providing information to other parties related to the taxpayer.[10]

In Article 39 of Law no. 28 Year 2007 increment of criminalization in letter h that is "not storing books, records, or documents that become basis of bookkeeping or recording and other documents including the result of data processing from bookkeeping which is managed electronically or held by on-line application program in Indonesia referred to in Article 28 paragraph (11) ". The penalty for Article 39 Paragraph (1) is maximally the same as the old law, but the new law adds a minimum limit for imprisonment of 6 (six) months and the penalty or penalty is 2 (two) times the amount of tax owed. Then in Article 39 paragraph (3) the threat of maximum penalty is the same as the old law, but the new law adds a minimum limit for imprisonment of 6 (six) months and a fine of at least 2 (two) times the amount of tax payable. The new law (Law No. 28/2007) adds to the criminalization of the misuse of tax invoices in Article 39A, whose threat is minimum 2 (two) years and maximum of 6 (six) years and a fine of at least 2 (two) times the amount of tax invoice and a maximum of 6 (six) times the amount of tax invoice.

In Law no. 28 Year 2007 on Article 41, 41B the threat of imprisonment and prison is the same as the old law, but the threat of penalties is greater than the old law. Article 41 paragraph (1) shall be subject to maximum 1 (one) year imprisonment and a maximum fine of Rp 25,000,000.00 (twenty five million rupiah), Article 41 paragraph (2) shall be punished with maximum imprisonment of 2 (two) years and maximum fine Rp 50.000.000,00 (fifty million rupiah). Article 41A maximum imprisonment of 1 (one) year and maximum fine of Rp 25.000.000,00 (twenty five million rupiah). Article 41B shall have a maximum penalty of 3 (three) years and a maximum fine of Rp 75,000,000.00 (seventy five million rupiah). This new law adds criminalization to disruptive third parties in order to withdraw tax from taxpayers. It is set out in Article 41C. The threat of punishment is in the form of imprisonment or a fine of money.

In the Law no. 6 of 1983 the system used is cumulative and alternative. In Law no. 9 of 1994 jo Law no. 16 of 2000 jo Law no. 28 of 2008 which is the third amendment of Law no. 6 Year 1983 formulation of criminal sanctions is cumulative.

With the change of form of criminal formulation from cumulative and alternative to cumulative form only, the legislator does not give freedom to the judge to choose the type of crime that is threatened, but the judge in giving a verdict or decision should combine the criminal sanction that is threatened to the perpetrator. Nevertheless the judge in the verdict is still given a leeway to determine under the maximum threatened. For the new law, the Law no. 28 of 2007 is more narrowed the freedom of judges because of the existing provisions give a minimum limit of imprisonment and penalty (Article 39, 39A). Then the question arises why this happens. Considering that taxes have a considerable role in facilitating the development, criminal sanctions need to be improved either in the form of sanctions from cumulative or alternatives to cumulative only as well as duration and amount of fines. This is intended to improve taxpayer compliance[11]. If you look at the reasons submitted by the investigator

[9]Sri Endah Wahyuningsih, 2013, *Prinsip-Prinsip Individualisasi Pidana Dalam Hukum Pidana Islam dan Pembaharuan Hukum Pidana Indonesia,* Semarang: Badan Penerbitan Universitas Diponegoro, page 93.
[10]Interview with tax officials
[11]Interview with Investigator of the Directorate General of Taxes.

according to the opinion of the author, it is correct to see the state budget revenue and expenditure (APBN) from the last few years shows the tax sector is very big contribution to the state budget. Therefore, for anyone who commits a crime in the field of taxation needs to be dealt with firmly in accordance with applicable regulations. Nevertheless, obedient or not to the rule does not lie in the duration or magnitude of the threat of criminal sanction, there are still other factors to consider. According to SoeryonoSoekanto "if a threat of punishment is listed on paper only without actually applied to the perpetrator of a crime, then there is no effect.[12]" In addition, the threat of punishment must be imposed or given to the offender without delay. When this is done quickly, then the threat of punishment has a greater effect than when it is postponed.[13]

