PRIVATE POLICY IN THE IMPLEMENTATION OF SANCTIONS BASED ON ECONOMIC DAMAGE DUE TO TAX CRIME

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ABSTRACT

Taxes are mandatory contributions imposed on the people, through formal legality and can be applied. In Law No. 16 of 2009, that a crime against tax, may be subject to sanctions both criminal and administrative. When tax penalties began to be applied to taxpayers, it seems that the application of these sanctions caused unrest among business people. The issue of tax (tax law) as part of state administrative law, is actually resolved through administrative law methods, not criminal law. The perspective of tax law enforcement by criminal procedure must be changed immediately. The tendency to use criminal sanctions in tax law is felt to have to be abandoned for the benefit of tax law as well as tax revenue itself. The law enforcement approach using administrative sanctions on tax law provides more benefits in carrying out development in various areas of life where funds are sourced from taxes. Even with the various developments in various sectors of life, in the end will provide other benefits in creating change in society.

Keywords: tax law, tax, administrative law, law enforcement

INTRODUCTION

The state in carrying out governance, has an obligation to safeguard the interests of its people, in the fields of welfare, security, defense and intelligence of their lives. This is in accordance with the objectives of the state stated in the preamble to the 1945 Constitution the fourth paragraph stating: "Protect all Indonesians and all Indonesian blood and to promote public welfare, educate the nation's life and participate in carrying out world order based on social justice" (Wirawan & Burton; 2013).

Tax is a mandatory contribution to the state owed by individuals or entities that are coercive based on the law, with no direct compensation and maximum use for the prosperity of the people. The discussion on taxes is certainly inseparable from the issue of the rights and obligations of the taxpayer. It is based that the taxpayer is a legal subject who has rights and obligations in legal relations in the taxation field (Barus; 2015).

With regard to the implementation of the provisions of the law in the field of taxation, the taxpayer has several obligations that must be fulfilled. If the taxpayer does not fulfill the obligations that the law places on the taxpayer, taxpayers may be forced to fulfill obligations in various ways. There is coercion in the form of administrative coercion in the field of state administrative law such as administrative fines or forced letters, but there is also coercion in the field of criminal law. Obligations that are considered to be seriously threatened with criminal sanctions (Djafar; 2011).

The settlement of tax criminal law can also be resolved through administrative channels as meant in Article 44B the Law No. 6 of 1983 on General Provisions and Tax Procedures (UUKUP) which states as follows: Paragraph (1) which reads "In the interest of state revenue, at the request of the Minister of Finance, the Attorney General can stop investigating tax crimes in the longest time in a period of 6 (six) months from the date of the request letter.

Paragraph (2) which reads "Termination of investigation of criminal acts in the field of taxation as referred to in paragraph 1 is only done after the taxpayer has paid tax debt that is not or underpaid or that should not be returned and is added with administrative sanctions in the form of a fine of 4 (four) times the amount of tax that was not or is not paid or should not be returned."

Taxes constitute the largest share of state revenue and are one of the main sources of financing for national development. The strategic role of the taxation sector can be seen from the increasing trend set by the government in the State Budget (APBN). In the last five years, the target of state revenue from the tax sector increased by around 190%, from Rp. 652 trillion in 2010 to Rp. 1,246 trillion in 2014 and Rp. 1,244.7 trillion (APBNP) targeted in the 2015 Revised State Budget (Pujiono, P, 2016).

The low level of tax compliance, in terms of the legal aspects can actually be minimized by formulating a criminal law policy in the taxation field. The low level of taxpayer compliance encourages the birth of legal policies in an effort to overcome existing problems. The Government in terms of formulation has actually issued general tax provisions, namely through Law Number 6 of 1983 concerning General Provisions and Tax Procedures, as amended and perfected through Law Number 9 of 1994, Law Number 16 of 2000 , Law Number 28 of 2007, Law Number 16 of 2009 which also regulates criminal sanctions.

