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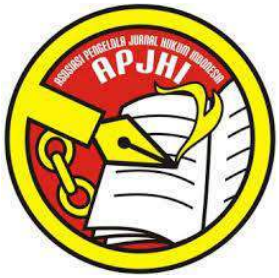

Rethinking Criminal Law Policy in Taxation on Overcoming Tax Distortion and Violations in Indonesia

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Abstract

The financing of national development, especially those that rely on domestic sources, apart from oil and gas, exports of non-oil and gas goods, from the tourism sector, also comes from the taxation sector. The taxation sector plays a vital role in national development. In practice, there are many cases of tax evasion that have escaped the applicable law, including the tax evasion case that occurred in Solo, the Surakarta District Court acquitted. In the 2009 to 2012 period, quite a number of people indicated that they had committed criminal acts in the field of taxation by entities or entrepreneurs to manipulate taxes. Of these cases, some were resolved out of court (administrative sanctions) meaning that they were resolved by the Directorate General of Taxes and some were resolved through court (criminal sanctions). If it is possible that the taxpayer can still be fostered (able to pay the tax debt and fines and to maintain the good name of the taxpayer) then the case will be settled out of court (Directorate General of Taxes). However, if it is difficult to develop or to resolve out of court, then the case is settled through the court. This can be seen from the existing data in the period 2009 to 2012 that there are 92 (ninety-two) cases of tax crimes that have entered the prosecution stage. Of the number of cases, 69 (sixty nine) cases have been decided by the court with a sentence of imprisonment and a fine of almost 4.3 (four point three) trillion rupiah.

Keywords: Tax Distortion, Violation, Criminal Law, Sanction**.**

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Introduction

The financing of national development, especially those that rely on domestic sources, apart from oil and gas, exports of non-oil and gas goods, from the tourism sector, also comes from the taxation sector. The taxation sector plays a vital role in national development. This can be seen from the State Revenue and Expenditure Budget (APBN) from year to year. In 2014/2015 state revenue reached Rp. 1,667.1 trillion. A total of Rp 1,280,4 trillion of this amount came from the taxation sector. Meanwhile, the non-tax sector contributed as much as Rp. 385.4 trillion. The rest comes from receiving grants of Rp. 1.4 trillion. In 2015/2016 the APBN underwent a change, namely state revenues of Rp. 1,635.4 trillion. IDR 1,246.1 trillion came from the taxation sector, IDR 386.9 trillion from non-tax state revenue and IDR 2.3 trillion from grant receipts.[1] Then in the 2016/2017 State Budget, state revenues amounted to Rp. 1,822.5 trillion. Of that income, Rp. 1,546.7 trillion came from the taxation sector, Rp. 273.8 trillion from non-tax income and Rp. 2.0 trillion from the grant receipt sector.[2] In 2020, state revenue is 1,699.9 trillion. A total of 1,404.5 came from tax revenues, 294.1 trillion were non-tax revenues, and 1.3 were grants. In 2021, the state's revenue will be 1,743.6 trillion. 1,444.5 trillion is tax revenue, 298.2 is PNBP, and 0.9 is grants.[3] For 2022, according to Law no. 6 of 2021 concerning the State Revenue

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[1] APBN 2014/Ministry of Finance of the Republic of Indonesia, page 3.
[2] APBN 2016/Ministry of Finance of the Republic of Indonesia, page 2.
[3] Ministry of Finance, *Information on the 2021 State Budget: ACCELERATION OF ECONOMIC RECOVERY AND STRENGTHENING REFORM*, Access 30 May 2022 at https://www.kemenkeu.go.id /media/16835/information-apbn-2021.pdf

and Expenditure Budget for the 2022 Fiscal Year, the State Revenue Budget is planned at Rp.1,846,136,669,813,000 (one quadrillion eight hundred forty-six trillion one hundred thirty-six billion six hundred sixty-nine million eight hundred thirteen thousand rupiah), which comes from tax revenues, Non-Tax State Revenues (PNBP), and grants. Of the APN, Rp. 1,510,001,200,000,000 (one quadrillion five hundred ten trillion one billion two hundred million rupiah) came from the taxation sector, both domestic tax revenues and international trade tax revenues.[4]

