

Application Of Criminal Law Against Corporations For Criminal Actions Of Tax Evavasion Based On Law Of The Republic Of Indonesia Number 28 Of 2007 Concerning General Provisions And Procedures For Taxa

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Application Of Criminal Law Against Corporations For Criminal Actions Of Tax Evasion Based On Law Of The Republic Of Indonesia Number 28 Of 2007 Concerning General Provisions And Procedures For Taxation

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ABSTRACT. Constitutionally, tax collection is regulated in Article 23A of the 1945 Constitution of the Republic of Indonesia which confirms that taxes and other coercive levies are for state needs as regulated by law. Tax regulations themselves are regulated in Law of the Republic of Indonesia Number 28 of 2007 concerning General Provisions and Tax Procedures. Tax is an official state levy on taxpayer citizens. What is meant by taxpayer is an individual or entity including taxpayers, tax holding agents and tax collectors who have tax rights and obligations in accordance with the provisions of tax laws and regulations. As time goes by and the development of economic globalization, there is a lot of potential for crimes or crimes in the economic sector committed by corporate business actors. The difficulty holding corporations criminally liable results in many material and immaterial losses to the state. However, criminal liability in the form of strict liability can provide a solution to this problem. Where full corporate criminal liability (strict liability) states that corporations can be held criminally liable. This research uses normative research methods by taking a statutory approach and a conceptual approach. The data obtained in this research was through literature study by collecting data from secondary legal materials, namely primary data, secondary data and tertiary data related to the problem formulations that will be discussed in this research. Then the data obtained is analyzed and described qualitatively. The aim of the research is to determine the *modus operandi* of perpetrators in committing criminal acts of tax evasion based on Law of the Republic of Indonesia Number 28 of 2007 concerning General Provisions and Tax Procedures and to find out how criminal law is applied to corporations for criminal acts of tax evasion based on Law of the Republic of Indonesia Number 28 of 2007 concerning General Provisions and Tax Procedures.

Keywords: Enforcement of Criminal Law, Corporations, Crime, Tax Evasion.

INTRODUCTION

In the opinion of expert Rifqhi Siddiq, tax is a payment that is required by the government of a country within a certain time to taxpayers and is in mandatory form and must be repaid to the state by the taxpayer but does not directly respond to his services. Meanwhile, according to Article 1 paragraph 1 of the Law of the Republic of Indonesia Number 28 of 2007 concerning General Provisions and Procedures for Taxation , what is meant by tax is a mandatory contribution to the state owed by an individual or entity

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that is coercive based on law, without receiving rewards directly and used for state needs for the greatest prosperity of the people.

There are 5 (five) tax elements, including:

- Contributions or levies from the people to the state;
- Taxes are collected based on law;
- Taxes can be imposed;
- Without lead service or counterperformance; And
- Used to finance state households or general government expenditure.

Tax payment is a right and obligation of every person obliged to pay taxes to finance the state and national development. The characteristics of taxes are:

- Taxes are collected by the state. Both by the central government and regional governments based on laws and implementing regulations;
- Tax collection implies a transfer of funds (resources) from the private sector (taxpayers paying taxes) to the state sector (tax collectors or tax administrators);
- Tax collection is intended for general government financing purposes in order to carry out routine government functions in development;
- It cannot be shown that there is individual compensation (counterperformance) by the government for tax payments made by taxpayers; And
- Functions as a budgeter who fills the state treasury or state budget to cover the financing of government administration and regulates or implements state policies in the economic and social fields (regulating/regulative function).

Recently, the Indonesian government has been intensively eradicating the crime of tax evasion. Tax evasion is an attempt made by a taxpayer to reduce or eliminate tax debt based on applicable provisions as a violation of statutory regulations. What is meant by tax crime is incorrect information regarding reports related to tax collection by submitting a notification letter but the contents are incomplete and attaching incorrect information so that it can cause losses to the state and other crimes. The definition of this tax crime is regulated in Article 33 paragraph 3 of the Law of the Republic of Indonesia Number 25 of 2007 concerning Capital Investment.

The existence of corporations greatly influences the stability of the national economy because it can influence the economic growth or income of a country. The positive impact of

the development of a corporation is that it is a source of state revenue in the form of taxes paid into the state treasury, it can reduce unemployment because corporations can absorb labor and providing for community needs. Meanwhile, the negative impact of the development of a corporation is that many corporations do not comply with tax obligations. Because tax is a direct and coercive obligation, collection can also be forced. There are various definitions of the corporate concept, one of which is based on legal terminology. Corporate law (*corporation*) is a group of people who jointly carry out financial, financial, ideological or government affairs.