Then the forms of sanctions that use the cumulative system cause various problems. When it is viewed from the cumulative system operationalization of cumulative system has a very rigid and imperative nature. With this system the judge is required to bring both criminal types together (imprisonment/penalty and fine). Thus the judge is not given the opportunity to choose which criminal type he deems most appropriate for the offender. When looking at the formulation of sanctions on the tax law the most cumulative formulation is between imprisonment and fines. Even this is feared not effective and can cause problems. Within the tax law there is no special provision regarding substitution for unpaid penalties. This means the general provisions of the Criminal Code, namely Article 30, that the maximum penalty of replacement confinement is six months or may be a maximum of eight months if there is a *recidive* or *concursus*. Thus the possibility of a criminal penalty will not be effective, because if he is unable to pay a penalty is only subject to a six months or a maximum of six months' imprisonment. For the perpetrator/convicted criminal the replacement of a fine may not have an effect because if he pays the fine, he will continue to imprisonment due to cumulatively imposed judge.

2. Functionalization or Implementation of Criminal Sanctions in the Field of Justice-Based Taxation

In the period 2009 to 2012 quite a lot of the amount indicated to commit criminal acts in the field of taxation conducted by the agency or entrepreneurs to manipulate the tax. Of those cases there are those resolved out of court (administrative sanctions) which means that they are resolved by the Directorate General of Taxes and some are settled through the courts (criminal sanctions). If possible the taxpayer can still be fostered means able to pay the taxes and penalties and to maintain the good name of the taxpayer, and then the case will be settled out of court (Directorate General of Taxes)[14]. If it is difficult to resolve outside the court, the case will be resolved by court. This can be seen from the existing data in the period 2009 to 2012 that there are 92 (ninety two) tax criminal cases that have entered the prosecution stage. Of the total cases, 69 (sixty nine) cases have been severed by the court with a prison sentence and a fine of almost 4.3 (four point three) rupiah.[15]

In cases of taxation rarely are processed until the stage of investigation, let alone until the process in court. From the results of the examination, there are allegations of criminal acts in the field of taxation. The Director General of Taxes is authorized not to conduct investigations and only apply administrative sanctions. If the administrative sanction is applied, then the respective settlement of the Director General of Taxes shall issue a tax assessment letter (SKP) to be paid by the taxpayer within one month of issue (Article 9 paragraph (3) of Law No. 28 Year 2007). If the taxpayer's due date does not pay, then the tax bill issued and the application of tax bills with forced mail. The implementation of this tax bill by this letter follows the law no. 19 of 2000 regarding the amendment to the law no. 19 of 1997 on tax collection by a forced letter.

In the tax law is not specified or there are no specific guidelines or parameters for reference to PPNS Directorate General of Taxation in determining when and what forms of violations or criminal offenses in the field of taxation. How can or cannot proceed to the stage of investigation or just enough until stage examination only, so the settlement is administrative (out of court). In practice, as the authors described above, the guidelines in determining an offense is only to the level of examination or to the stage of investigation is "to be fostered or not"[16]. If he can be fostered means able to pay all the taxes and penalties, then the offense or crime there is no need for an investigation, just enough examination. Conversely, if it cannot be fostered, then the examination will continue until the investigation stage. In the absence of guidance or parameters in the tax laws and in practice such guidelines, it will result in policies that are biased, discriminatory and there is no legal certainty. In addition, the investigated criminal offenses in the field of taxation may still be dismissed, as stated in Article 44B of Law no. 28 Year 2007 which states that for the sake of state revenues, the Attorney General may stop the investigation of criminal offenses in the field of taxation at the request of the Minister of Finance. However, the termination of this investigation can be done if the taxpayer has paid taxes that are not or less paid or that should not be returned, plus a fine of 4 (four) times the amount of tax which is not or less paid. From this provision, it appears that "orientation of state revenue" is the most preferred policy in the field of taxation. So strong is this orientation, until the handling of criminal acts in the field of taxation should be solved through

[12]Soeryono Soekanto, 1985, *Efektivitas Hukum dan Peranan Sanksi,* Bandung: Remaja Karya, Interview with Investigator of the Directorate General of Taxes 90.
[13]Ibid, page 92.
[14]Interview with Investigator of the Directorate General of Taxes.
[15]Investigator of the Directorate General of Taxes.
[16]Investigator of the Directorate General of Taxes.

litigation, it can be resolved by approaching receipt of payment of taxes payable and penalties (administrative). According to the author's opinion, law enforcement in the field of taxation is going well, and then Article 44B should be deleted or replaced by a redacted editor that "state compensation does not stop the investigation".

