

BUSINESS CRIMES IN THE FIELD OF TAXATION

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Abstract: Tax is a source of state revenue that has a significant contribution so that the source of tax revenue becomes a mainstay for national development. Taxes can be one of the instruments for the government to measure how much public awareness is to pay taxes or fund state administration and measure the value of people's real income and welfare. Criminal law in an effort to tackle crime in the field of taxation is to create coherence in the applied criminal law policies whose impact will not make it difficult for law enforcement officials to apply them in tax legislation. The imperative elements contained in the tax law, want to set forth a principle that the use of criminal sanctions should still pay attention to the principle of subsidiarity. In a sense, a new type of punishment that is more severe is used if other types of criminal sanctions that are lighter are deemed inappropriate or unable to support the achievement of the objective of punishment.

Keywords: *Business Crime, Taxation.*

Introduction

Tax is a source of state revenue that has a significant contribution so that the source of tax revenue becomes a mainstay for national development. Taxes can be one of the instruments for the government to measure how much public awareness is to pay taxes or fund state administration and measure the value of people's real income and welfare. The higher public awareness and the increasing number of taxpayers shows that the level of public trust in state administration is higher and the attitude of nationalism or feeling of belonging to the country is also higher. As an instrument of successful development and prosperity, professionally managed taxes can function to support and accelerate the attainment of a just and prosperous society. Therefore, when collecting taxes, pay attention to several things, namely based on clear and definite laws and regulations, the principle of fairness and proportionality based on ability, and the principle of development or sustainable economic activity (taxes must not shut down the business world). Funds originating from taxes are people's trust funds which must be managed effectively and efficiently and returned to the people in the form of a national development program whose benefits can be immediately felt and enjoyed by the people. Lately the problem regarding the management of tax (tax) funds has become a national problem in connection with the news of criminal acts against taxpayer funds which have become the main topic in the mass media involving unscrupulous tax officers, which have had a broad negative impact on society, especially the tax officials. taxpayer.

Legal problems that need attention in the future are regulation and law enforcement regarding tax dispute resolution based on business crimes that have the potential to harm state revenues and criminal offenses in the field of taxation as well as misuse of funds sourced from state revenues originating from taxes. As it is known that business crimes are faced in almost all countries in this world.

Literature Review

1. Tax Law

Taxes are the main contribution of government revenue, and taxes are also a source of state spending. There are two tax functions, namely the budget function (Brotodiharjo, 2013). First, it functions as a budget, namely taxes as a source of government funds to finance its expenditures. The tax-budgeting function is a function that lies in the public sector, and taxes are a tool to put as much money as possible into the state treasury which in time will be used to finance state expenditures, especially to finance routine expenditures, and if after that there is still surplus (surplus), so that this surplus can be used to finance government investment (public savings for public investment) (Munawir, 2017).

Second, it functions as Regular or regulates, namely taxes as a tool to regulate or implement government policies in the social and economic fields. Taxes have a function to regulate (Regular), in the sense that taxes can be used as a tool to regulate or implement state policies in the economic and social fields with a function to regulate taxes which are used as a tool to achieve certain goals that are outside the field of Finance and its regulatory functions mostly directed to the private sector.

Based on Law Number 28 of 2007 concerning the Tax Law, it can be explained that taxes are dues owed by individuals or legal entities that must be paid to the state in accordance with the law and are coercive. Participation in paying taxes does not bring direct rewards, but will be allocated for the national interest for the greatest prosperity of the people.

Method

A study cannot be said to be research if it does not have a research method (Koto, 2021). The research method is a process of collecting and analyzing data that is carried out systematically, to achieve certain goals. Data collection and analysis is carried out naturally, both quantitatively and qualitatively, experimentally and non-experimentally, interactively and non-interactively (Koto, 2020). The research method used is normative juridical research, namely legal research conducted by examining literature or secondary data (Koto, 2022). In qualitative research, the process of obtaining data is in accordance with the research objectives or problems, studied in depth and with a holistic approach (Rahimah & Koto, 2022).