By looking at the APBN from the last three years and even previous years, it shows that the tax sector is very dominant in determining Indonesia's development budget. This shows that the tax functions as a *budgetary*, which is a tool or a source to put as much money as possible into the state treasury. In addition to the budgetary function, taxes have another function, namely regulating or non-budgetary, namely taxes can be used as a tool to regulate or implement state policies in the economic and social fields.[5] With this function, taxes are used as a tool to achieve certain goals that are outside the financial sector and are mostly aimed at the private sector. Some examples of the implementation of the regulating or regulatory function are: (1) the application of high import duty rates on certain imported goods because these goods can be produced domestically, or conversely the imposition of low export taxes in order to assist the development or protect the industry. in a country that promotes exports; and (2) the application of regulatory functions in the social sector, in order to reduce luxury lifestyles or high consumption patterns. The government imposes a tax on the consumption of luxury goods by imposing a sales tax on luxury goods at a high enough rate so that people who want to live in luxury (by consuming luxury goods) must bear the increasingly high tax burden and will eventually reduce their luxury and return to their lifestyle.

Given the important function of taxes, public awareness to pay taxes is a prerequisite that must be fulfilled if the state wants tax order. Paying taxes is an obligation for the people or society in order to support the continuity of national development. Development and funding are two things that are mutually binding and cannot be separated from one another. Many developing countries cannot carry out their development smoothly due to lack of funds. Apparently, the strategic role of taxes in development is not fully proportional to the tax compliance of citizens. This is proven by the fact that tax revenue has not been optimal so far. This is indicated by a relatively low tax ratio, which is in the range of 12 percent. This value is still below neighboring countries such as Singapore, Malaysia, the Philippines and Thailand.[6]

The significance of taxes in national development causes the government to run programs that stimulate national tax awareness, such as *tax amnesty*. The main purpose of the *tax amnesty* is so that the funds needed by the state are sufficient, especially related to the State Revenue and Expenditure Budget and taxpayer data can be collected properly, so it is very profitable to monitor future taxpayers. Based on data obtained[7] until the closing of the *tax amnesty* in March 2017, the number of property declarations for Indonesian taxpayers reached IDR 4,865.7 trillion. The value consists of domestic declarations of Rp. 3,686.8 trillion, foreign declarations of Rp. 1,031.7 trillion, and repatriation of Rp. 147.1 trillion. The ransom received reached Rp. 114.2 trillion. The declaration of IDR 4,865.7 trillion, equivalent to 39% of Indonesia's gross domestic product (GDP) and a ransom of IDR 114.2 trillion, equivalent to 0.91% of GDP, is the highest *tax amnesty* in the world.[8]

In practice, there are many cases of tax evasion that have escaped the applicable law, including the tax evasion case that occurred in Solo, the Surakarta District Court acquitted[9], the Supreme Court

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[4] Law No. 6 of 2021 concerning the 2022 State Revenue and Expenditure Budget.
[5] S. Munawir, 1992, *Taxation*, Yogyakarta: Liberty, page 5.
[6] Republika, Wednesday, 13 April 2016.
[7] Solo Pos, Monday, 3 April 2017.
[8] Compare with the ransom achieved in the top three, Turkey is ranked second with 0.74% of GDP and Chli is ranked third with 0.62% of GDP.
[9] http://www.solopos.com/2015/04/02 case of free tax evader in the Solo District Court sentenced in MA., downloaded on April 12, 2017.

with a decision no. 2239 K/PID.SUS/2012 convicted a director of fourteen companies belonging to the Asian Agri Group, while the corporation was not investigated from the start.[10] The Solo District Court acquitted the Defendant, but in MA the defendant was sentenced. Then for the Asian Agri Group case, the Supreme Court did not ensnare corporations as perpetrators of tax crimes, even though in Law no. 28 of 2007 concerning the third amendment to Law no. 6 of 1983 concerning General Provisions and Tax Procedures, it is stated that taxpayers consist of individuals and legal entities or corporations. However, oddly enough, in this law, there are no provisions for criminalizing corporations. Regarding such matters, it is actually possible to follow the guidelines contained in the Criminal Code (Article 103), but the Criminal Code does not regulate corporations or legal entities as subjects of criminal law.