From the above description it appears that there is a wide discretion given the law to the Dictated Tax General in dealing with violations or criminal acts that occurred in the field of taxation. Most of the violations/criminal acts of taxation tend to be settled by using administrative sanctions. Indeed, the choice of administrative sanctions is in terms of advantages, namely tax money can immediately enter the state treasury and the amount in accordance with the desired. With the policy of the Director General of Taxes which tends to settle criminal offenses in the field of taxation by administrative means, the provisions of criminal sanctions stipulated in the tax law are not functioning or not functioned. Whereas if the provisions of criminal sanction applied or functioned to criminal acts in the field of taxation will have a pretty good deterrent effect, both against the perpetrator (prevention special) and the candidate of the perpetrator (general prevention). Thus, the irregularities or violations are reduced and resulted in tax revenue to the state treasury increasingly large. This is in accordance with Umar Said's opinion in relative or objective theory (*doeltheorien*) in criminal law states: that punishment is not only to punish the crimes that have been committed but also to 1) prevent others from committing the criminal acts of the tax, 2) improvement of the taxpayer concerned so that in the future it will not repeat the same action, and 3) protect other obedient and non-compliant taxpayers to perform their proper tax duties so that tax revenue can continue to be achieved.[17]

Based on the above explanation, it is clear that the tax law has given a considerable opportunity to the Directorate General of Taxes in settling a case or criminal case in the field of taxation by administrative means of paying taxes and penalties. This payment is deemed to have covered the state losses, so that the provisions of criminal sanctions no need be used.

Furthermore, there are many cases of criminal acts in the field of taxation have not yet entered the process of justice, but they are solved by administrative means, what about cases that have been delegated to the court. In this regard, from cases of criminal acts in the field of taxation which have been transferred to the court, in fact most or almost all, the prosecutor as a public prosecutor based his indictment on an individual as a perpetrator not on the body or corporation as the perpetrator. Likewise, the decision of the District Court, the High Court and the Supreme Court also decide or punish individuals as perpetrators of tax crime. Yet it has been recognized in the Law no. 28 of 2007 on the third Amendment to Law no. 6 of 1983 concerning General Provisions and Tax Administration that the taxpayer or the subject of tax law is an individual or entity (corporation). Under such circumstances, the criminal provisions contained in the tax law do not function comprehensively.

The case of taxation in Indonesia which is charged with committing a crime is an individual as an employee of a company. There is only one uniqueness in the case of criminal acts committed by SuwirLaut in a criminal act in 14 (fourteen) companies incorporated in the Asian Agri Group, whereby a corporation or company was fined a penalty of Rp 2,519,955,391,304 (two and a half trillions more rupiah). Yet since the beginning of the investigation agency or corporation has never been charged with criminal acts in the field of taxation. As for the other two cases namely Surabaya case and Yogyakarta case of corporation or corporation has never been mentioned at all meaning body or corporation isnot the perpetrator of criminal act in tax field.

From the case in Surabaya the defendant was VinnaSencehero HO as the founder and director of CV. AnugerahBumi Nusantara, the case in Yogyakarta defendant Lin Handy Kiatarto his position was the director of CV. TiraPersada and Defendant SuwirLaut are Tax Manager from 14 (fourteen) companies from Asian Agri Group whose tax return has been notified to each director of 14 (fourteen) companies, they work for their respective companies and work according to their duties and their respective authorities. Therefore, the acts committed by each person are not in the name of the person but on behalf of the company, including in the conduct of criminal acts in the field of taxation, it cannot be charged on personal interests but charged to the interests of the body or company. Under conditions of investigation, prosecution, examination in the Court until the verdict is read out in the cases which the authors describe above are blamed are the individuals of Vinna Sencahero HO, Lin Handy Kiatarto and Suwir Laut. Yet the result of effort or performance of the concerned is for the benefit of the company. Seeing such things, then from the aspect of substance fairness and procedural justice is not fulfilled everything.

E. Conclusions

1. The formulation of criminal sanctions in Law no. 6 of 1983 as amended by Law no. 28 of 2007 concerning the Amendment of Act No. 3 of 2007 6 of 1983 is the imprisonment, fine, and imprisonment with the formulation of cumulative criminal sanctions.
2. Implementation of criminal sanctions or law enforcement has not run maximally. This is due to the perpetrators of individual tax crimes that can be criminalized, while the perpetrators of corporate or corporate crime have not been touched by criminal sanctions. In order for the perpetrators of criminal acts in the field of taxation to be subject to

[17]Umar Said, 2009, *Pengantar Hukum Indonesia* (dalam Putusan MA. No. 2239 K/PID.SUS/2012).

criminal sanction or to be criminally charged, it is necessary to have a correction or reconstruction of criminal sanctions in the field of taxation both the legal substance (material law) and the law of the show (formal law).