Result and Discussion

1. Business Crime In Indonesia

The definition of the term "business crime" is formulated by John.E.Conklin as: "Business crime is an illegal act, punishable by a criminal sanction, which is committed by an individual or a corporation in the course of a legitimate occupation or pursuit in the industrial or commercial sector for the purpose of obtaining money or property, avoiding the payment of money or the loss of property or personal advantage". (Conklin, 1977:11-13). The formulation of "business crime" above shows one of the patterns of non-conventional crime which is currently very prominent because it is a problem in almost all countries, especially developing countries which are very dependent on their economic development and growth and are closely connected in transnational commerce. In addition, the notion of "business crime" also contains a philosophical, juridical and sociological meaning. Philosophically, business crime implies that there has been a change in values (values) in society when a

business activity is operated in such a way as to be detrimental to the interests of the wider community. This change in value illustrates that the business community no longer values honesty (honesty) in national and international business activities in order to achieve the goal of maximizing profits. In short, it can be concluded that in business activities there is no order and legal certainty and therefore it is impossible to find justice for business people with good intentions. The logical consequence of the situation and legal issues is that other legal instruments are needed, namely criminal law to help create order and legal certainty and to find justice for business people who have good intentions and have been harmed. As for juridically, the definition of the term "business crime" indicates that there are 2 (two) sides of a coin, namely on the one hand there are aspects of civil law, and on the other hand there are aspects of criminal law. The two aspects of law have two diametrically different purposes and have properties or characteristics that conflict with one another. Aspects of civil law are more concerned with peace between the parties, while aspects of criminal law are more concerned with protecting the public interest, the wider community and even the state. Sociologically, the notion of "business crime" shows a real situation that occurs in activities in the business world. But on the other hand, it also shows that business activities are no longer 'friendly' (unfriendly business atmosphere) or as if there is no longer anyone who can be trusted among business people. Business activities should run in a healthy manner even though they are competitive.

Still according to Robintan Sulaiman, the factors that cause business crimes include 3 (three) things, namely: 1). Business crimes have indeed been designed when the business was created, and that means there is a need for it; 2). This business crime arises because of fast-growing business developments and creates opportunities for perpetrators. So at the time this business was created or started there were no plans to carry out business activities; 3). Business crimes committed by people outside of business actors who master technology and can use technology to commit crimes. All of these three things have economic/commercial motives (profit oriented) and the insistence on the need to earn as much money as possible in a short time is the main motive in business crimes. (Robintan Sulaiman, 2001:8-12). Even this motive is owned by corporations that justify any means to get profits so that the investment that has been invested does not suffer losses (this is known in the "Anomie Theory").

First of all, it is necessary to know the origin of the word "corporation" before entering into the substance of understanding corporate crime. The word corporation or *Corporatie* (Dutch), *Corporation* (English) comes from the Latin word "*Corporatio*", as a noun (substantivum) which comes from the verb "*Corporare*". *Corporare* itself comes from the word "*Corpus*" (Indonesia = Agency) which can be interpreted as giving body or body. So the word "*Corporatio*" means the result of bodily work, in other words the word body that is made into a person, that is a body that is obtained by human actions as opposed to the human body, which occurs according to nature. (Soetan and Malikoel, 1983:82). Several opinions were put forward to better understand the existence of a corporation as a legal entity, including the following opinions: Sudikno Mertokusumo: explaining what is meant by a legal entity is an organization or group of people who have a specific purpose that can carry rights and obligations (Sudikno, 1988:53); Subekti: in essence, legal entities or associations can have the rights to act like a human being, and have their own assets, can be sued or sued before a judge. So *rechtspersoon* means people who are created by law (Subekti, 1996:48). Corporations are formed when people begin to gather (organize themselves) for the purpose of accumulating capital (capital). In a corporation, capital is raised by involving outside parties (which even transcend national boundaries). By law, this capital-raising institution developed and then stood alone, regardless of the people who contributed their capital. To run this institution there is a separate management, namely management complete with board of

directors and managers. A corporation which is an association of people who have an interest, where these people are members of the corporation and members who have power in corporate governance in the form of meeting of members as the highest instrument of power in corporate regulations. As an entity established with economic motives, its main objective is to seek profit, so that corporations, in this case, will enter into businesses that can generate profits.

Corporate crime shows that economic progress also gives rise to new forms of crime that are no less dangerous and the number of victims they cause. Within the scope of corporate crime, victims of criminal acts committed by corporations can no longer qualify as victims who have nothing to do with the perpetrators (unrelated victims or non participating victims), but there is an inter-relationship between perpetrators and victims.