On the other hand, a corporation can also be defined as a business entity, company, company, association, foundation, union and organization. In fact, the Criminal Code (KUHP) as a general criminal law provision which is a legacy of the Dutch colonial era does not yet recognize the existence of corporations as subjects of criminal law. This is because only humans have inner attitudes so that only humans can be held *criminally responsible* . The position of corporations as legal entities and non-legal entities in criminal law is broader than in civil law. can take the form of a legal entity or non-legal entity, the meaning is broader than in civil law.

Almost every day the public is presented with news about corruption because tax evasion is one part of the criminal act of corruption. Business development is increasingly growing and causing many losses to the state. The rise of criminal acts related to tax evasion committed by corporations and the absence of legal firmness that can be enforced to eradicate corporate crime, means the author is interested in discussing this further in this scientific work entitled "**Implementation of Criminal Law Against Corporations for Criminal Acts Tax Evasion Based on Law of the Republic of Indonesia Number 28 of 2007 concerning General Provisions and Tax Procedures**".

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FORMULATION OF THE PROBLEM

Based on the background description, the problem in this research can be formulated as follows:

1. What is the perpetrator's modus operandi in committing tax evasion based on Law of the Republic of Indonesia Number 28 of 2007 concerning General Provisions and Tax Procedures?
2. How is criminal law applied to corporations for criminal acts of tax evasion based on Law of the Republic of Indonesia Number 28 of 2007 concerning General Provisions and Tax Procedures?

RESEARCH METHODS

The type of research used in this journal is normative legal research which takes a legal approach to library materials or secondary data on the problems to be researched. This research uses laws and regulations in Indonesia in accordance with the legal norms contained in tax law. Secondary data sources in this research consist of primary legal materials, including Law of the Republic of Indonesia Number 28 of 2007 concerning the Third Amendment to Law of the Republic of Indonesia Number 6 of 1983 concerning General Provisions and Tax Procedures. Secondary legal materials consist of written works by legal experts, journals, mass media, print media and the internet. Meanwhile, tertiary legal materials are obtained from concepts and information that support primary and secondary legal materials consisting of language dictionaries, legal dictionaries and other legal sources that can answer the problem formulations that will be discussed in this research. The data collection technique in this research was carried out using library research obtained from secondary legal materials which were analyzed descriptively qualitatively.

DISCUSSION

1. The Modus Operandi of the Perpetrator in Committing the Crime of Tax Evasion Based on Law of the Republic of Indonesia Number 28 of 2007 concerning General Provisions and Procedures for Taxation in Indonesia

Corporation comes from the word " *corporatio* " in Latin, which comes from the verb " *corporare* " which means to give body or make a body. In Indonesia itself, the term corporation is closely related to special criminal law, for example Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Corruption Crimes (UU Tipikor). The definition of a corporation according to the Corruption Eradication Law is an organized group of people and/or assets, whether they are legal entities or non-legal entities.

As a profit-oriented company, of course a company will try its best to get as much profit as possible. One way is to avoid being a taxpayer. Try to minimize tax payments as much as possible. And without realizing it, this is one of the beginnings of various problems in society. An example is taxation in the name of a corporation by embezzling or manipulating taxes using various modus operandi so that the corporation can gain its own profit.

Adam Smith said that in tax collection there are 4 (four) things that must be paid attention to, namely justice (equity), juridical (*certainty*), economics and efficiency (*convenience of payment*). The aim is that the imposition of taxes does not make the business world die but rather becomes a motivation in developing a country's economy. Meanwhile, according to Siti Kurnia Rahayu, what is meant by tax evasion *is* the taxpayer's active efforts to reduce, eliminate and illegally manipulate tax debts or get away with not paying taxes in accordance with statutory regulations.

The factors that cause tax evasion include:

- a. Environmental conditions;
- b. Disappointing service from tax collectors;
- c. High tax rates;
- d. Discrimination;
- e. Fraud; And
- f. Poor tax administration system;

Every taxpayer, especially business entities, will try to minimize the tax burden through tax planning by carrying out tax management. The occurrence of tax evasion will have an impact on state treasury revenues. Usually, to carry out their actions in committing tax evasion, the perpetrators usually use several methods or *modus operandi*, including:

- Tax crime mode by adding fictitious costs;
- Mode by not reporting sales in the annual notification letter (SPT);
- The method of manipulating exports to obtain value added tax (VAT) refunds;
- The mode of issuing or using tax invoices is not based on actual transactions (fake tax invoices); And
- The mode does not deposit taxes that are withheld or collected.