If you look at the formulation of criminal sanctions in Law no. 28 of 2007 concerning the third amendment to Law no. 6 of 1983 concerning General Provisions and Tax Procedures, the formulation of criminal sanctions is cumulative, namely imprisonment and fines. The cumulative formula requires law enforcement to give combined sanctions or cannot choose between the two. This sanction cannot be applied to perpetrators of criminal acts in the form of bodies or corporations because it is impossible for perpetrators of corporate or corporate crimes to be imprisoned. In the end, because the law is like that, the perpetrators of corporate or corporate crimes will not be ensnared by this criminal sanction.

In addition to those described above, in handling tax crimes, it is often found that criminal acts that have met the requirements in the investigation and prosecution, but are not transferred to the court and even terminated on the grounds that the state losses caused by the tax crime have been fulfilled by the taxpayer. The Attorney General terminates the investigation at the request of the Minister of Finance in the interest of state revenue. The Attorney General may terminate an investigation no later than 6 (six) months from the request. This provision is regulated in Article 44 B of Law no. 28 of 2007. Seeing such conditions, it seems that the perpetrators of tax crimes are quite privileged by this regulation. Meanwhile, if you look at small cases or other criminal acts that cause small losses, it is difficult to avoid the entanglement of criminal law.

State financial losses will be very large if such cases are not resolved fairly, while cases that cause small losses are subject to criminal sanctions or are subject to criminal law. Given this, there seems to be a problem with the construction of criminal sanctions in the tax system in Indonesia. Based on the legal problems above and the significance of taxes on state revenues, this paper will look at the possibility of reconstructing[11] the tax criminal sanctions arrangement in the General Provisions and Procedures for Indonesian Taxation.

PLEASE PUT THE RESERCH METHOD

The Development of Tax Regulations in Indonesia

Taxes as a means of state household shopping have been known since pre-Christian times. History records that China and the Roman Empire had implemented tax collections as a permanent source of income for the state to run the wheels of government.[12] Even since humans were still living primitively taxes have been known by different names and systems. During the Dutch colonial period, under Governor General Daendels, the tax collection was known as a *contingent*, the payment system was in the form of agricultural products. Then during the British colonial period under Stafford Raffles as Lieutenant Governor General (1811-1814) the tax levy was known as the *Landrent* or land tax, as a substitute for the contingent. The basis for this tax levy was because previously the land tilled by the farmer belonged to the King, therefore

[10] Supreme Court Decision No. 2239 K/PID.SUS/2012

[11] Bryan A. Garner, *Black's Law Dictionary*, Edition 9, page 1387, reconstruction is defined as the process of rebuilding or recreating or reorganizing something (*Reconstruction is the act or process of rebuilding, recreating or reorganizing something).*

[12] Salamun AT., *Taxes, Image and Renewal Efforts*, Jakaera: PT. Bna Rena Pariwara, 1991, page 30.

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the farmer paid the rent to the King. Furthermore, after the King's submission to England, it is natural that the farmers now pay taxes to England.[13]

After Indonesia's independence on August 17, 1945, the legislation did not simply change or change from colonial products to laws on products of independence, including in this case the legislation in the field of taxation still uses the law on colonial products. Gradually there were developments in the form of the formation of laws, changes (reductions and additions) to regulations in the field of taxation of colonial/colonial heritage. The existence of the formation of laws and the changes that occur are adjusted to the state of the Republic of Indonesia which has become independent. The laws in the field of taxation that apply at this time are:

a. Law no. 11 Drt. 1957 concerning the General Regulation of Regional Taxes (LN 1957 No. 563, TLN No. 1287) which with Law No. 1 of 1961 (LN 1961 No. 3, TLN No. 2124) has been enacted into law.
b. Law No. 35 of 1953 concerning the Stipulation of the Law on Drt. No. 19 of 1951 concerning Collection of Sales Tax (LN 1951 No. 94) as a law (LN 1953 No. 85, TLN No. 489) last amended by Law no. 2 of 1968.
c. Law no. 19 of 1959 concerning Collection of State Taxes by Forced Letter (LN 1959, No. 63, TLN No. 1850).
d. Law No. 1 of 1967 concerning Foreign Investment (LN 1967 No. 1, TLN No. 2818).
e. Law No. 8 of 1967 jo. Government Regulation No. 11 of 1967 concerning Amendment and Improvement of Procedures for Collecting Income Tax 1944, Property Tax 1932 and Company Tax 1925 (LN 1967 No. 18 TLN No. 2827) with MPS and MPO procedures, the implementation of which is regulated in government regulation no. 11 of 1967 and known as Paying Your Own Tax (MPS) and Collecting Other People's Taxes (MPO).
f. Sales Tax Act 1951 (LN 1968 No. 14, TLN No. 2847).
g. Law No. 6 of 1968 concerning Domestic Investment (LN 1968 No. 53, TLN No. 2853).
a. Law No. 8 of 1970 concerning Amendments and Supplements to Company Tax 1925 (LN 1970 No. 43, TLN No. 2940).
b. Law No. 9 of 1970 concerning Amendments and Supplements to the 1944 Income Tax Ordinance (LN 1970 No. 44, TLN No. 2941).
c. Law No. 10 of 1970 concerning Taxes on Interest, Dividends, and Royalties 1970 (LN 1970 No. 45, TLN No. 2942) namely Amendments and Supplements to the 1959 Dividend Tax
d. Law. 11 of 1970 concerning Amendments and Supplements to Law No. 1 of 1967 concerning Foreign Investment (LN 1970 No. 46, TLN No. 2943).
e. Law No. 12 of 1970 concerning Amendments and Supplements to Law No. 6 of 1968 concerning Domestic Investment (LN 1970 No. 47, TLN No. 2944).

The laws and regulations above became the legal basis for administering taxation in Indonesia until the emergence of MPR Decree No. 11/MPR/1983 concerning Outlines of State Policy, particularly regarding the role of taxation and the importance of a new tax law. This MPR Decree aims to increase state revenues, especially from sources other than oil and gas. The realization of these provisions was conveyed in the state address of the President of the Republic of Indonesia in front of the session of the House of Representatives of the Republic of Indonesia on August 16, 1983 which contained the implementation of the fourth Repelita starting. The government submitted to the House of Representatives several draft laws on national tax reform. On December 31, 1983, Law no. 6 of 1983 concerning General Provisions and Tax Procedures, Law no. 7 of 1983 concerning Income Tax and Law no. 8 of 1983 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods. Shortly after the promulgation of the three laws, on December 27, 1985, two laws were promulgated, namely Law no. 12 of 1985 concerning Land

[13] Bambang Suwondo in Soeparman, 1994, *Criminal Acts in the Taxation Sector,* Bandung: PT. Citra Aditya Bakti, pages 2 – 3.

and Building Tax and Law no. 13 of 1985 concerning Stamp Duty. With the enactment of the five tax laws mentioned above, many old tax regulations or laws are no longer valid or revoked.[14]
In 1994, the tax law was renewed (second tax reform). This second amendment does not revoke or replace the previous tax laws, but only changes several articles of the Taxation Law which are deemed to contain several weaknesses.

The renewal of the Taxation Law includes Law no. 9 of 1994 concerning Amendments to Law no. 6 of 1983 concerning General Provisions and Tax Procedures, Law no. 10 of 1994 concerning Amendments to Law no. 7 of 1983 concerning Income Tax as amended by Law no. 7 of 1991, Law no. 11 of 1994 concerning Amendments to Law no. 8 of 1983 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods and Law no. 12 of 1994 concerning Amendments to Law no. 12 of 1985 concerning Land and Building Tax. The four product tax laws of 1994 are different from the product taxation laws of 1983 and 1985, but the basic principles adopted are still the same.[15] The difference is that before using *assessment system* it became a *self-assessment system*.