Law is not an objective, but law is a means to an end of a common idealized law. Therefore, Barda Nawawi Arief (1998) states that in connection with the problem of determining criminal sanctions as a means to an end, it is of course necessary to formulate criminal penalties which are expected to support the achievement of these general objectives (http: //www.jimly. com). It is only by then departing or goal-oriented that what methods, means, or actions can be used. When referring to the opinion of John Austin (2001), that the law is an order from the entrepreneur, in the sense of the order of those who have the highest authority or who hold sovereignty. However Sudarto (1983) provides a limitation in the formation of criminal sanctions that in using criminal law must pay attention to the goals of national development, which creates a prosperous just society that is evenly material and

spiritual based on Pancasila.

The purpose of criminal law policy in the field of taxation is basically not to find fault or give punishment as revenge, but to realize the level of compliance of the community as a taxpayer so that ultimately able to increase state revenue in the taxation field. The legal formulation policy in the field of taxation is substantially related to the renewal of tax administration with the aim of increasing taxpayer compliance as well as strategies in tackling violations and various forms of non-compliance with tax obligations.

The criminal law formulation policy in the field of taxation in its implementation turned out to cause various problems, especially related to the application of the provisions of the article governing criminal sanctions. One of the problems arises because one of the law enforcers in taking action on the same legal act is using a different policy. This research will discuss the Prosecution Policy in the Application of Sanctions Based on the Value of Economic Losses Due to Tax Crimes.

RESEARCH METHODS

This study uses a normative juridical approach by using primary legal materials, especially regarding legislation in the field of taxation, particularly Law Number 6 of 1983 concerning General Provisions and Tax Procedures as amended by Law Number 16 of 2009. Also used secondary legal materials that provide an explanation of primary legal materials, namely in the form of taxation books and various other information obtained from articles, press releases, mass media (Soekanto, Mamudji; 1986). The research approach was carried out using a legal approach and a case approach in the field of taxation. Other documents used are supporting legislation related to criminal matters and tax debt issues, namely Law Number 19 of 1997 concerning Tax Collection by Forced Letter amended by Law Number 19 of 2000, Law Number 14 of 2002 regarding the Tax Court and the Criminal Code (KUHP).

Indonesian State of Law

The idea of a rule of law was built by developing the legal instrument itself as a functional and just system, developed by arranging the structure and infrastructure of an orderly and orderly political, economic and social institution, and fostered by building a culture and awareness of rational and impersonal law in social life, nation and state. To that end, the legal system needs to be developed (law making) and enforced (law enforcing) as it should, starting with the constitution as the highest legal standing. To guarantee the establishment of the constitution as the supreme law of the supreme law, a Constitutional Court was formed which functions as the guardian and at the same time the ultimate interpreter of the constitution (Asshiddiqie; 2011).

In modern times, the concept of the rule of law in Continental Europe was developed among others by Immanuel Kant, Paul Laband, Julius Stahl, Fichte, and others using the German term, "rechtsstaat". Whereas in the Anglo American tradition, the concept of the rule of law was developed on the pioneering work of A.V. Dicey (2007) as "The Rule of Law". According to Julius Stahl, the concept of the rule of law which he calls the term 'rechtsstaat' includes four important elements, namely (Asshiddiqie; 2011):

1. Protection of human rights.
2. Sharing of power.
3. Government based on law.
4. State administrative justice.

Whereas A.V. Dicey explained that there are three important characteristics in each rule of law which he calls the term "The Rule of Law", namely:

1. Supremacy of Law.
2. Equality before the law.
3. Due Process of Law.

The four principles of 'rechtsstaat' developed by Julius Stahl mentioned above can in principle be combined with the three principles of the 'Rule of Law' developed by A.V. Dicey to mark the characteristics of the modern rule of law today. In fact, by "The International Commission of Jurist", the principles of the rule of law are added to the principles of free and impartial justice (independence and impartiality of judiciary) which are increasingly felt necessary in every democratic country today. The principles considered important characteristics of the rule of law according to "The International Commission of Jurists" are:

1. The state must obey the law.
2. The government respects individual rights.
3. Free and impartial justice.

According to Arief Sidharta (2004), Scheltema, formulating his views on the elements and principles of the rule of law in a new way, which includes 5 (five) things as follows:

1. Recognition, respect and protection of human rights rooted in respect for human dignity.

2. The validity of the principle of legal certainty. The rule of law is aimed at ensuring that legal certainty is realized in society. The law aims to realize legal certainty and high predictability, so that the dynamics of shared life in society are 'predictable'. The principles contained in or related to the principle of legal certainty are:
   a) The principles of legality, constitutionality and rule of law;
   b) The principle of the law establishes various sets of regulations on how the government and its officials take government action;
   c) The principle of non-retroactive legislation, before binding the law must first be promulgated and announced appropriately;
   d) The principles of justice are free, independent, imparial, and objective, rational, fair and human;
   e) The principle of non-liquet, the judge may not reject the case for reasons of law the statute is missing or unclear;
   f) Human rights must be formulated and guaranteed in protection the law or the Constitution.

3. Validity of the Equality (Similia Similius or Equality before the Law) In the rule of law, the Government may not privilege certain people or groups of people, or discriminate against certain people or groups of people. In this principle, contained (a) the existence of guarantees of equality for all people before the law and government, and (b) the availability of mechanisms to demand equal treatment for all citizens.

4. The principle of democracy in which everyone has the same rights and opportunities to participate in government or to influence government actions. For this reason, the principle of democracy is realized through several principles, namely:
   a) There are mechanisms for selecting certain public officials that are direct, public, free, confidential, honest and fair which are held periodically;
   b) The government is responsible and can be held accountable by the people's representative body;
   c) All citizens have the same possibilities and opportunities to participate in the process of making political decisions and controlling the government;
   d) All government actions are open to criticism and rational study by all parties;
   e) Freedom of opinion / belief and express opinion;
   f) Freedom of the press and information traffic;
   g) Draft laws must be published to enable effective people's participation.

5. The Government and Officials carry out the mandate as a public servant in the context of realizing the welfare of the community in accordance with the objectives of the state concerned. This principle contains the following matters:
   a) General principles of adequate governance;
   b) Fundamental requirements for human existence with human dignity are guaranteed and formulated in legislation, especially in the constitution;

The government must rationally arrange its actions, have clear and effective goals (doelmatig). That is, the government must be carried out effectively and efficiently.

Muhammad Tahir Azhary (1992), by taking inspiration from the Islamic legal system, put forward the view that the characteristics of a good nomocracy or the rule of law contain 9 (nine) principles, namely:

1. The principle of power as a mandate;
2. . The principle of deliberation;
3. The principle of justice;
4. The principle of equality;
5. The principle of recognition and protection of human rights;
6. The principle of free justice;
7. The principle of peace;
8. The principle of welfare;
9. The principle of obedience of the people.

The concept of the rule of law "Rechtstaat" was born from a struggle against the absolutism of the kings so that it is revolutionary and rests on the European legal system or the Civil Law or Modern Roman Law. The concept of Rechtsstaat is in line with the birth of the concept of Liberalism which also developed the notion of "Liberal rule of law" or rule of law in the narrow sense as taught by Immanuel Kant (1724-1804) namely "Nachtwakerstaat" or "State of the Night Guard". Then Frederich Julius Stahl, a German scholar in 1878 corrected and perfected the understanding of the Liberal State of Law with the concept of the rule of law in the broad sense of the "Welfare Law State" (Welfarestaat), with the main elements (Either; 2016):

1) There is protection of human rights;
2) There is a separation and division of state power for guarantee the protection of human rights;
3) Government based on regulations;
4) The existence of administrative justice.

The Republic of Indonesia (NKRI) is a state of law. Explanation of the 1945 Constitution confirms that the Indonesian State is based on Law (Rechtstaat) not a state of power (Machtstaat). The statement was later in the 1945 Constitution the results of the amendment (1999-2002) regulated in article 1 paragraph (3) which stipulates that "The State of Indonesia is a State of Law".