Avoiding taxes is a common phenomenon in the use of taxes. This is usually done through self-restraint to reduce or suppress the appetite for consumption of goods that can be taxed or replace them with goods for which the tax is relatively minimal. The negative impacts resulting from tax evasion are:

- a. Can cause the rate of economic growth to stall;
- b. Can hinder the preparation of the draft state revenue and expenditure budget (RAPBN) ; And

- c. Can disrupt infrastructure development;

The consequences of intentional unlawful acts or negligence cause enormous state losses because tax revenues are not deposited into the state treasury.

2. Application of Criminal Law Against Corporations for the Crime of Tax Evasion Based on Law of the Republic of Indonesia Number 28 of 2007 concerning General Provisions and Tax Procedures

Humans are referred to as legal subjects (*natuurlijk persoon*) and corporations are referred to as legal entities (*rechtspersoon*). In line with the development of criminal law in Indonesia, the predicate of criminal law subjects is not only for humans but also for corporations. Corporations as subjects of tax criminal law. Legal subjects supporting rights and obligations. It is intended that corporations support rights and obligations related to the realm of administrative criminal law. This means that legal subjects can commit tax crimes and can be held criminally responsible and subject to tax criminal sanctions for the corporation's actions.

The main elements in a tax audit go through the following stages:

- a. Information that is measurable with fixed criteria. Starting with searching, collecting and processing the information contained in the Annual Notification Letter (SPT) which is filled in by the Taxpayer in accordance with the *self-assessment system*;
- b. Business Unit. In this case, when carrying out a tax audit, the scope of the audit must be stated clearly. Business entities can take the form of individual taxpayers or legal entity taxpayers;
- c. Collecting and Evaluating Evidence Materials. This means that all information used by tax auditors must undergo evaluation so that it conforms to predetermined criteria; And
- d. Competent and Independent Examiner. Every tax auditor must have sufficient knowledge, attitudes and skills to be able to understand the criteria used.

Tax law is an administrative regulation regarding the authority of employees or tax officials in collecting taxes from taxpayers who have the obligation to pay taxes according to their own calculations in the interests of state revenue. Crimes in the field of taxation are acts of defiance laws carried out by taxpayers (individuals and legal entities) and can causing losses to state revenues.

As regulated in Article 2 paragraph 1 of Law of the Republic of Indonesia Number 28 of 2007 concerning General Provisions and Procedures for Taxation, tax subjects as mandatory workers are divided into 2 (two) parts, including:

- a. Individuals or individuals and undivided inheritance as a unit replace those entitled to; And
- b. Entities consisting of limited liability companies, limited liability companies, state and regional owned companies with any name and in any form, partnerships, companies or other associations, firms, kongsi, cooperative associations, foundations or institutions and permanent business forms.

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According to Article 43 paragraph 1 of Law of the Republic of Indonesia Number 28 of 2007 concerning General Provisions and Procedures for Taxation, those who can be held responsible for tax crimes are taxpayers who order or participate in committing tax crimes regarding corporate criminal acts committed by corporate bodies. The law is regulated based on Article 103 of the Criminal Code (KUHP) and Law of the Republic of Indonesia Number 31 of 1999 concerning Corruption Crimes.

The main principle in criminal responsibility is the principle of guilt (*schuld*) on the part of the perpetrator. Because it is very difficult to determine whether or not there is a mistake in the corporation. An expert named Barda Nawawi Arief is of the opinion that corporate responsibility is a principle of fault which does not apply absolutely so that criminal liability refers to the doctrine of *strict liability* and *vicarious liability* which in principle is a deviation from the principle of fault. And it should be used as a consideration for the application of corporate responsibility in criminal law. Even though corporations can be held criminally responsible, a corporation cannot be sentenced to prison or death. So the penalty that can be imposed on corporations as perpetrators of tax crimes is a fine.