Then in 2000 there was another change with the issuance of Law no. 16 of 2000 concerning the Second Amendment to Law no. 6 of 1983 concerning General Provisions and Tax Procedures. Law No. 17 of 2000 concerning the Third Amendment to Law No. 7 of 1983 concerning Income Tax and Law no. 18 of 2000 concerning the Second Amendment to Law no. 8 of 1983 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods. For Law No. 16 of 2000 the amendments only concern administrative matters. Regarding the criminal sanctions are the same as those stated in Law no. 9 of 1994 concerning the First Amendment to Law no. 6 of 1983 concerning General Provisions on Tax Procedures. In 2008 there was another change with the enactment of Law no. 28 of 2007 concerning the third amendment to Law no. 6 of 1983 concerning General Provisions and Tax Procedures. Until finally issued again Law no. 16 of 2009 concerning the stipulation of Government Regulation in Lieu of Law no. 5 of 2008 concerning the fourth amendment to Law no. 6 of 1983 concerning General Provisions and Tax Procedures.

Legal Sanctions in the Taxation Sector

Paying taxes is an obligation for citizens in order to participate in financing development in order to realize mutual prosperity. Based on Law no. 28 of 2007 concerning the third amendment to Law no. 6 of 1983 concerning General Provisions and Tax Procedures, it is known that there are two sanctions in the taxation sector, namely administrative sanctions and criminal sanctions. Administrative sanctions are payments of losses to the state, especially those in the form of fines, interest and increases. Meanwhile, criminal sanctions are the last tool or legal bastion used by the fiscus so that legal norms are obeyed.[16] As part of administrative law, the tax law contains more administrative sanctions than criminal sanctions. Administrative sanctions are the authority of the tax administration and are imposed by the Directorate

[14] For example, Law no. 6 of 1983 concerning General Provisions and Tax Procedures revoked: (1) the 1925 Company Tax Ordinance (Staatblad 1925 No. 319) which was last amended by Law no. 8 of 1970 concerning Amendments and Supplements to the 1925 Company Tax Ordinance; (2) Income Tax Ordinance 1944 (Staatblad 1944 No. 17) which was last amended by Law no. 9 of 1970 concerning the Amendment and Supplement to the 1944 Income Tax Ordinance; (3) Law no. 8 of 1967 concerning Amendments and Improvements to the Procedure for Collecting Income Tax 1944, Property Tax 1932, and Company Tax 1925, except for provisions concerning the procedure for collecting wealth tax; and (4) Law no. 10 of 1970 concerning Taxes on Interest, Dividends and Royalties 1970. Law no. 7 of 1983 concerning Income Tax revoked several articles in the law on foreign investment and domestic investment. Law No. 8 of 1983 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods revoked the old tax law, namely Law no. 35 of 1953 concerning the Stipulation of Emergency Law No. 19 of 1951 concerning Collection of Sales Tax. Law No. 12 Years concerning Land and Building Tax revoked the 1908 Household Tax Ordinance, 1923 Indonesian Verponding Ordinance, 1928 Indonesian Verponding Ordinance, 1932 Wealth Tax Ordinance, 1942 Road Tax Ordinance. 13 of 1985 concerning Stamp Duty (LN 1985 No. 69, TLN No. 3313) replacing the 1921 Stamp Duty Rules

[15] . 6 of 1983, Law No. 7 of 1983, Law No. 8 of 1983 and Law no. 12 of 1985.

[16] Mardiasmo, *Taxation*, Yogyakarta: Andi Offset, 1992, page 21.

General of Taxes. While criminal sanctions are the authority of the criminal court and imposed by criminal judges, if the judge has confidence that the perpetrator is really proven guilty of committing a crime.

Administrative sanctions are a number of payments of losses in the form of money to the state. There are three kinds of tax administration sanctions that can be imposed on taxpayers in accordance with tax laws, namely in the form of fines, interest, and tax increases.[17] Administrative sanctions in the form of fines, interest and increases are more emphasized in the interests of the state which are economic in nature, namely so that state revenues from the tax sector can increase. If the application of administrative sanctions regulated in the articles of the tax law above is still not effective, then the collection can be made based on Law no. 19 of 2000 concerning amendments to Law no. 19 of 1997 concerning Collection of Taxes by Forced Letter *Jo* Decree of the Minister of Finance of the Republic of Indonesia no. 608/KMK.04/1994 concerning Procedures for Implementing Tax Collection and Appointment of Officials Authorized to Issue Forced Letters.