By paying attention to the concepts of the rule of law as outlined in the discussion of items 1, 2, 3, and 4 above, Indonesia does not embrace the concepts of Rechtstaat, Rule of Law, Islamic Legality and Nomocracy, and Socialist Legality, but adheres to the concept of a legal state based on Pancasila or the "Pancasila Law State". The concept of the Pancasila State law originates from the socio-cultural values of Indonesia whose crystallization is the Pancasila as the State Base as stipulated in the Preamble of the 1945 Constitution which is a "Staatsfundamentalnorm" of the Unitary State of the Republic of Indonesia.

According to Philipus M. Hadjon (1987) important elements of the Indonesian law state based on Pancasila are:

1. Harmony of relations between the government and the people based on harmony;
2. A proportional functional relationship between the powers of the State;
3. The principle of resolving disputes through consultation and justice is the last means if the deliberation fails;
4. Balance between rights and obligations.

Tax Law in Indonesian National Law

Indonesia as a state of law, characterized by a welfare state (Welfare State) who intends to bring justice to all the people of Indonesia. In a modern welfare state, the task of the government in carrying out public interests is very broad and sometimes violates the rights of the community to collect taxes. This can be avoided if the government lives and obeys applicable tax laws. Tax collection in Indonesia has the philosophy of the Five Principles and the 1945 Constitution, precisely in Article 23-A of the 1945 Constitution the result of the 4th amendment that reads: "Taxes and other levies that are forcing for the country's needs are regulated by law".

That the tax must be regulated by law reflects that the tax collection is determined together with the people through their representatives in the DPR, including the determination of the tax rate. Thus, sustainable reform is based on the Pancasila philosophy and the 1945 Constitution, in which provisions stipulate that upholds citizens' rights and places tax obligations as a state obligation which is a means of community participation in state financing and national development.

Some experts give an understanding of tax as follows; PJA Adriani (2003) provides the following tax definition: "Taxes are dues to the state (which can be forced) that are owed by those who are obliged to pay them according to regulations, with no achievement back, which can be directly appointed, and the purpose is to finance public expenditures related to the duty of the state to run the government ".

Rochmat Soemitro (2003) gives the tax understanding as follows: "Taxes are dues to the state (which can be forced) that are owed by those who are obliged to pay them according to regulations, with no achievement back, which can immediately be demonstrated, and the point is to finance expenses general in connection with the duty of the state to organize government. "According to Black Law Dictionary (1990), "*tax is a monetary charge imposed by government on persons, entreties, or property to yield publik revenue*.

According to Article 1 number 1 of Law Number 28 Year 2007 concerning the Third Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures: "Tax is a mandatory contribution to the state owed by individuals or compelling bodies under the law law, by not getting a direct reward and used for the needs of the state for the maximum prosperity of the people (Bawazier; 2018).

From the three definitions above, it can be seen that the characteristics inherent in the notion of tax are

1. Taxes are levied based on the strength of the law and the implementing regulations.
2. In tax payments can not be demonstrated the existence of individual contra.
3. Taxes are levied by the state, both by the central government and regional governments.
4. The tax is intended for government expenditures, which if there is still a surplus of income, is used to finance Public Saving.

Imposition of Criminal Sanctions Against Taxpayers' Criminal Acts

Tax criminal acts are acts against the law committed by taxpayers (individuals and entities) that can cause losses to state revenues in the tax sector, which can be grouped into 2 (two) parts, namely negligence (violation) and intentional (crime). Article 43 Paragraph (1) of the KUP Law stipulates that in addition to being carried out by taxpayers (plagen or dader), taxation criminal acts can involve a companion (deelderming) such as a taxpayer's representative, power of attorney or other party who orders to do (doen plager or midedader) , who participated in committing (medeplegen or mededader), who advocated (uitlokker), or who helped carry out tax crime (medeplichtige), this is intended in order to hold the perpetrators accountable (Irawan; 2003).

Taxation Criminal Acts related to SPT is about incorrect information regarding reports related to tax collection by submitting notification (SPT), but the contents are incorrect or incomplete or attach incorrect information so that it can cause state losses and other crimes that regulated in taxation laws (Barus; 2015).