When giving a decision, the judge usually takes into account *the mens rea* of the perpetrator or the corporation because the corporation is considered to have made a profit. So that criminal liability is imposed on the management and corporation. Corporations as legal subjects have long been known in civil law. From all the provisions of the regulations, it can be concluded that acts that are threatened with criminal sanctions are criminal acts:

- a. What is done by the taxpayer;
- b. Which is carried out by tax officials (fiscus); And

- c. What is done by a third party, namely not a taxpayer and not a tax official.

The forms of criminal liability for corporations proven to have committed criminal acts of tax evasion are:

- a. Article 38 of Law of the Republic of Indonesia Number 16 of 2009 concerning General Provisions and Tax Procedures. Which reads "Everyone who, through negligence:

- Not submitting a notification letter; And
- Submitting a notification letter but the contents are incorrect or incomplete or attaching information whose contents are incorrect so that it can cause losses to state revenue and this act is an act after the first act as intended in Article 13A, is fined at least 1 (one) times the amount of tax owed which is not or underpaid and a maximum of 2 (two) times the amount of tax owed which is not or underpaid, or shall be sentenced to imprisonment for a minimum of 3 (three) months or a maximum of 1 (one) year.

- b. Article 39 of Law of the Republic of Indonesia Number 16 of 2009 concerning General Provisions and Tax Procedures. Which reads:

- Any person who deliberately does not register or misuses or uses without authorization the Taxpayer Identification Number (NPWP) or Confirmation of Taxable Entrepreneur as intended in Article 2 or does not submit a notification letter and submits a notification letter but the contents of the information are incorrect or incomplete; or refuses to carry out an inspection as intended in Article 29 and shows false or falsified books, records or other documents as if they were true and does not carry out bookkeeping, record keeping, does not show or does not lend books, records or other documents; does not remit tax that has been withheld or collected which can result in losses to state revenues and is punishable by imprisonment for a maximum of 6 (six) years and a fine of a maximum of 4 (four) times the amount of tax owed that is not or underpaid.

- As intended in paragraph 1, the penalty is doubled if a person commits another crime in the field of taxation before 1 (one) year has passed since the completion of serving the prison sentence imposed.
 - Every person who attempts to commit a criminal act misuses or uses without rights the NPWP or NPPK as intended in paragraph 1 letter a or submits a notification letter and/or information whose contents are incorrect or incomplete as intended in paragraph 1 letter c in order to submit a request for restitution or making tax compensation, shall be punished with imprisonment for a maximum of 2 (two) years and a fine of a maximum of 4 (four) times the amount of restitution requested and/or compensation made by the taxpayer.
- c. Article 41 of Law of the Republic of Indonesia Number 16 of 2009 concerning General Provisions and Tax Procedures. Sanctions for officials who, due to negligence, do not fulfill the obligation to keep matters confidential as intended in Article 34, are to be punished with imprisonment for a maximum of 1 (one) year and a fine of a maximum of IDR 4,000,000 (four million rupiah). An official who deliberately does not fulfill his obligations or someone who causes the official's obligations to not be fulfilled as intended in Article 34 shall be punished with imprisonment for a maximum of 2 (two) years and a fine of a maximum of IDR 10,000,000 (ten million rupiah).
- d. Article 41A of Law of the Republic of Indonesia Number 16 of 2009 concerning General Provisions and Tax Procedures. Sanctions for third parties. Any person who, according to Article 35 of this law, is obliged to provide the information or evidence requested but deliberately does not provide information or evidence, or provides information or evidence that is not true, shall be punished with imprisonment for a maximum of 1 (one) year and a fine of up to 1 (one) year, a lot of IDR 10,000,000 (ten million rupiah).

Conclusion

Based on the research results and discussion of several problem formulations above, the author can conclude as follows:

1. The perpetrator's modus operandi in committing the criminal act of tax evasion based on Law of the Republic of Indonesia Number 28 of 2007 concerning General Provisions and Tax Procedures is carried out in various ways, namely by adding fictitious costs, by not reporting sales in the annual notification letter. (SPT), the mode of manipulating exports to obtain value added tax (VAT) refunds, the mode of issuing or using tax invoices that are not based on actual transactions or fake tax invoices and the mode of not depositing taxes withheld or collected.
2. The application of criminal law to corporations for criminal acts of tax evasion based on Law of the Republic of Indonesia Number 28 of 2007 concerning General Provisions and Tax Procedures, namely subject to criminal sanctions under Article 38, Article 39, Article 41 and Article 41A of Law of the Republic of Indonesia Number 16 2009 concerning General Provisions and Tax Procedures.

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