If the taxpayer objected to the amount of administrative sanctions stated in the tax invoice (before the forced letter was issued), then he/she may file an objection to the Director General of Taxes (Directorate General of Taxes). This is indeed not explicitly stated in Article 25 paragraph (1) of the Law No. 28 of 2007 that if the taxpayer is of the opinion that the amount of tax loss and withholding or collection of taxes is not as appropriate, then the taxpayer may file an objection to the Director General of Taxes. Thus, administrative sanctions can become the object of a dispute between the taxpayer and the tax authorities (tax officials). If this happens, the taxpayer has the right to file an objection to the Director General of Taxes [18] within a maximum period of 12 (twelve) months from the date the objection is received in the form of accepting in whole or in part, or rejecting or increasing the amount of tax payable. If the time period has passed and the Director General of Taxes does not make a decision, then the objection is considered accepted (Article 26 of Law No. 28 of 2007). the defendant (fiskus) who also acts as the party deciding the dispute. This is a quasi-judgment.[19] If after the decision on the objection is issued by the Director General of Taxes and the taxpayer still has objections to the decision, the taxpayer may file an appeal. An appeal can be submitted to the Tax Dispute Settlement Agency (Law No. 17 of 1997).[20]

In contrast to administrative sanctions, criminal sanctions in Law no. 28 of 2007 concerning the third amendment to Law no. 6 of 1983. Criminal sanctions in the field of taxation are regulated in articles 38, 39, 39A, 41, 41A, 41B, and 41C. Basically, criminal acts in the field of taxation are distinguished according to their nature, namely due to negligence and intentional. The two natures of the crime are subject to criminal sanctions to taxpayers, officials (fiskus) and to third parties. Criminal sanctions against taxpayers include:

a. Due to negligence, they do not submit a notification letter (SPT) or submit a notification letter but the contents are incorrect or incomplete or attach information whose contents are not correct, so

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[17] Administrative fines, for example, if a letter, notification (SPT) is not submitted or submitted not in accordance with the specified time limit, a fine of Rp. 500,000.00 (five hundred thousand rupiah) for the VAT period SPT, Rp. 100,000.00 (one hundred thousand rupiah) for other period SPT, and in the amount of Rp. 1,000,000.00 (one million rupiah) for the Annual Income Tax SPT of corporate taxpayers and Rp. individual taxpayers (Article 7 paragraph 1 of Law No. 28 of 2007). Administrative sanctions in the form of interest, for example, if a taxpayer whose tax payment does not comply with the provisions or is late in payment is subject to administrative sanctions in the form of interest of 2% per month (Article 9 paragraph 2a of Law No. 28 of 2007). Administrative sanctions in the form of an increase, for example, underpaid taxes that arise as a result of disclosing the incorrect filling of the notification letter are subject to administrative sanctions in the form of an increase of 50% of the underpaid tax (article 8 paragraph (5) of Law No. 28 of 2007).

[18] Rochmat Soemitro, *Administrative Court in Tax Law in Indonesia*, Bandung : PT. Eresco, 1991, page 58.

[19] *Ibid*, page 55 and see Malimar, *Tax Courts in Indonesia*, Papers at the National Seminar on the Theme of Enforcement of Tax Law (Tax Courts) and Justice for Sharing the Tax Burden, Held by the Faculty of Law, Diponegoro University, Semarang, 25 September 1995, page 3, see also Philipus M Hadjon, *Legal Protection for the People in Indonesia*, Surabaya: PT Bina Ilmu, 1987, page 14.

[20] Prior to the enactment of Law no. 17 of 1997 concerning the Tax Dispute Settlement Agency, an appeal can be submitted to the Tax Advisory Council (MPP).

that it can cause losses to state revenue and the act is an act after the act. for the first time as referred to in Article 13A, shall be fined at least 1 (one) time the amount of tax payable which is not or underpaid and at most 2 (two) times the amount of tax payable which is not or underpaid, or sentenced to imprisonment for a minimum of 3 (three) times.) month or a maximum of 1 (one) year (Article 38 of Law No. 28 of 2007).