References

Ahmad Drajad, 2017, *internet* diunduh 23 Desember2017

Barda Nawawi Arief, 1996, *Bunga Rampai Kebijakan Hukum Pidana*, Bandung : PT. Citra AdityaBakti.

BardaNawawiArief, *Beberapa Aspek Pengembangan Ilmu Hukum Pidana* (Menyongsong Generasi Baru Hukum Pidana Indonesia), Pidato Pengukuhan Sebagai Guru Besar Ilmu Hukum Universitas Diponegoro Semarang,tanggal 25 Juni 1994

Faisal, 2015, *Ilmu Hukum, sebuah kajian kritis, filsafat, keadilan dan tafsir,* Yogyakarta: Thafamedia
Gunarto, 2015, *Bahan Materi Kuliah Teori Hukum Program Doktor (PDIH),*Fakultas Hukum UNISSULA Semarang.

HyronimusRhiti, 2015, *FilsafatHukum,* Yogyakarta: UniversitasAtma Jaya.

Madjid Khadduri, 1999, *Teologi Keadilan (Perspektif Islam),* Surabaya: Risalah Gusti.

Mahrus Ali, 2013, *Membumikan hukum Progresif,* Yogyakarta: Aswaja Pressindo.

Muladi, 1995, *Kapita Selekta Sistem Peradilan Pidana*, Semarang : Badan Penerbit Universitas Diponegoro.

Muladi dan Barda Nawawi Arief, 1992, *Bunga Rampai Hukum Pidana,* Bandung: Alumni.

Ronny Hanitijo Soemitro, 1990, *Metodologi Penelitian Hukum dan Yurimetri,* Jakarta: Ghalia Indonesia.

SoerjonoSoekanto, 1985, *EfektivitasHukumdanPerananSanksi,* Bandung: RemajaKarya.

Peter Mahmud Marzuki, 2009, *PenelitianHukum,* Jakarta: Prenada Media Group.

Soerjono Soekanto, 1986, *Pengantar Penelitian Hukum,* Jakarta: Universitas Indonesia Pess.

S. Munawir, 1992, *Perpajakan,* Yogyakarta: Liberty.

Soehardjo Sastrosoehardjo, 1995, *Politik Hukum dan Pelaksanaanya Dalam Negara Republik Indonesia,* Buku Pegangan Kuliah Magister Ilmu Hukum (S2) Undip Semarang.

Sri Endah Wahyuningsih, 2013, *Prinsip-Prinsip Individualisasi Pidana Dalam Hukum Pidana Islam dan Pembaharuan Hukum Pidana Indonesia,* Semarang: Badan Penerbitan Universitas Diponegoro.

Sudarto, 1986, *Hukum dan Hukum Pidana,* Bandung: Alumni.

Umar Said, 2009, *PengantarHukum Indonesia* (Putusan MA. No. 2239 K/PID.SUS/2012).

Republika, 13 April 2016.

http://ugun-guntari.blogspot.com/2011/12 teori keadilan dalam perspektif hukum.

Undang-Undang No. 28 Tahun 2007 tentang Perubahan ketiga Undang-Undang No. 6 Tahun 1983 tentang Ketentuan Umum dan Tata Cara Perpajakan.

Putusan MA. No. 2239 K/PID.SUS/2012.

Putusan MA. No. 1933 K/PID.SUS/2015.

Putusan MA. No. 2806 K/PID.SUS/2015.

Bambang Ali Kusumo
alikusumobambang@yahoo.co.id
Student of Doctoral Program of Law Science,
Universitas Islam Sultan Agung, Semarang

Sri EndahWahyuningsih
endah.w@unissula.ac.id
Faculty of Law, Universitas Islam Sultan Agung, Semarang

Gunarto
gunarto@unissula.ac.id
Faculty of Law, Universitas Islam Sultan Agung, Semarang

I Gusti Ayu Ketut Rachmi Handayani
ayu_igk@staff.uns.ac.id
Universitas Sebelas Maret