The SPT is the basis that starts the examination. Thus the tax return reported by the taxpayer will be able to determine whether or not the taxpayer will be examined. In addition to that, the SPT function, namely as a means of reporting the calculation and payment of tax payable, will find out how much the amount of tax owed, how much the tax is less or more paid in a period of time, namely in a certain tax period or a certain tax year.

Violations of the tax provisions classified as tax crime committed by taxpayers relating to the tax return along with the sanctions are as follows: Negligence for taxpayers; Intentional For Taxpayers; Trial For Taxpayers. In addition to negligence and deliberation, taxation criminal acts also include probation as stipulated in Article 39 paragraph (3) of the KUP Law where every person who tries to commit a crime of abusing or using without the right the Taxpayer Identification Number or Taxable Entrepreneur Confirmation or submitting a Letter Notification and / or information whose contents are incorrect or incomplete in the context of applying for restitution or tax compensation or tax credit, shall be sentenced to a maximum of 2 (two) years imprisonment and a fine of at least 2 (two) times the amount of restitution requested and / or compensation or credit done and no more than 4 (four) times the amount of restitution requested and / or compensation or credit made.

The dilemma of legal settlement of taxation crimes stated in the article is the granting of authority by law to the Minister of Finance on the grounds of state revenue interests, asking the attorney general to stop the process of investigating tax crimes. The assertion that the Attorney General can stop the tax investigation if there is a request from the Minister of Finance based on the interests of state revenue, shows that in tax law, it is not the only legal step that must be applied.

Minister of Finance Regulation No. 13 / PMK.03 / 2009 further explained that the tax that is not or underpaid or that should not be returned is calculated at the amount of the loss in state revenue listed in the case file in case the investigation is terminated after the file is declared complete by the Public Prosecutor, or the amount of the loss the state revenue calculated by investigators or experts as outlined in the progress report in the event that the investigation is stopped while the investigation is still ongoing.

The Minister of Finance can use Article 44B of the KUP Law by writing to the Attorney General. Furthermore, the Attorney General can stop the investigation as long as the taxpayer pays off the tax debt along with administrative sanctions of four times the amount of underpaid tax. Tax laws provide a solution to settling tax debts by emphasizing administrative aspects through paying taxes, not punishing taxpayers. The taxpayer inspection process is not intended to convict the taxpayer but prioritizes the administrative process by issuing a tax assessment as the basis for collecting tax debt.

The mistake of including the criminal article in tax law seems to be based on two reasons, namely: Tax is a means for the state to finance development for the welfare of society. The task of the state is to provide prosperity and justice from tax collection, if the source of tax revenue is not reached, then various development programs will not run smoothly. Tax is the only fairest instrument to provide a level of public welfare. Only with tax instruments each nation can create prosperity and justice for society (Barus; 2015).

The issue of Article 44B of the KUP Law, which changes criminal sanctions with administrative sanctions can disturb the sense of justice in the community. But precisely by changing the way to apply the law in accordance with the rules of the law that have been set, will make the desired sense of justice. The purpose of law is not solely for legal certainty but also to fulfill a sense of justice and for expediency. If there is a taxpayer who has been investigated, it should not be delegated to the court, but given a pardon if they want to pay off the tax debt along with administrative sanctions.

CONCLUSION

The tax law provides a solution to tax settlement by emphasizing the administrative aspects through payment of taxes by means of tax assessments, not on convicting taxpayers. The tax audit process is not intended to convict a taxpayer but rather prioritizes the administrative process by issuing tax assessments as a basis for collecting tax debt. The criminal article regulated in the tax law is incorrect or inaccurate. The mistake of including the criminal article in tax law, in the author's view, seems to be based on two reasons. First, taxes are a means for the state to finance development for the welfare of society. Second, taxes are the only fairest instrument to provide a level of welfare for the community. Only with a tax instrument can every nation be able to create the welfare and justice that its people expect.

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