2. Business Crime in the Field of Taxation

Satjipto Rahardjo, interprets the corporation as an entity created by law. The agency he created, as previously stated, apart from being an individual, entity or legal entity or corporation is also a taxpayer. Today in the association of law and literature, the term legal entity consists of a "corpus" namely its physical structure and into which the law incorporates animus elements which give the body a personality. Therefore a legal entity is a legal creation, except for its creation, its death is also determined by law (Rahardjo, 1986).

So far, the Criminal Code has not regulated or determined that a corporation or legal entity is the subject of a crime so that it can be prosecuted and subject to criminal sanctions. The difference between humans and legal entities is that humans can do anything that is not prohibited by law, whereas legal entities can only do what is explicitly or implicitly permitted by law or its articles of association. Article 23A of the 1945 Constitution of the Republic of Indonesia, the amendments stipulate "State taxes and revenues that are coercive for the needs of the State based on the law". In tax law, recognition of corporations is contained in the KUP Law, in Article 1 point 2 it states that: "Taxpayers are individuals or entities which according to the provisions of the tax laws and regulations are determined to carry out tax obligations, including the collection of certain taxes or withholding taxes" , and in Article 1 number 3 states that "Entity is a group of people and/or capital which is a unit that either does business or does not do business which includes other companies, state or regional owned enterprises with whatever name and in whatever form, firm, joint venture , cooperatives, pension funds, associations, associations, foundations, mass organizations, social organizations". The magnitude of the role of corporations in development in the economic sector, especially in the income of taxes from existing corporations, it is only natural that special attention is directed to increasing corporate social responsibility in maintaining discipline in paying taxes. But in reality, there are no laws and regulations that explicitly regulate sanctions against corporations if corporations commit criminal acts of taxation. If action sanctions in the form of closing or terminating corporate activities are enforced, then those who will be affected are the workers of the corporation. In the criminal provisions of the KUP Law regulated in Article 38 to Article 39A, none of these articles include sanctions for corporations, even though corporations can act as taxpayers, there is not a single article in the KUP Law which states clearly and clearly who be responsible for (criminal) violations in the field of taxation and what forms of punishment are appropriate for corporations. Likewise in the Criminal Code there is not a single article that explicitly regulates this matter.

Crimes in the field of taxation can be in the form of committing acts or not committing acts that comply with the provisions of the tax laws and regulations. In essence, the provisions of the tax laws and regulations are categorized as a rule of tax law which becomes a corridor for doing or not doing. Thus, committing an act or not committing an act in the field of

taxation is classified as a crime in the field of taxation when it fulfills the formulation of tax law principles. Doing or not committing an act as a form of crime in the field of taxation requires a description of the basic analysis so that it is easy to understand in principle. First, committing an act but contrary to the rules of tax law, so that it is categorized as a crime in the field of taxation. For example, the taxpayer commits an act in the form of submitting a notification but the substance of which is incorrect, incomplete, unclear, or not signed. Second, not committing an act, but fulfilling the formulation of tax law rules, so that it is categorized as committing a crime in the field of taxation. For example, taxpayers do not pay taxes for a time or tax period for each type of tax (Saidi, 2012).

When a crime in the field of taxation has fulfilled the elements of a tax offense, it means that the perpetrator of the crime must be subject to criminal sanctions as determined in the rules of tax law. If criminal sanctions are traced as a threat of punishment aimed at criminals who comply with the formulation of tax law principles, they are only in the form of prison sentences, confinement sentences, and fines. These three types of punishment are at the level of principal punishment. The application of criminal instruments in the KUP Law is essentially a special law outside the KHUP that cannot be separated from the principle of *ultimum remedium* or the last alternative when other legal sanctions are deemed no longer effective in enforcing tax avoidance (Hasibuan, et al, 2015).

Conclusion

Criminal law in an effort to tackle crime in the field of taxation is to create coherence in applied criminal law policies whose impact will not make it difficult for law enforcement officials to apply them in tax legislation. The imperative elements contained in the tax law, want to set forth a principle that the use of criminal sanctions should still pay attention to the principle of subsidiarity. In a sense, a new type of punishment that is more severe is used if other types of criminal sanctions that are lighter are deemed inappropriate or unable to support the achievement of the objective of punishment.

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