b. Deliberately not registering to be given a NPWP or not reporting his business to be confirmed as a taxable entrepreneur, abusing or using without rights the taxpayer identification number (NPWP) or taxable entrepreneur confirmation number, or not submitting a notification letter (SPT); or submit a notification letter (SPT) and/or information whose contents are incorrect or incomplete; or refuse to carry out the examination as referred to in Article 29; show books, records or other documents that are false or falsified as if they were true; or does not describe the actual situation; not keeping books or records in Indonesia, not showing or not lending books, records, or other documents; or not to keep books, records, or documents that form the basis for bookkeeping or recording and other documents including the results of data processing from books that are managed electronically or administered through an *online* in Indonesia as referred to in Article 28 paragraph 11; or not depositing taxes that have been withheld or collected so as to cause losses to state revenues. The above actions are punishable by imprisonment for a minimum of 6 (six) months and a maximum of 6 (six) years and a fine of at least 2 (two) times the amount of tax owed which is not or underpaid and a maximum of 4 (four) times the amount of tax. unpaid or underpaid debts (Article 39 paragraph (1) of Law No. 28 of 2007).

c. Attempts to commit a criminal act of abusing or using without the right of NPWP or taxable entrepreneur confirmation number, or submitting an SPT and/or information whose contents are incorrect or incomplete in order to apply for tax refunds or tax compensation or tax credits, shall be punished with imprisonment for a maximum of a short period of 6 (six) months and a maximum of 2 (two) years and a fine of at least 2 (two) times the amount of restitution requested and/or compensation or credit made and a maximum of 4 (four) times the amount of restitution requested and/or compensation or credit made (Article 39 paragraph (3)).

In addition to sanctions against taxpayers, sanctions can also be imposed on officials (fiskus), for example:[21] (a) officials who due to negligence do not fulfill the obligation to keep things confidential as referred to in article 34, are punished with imprisonment for a maximum of 1 (one) year and a maximum fine of Rp. 25,000,000.00 (twenty five million rupiah) (Article 41 paragraph (1)); (b) an official who intentionally does not fulfill his obligations or a person who causes the official's obligations to be not fulfilled as referred to in article 34, is threatened with imprisonment for a maximum of 2 (two) years and a fine of a maximum of Rp. 50,000,000.00 (fifty million rupiahs) (Article 41, paragraph 2).

Criminal sanctions can also be given to third parties, for example: (a) third parties who intentionally do not provide information or evidence, or provide incorrect information or evidence, are subject to a maximum imprisonment of 1 (one) year and a maximum fine of Rp. 25,000,000.00 (twenty five million rupiah) (Article 41A); (b) a third party who intentionally obstructs or complicates the investigation of a criminal act in the taxation sector, is threatened with imprisonment for a maximum of three years and a fine of a maximum of Rp. 75,000,000.00 (seventy five million rupiah) (Article 41B).

Formulation of Criminal Sanctions in the Settlement of Tax Crimes

Based on the formulations contained in the four laws above, acts that are made into criminal acts or which can be criminalized can be broken down into: acts related to notification letters (SPT), acts that are not registering or abusing or using without rights the taxpayer identification number (NPWP), actions related to bookkeeping or recording the act of not depositing taxes that have been withheld or collected and

[21] The prosecution of criminal acts against officials is only carried out if there is a complaint from a person whose confidentiality has been violated (which is a complaint offense). Meanwhile, criminal acts against taxpayers and third parties are not a complaint offense.

actions taken by officials that harm other people or other parties in relation to taxation. To facilitate the discussion, the authors present the schema or table below:

BE CRIMINAL OR CRIMINAL

ACTS	CAN	THAT	. 16 of 2000	Law no. 28 of 2007 Jo Law. No. 16 of 2009
Acts related to the Tax Return (SPT)	Article 38. The punishment is a maximum of one year imprisonment and/or a maximum fine of twice the amount of tax payable Article 39 paragraph 1 letter b and c. maximum imprisonment of 3 (three) years and / or a maximum fine of four times the amount of tax payable.	Article 38 A maximum penalty of one year and a maximum fine of twice the amount of tax payable Article 39 paragraph 1 letter b and c shall imprisonment for a maximum of 6 years and a maximum fine of four times the amount of tax payable.	Article 38 The maximum penalty is one year and a maximum fine of twice the amount of tax payable . Article 39 paragraph 1 letter b and c. Imprisonment for a maximum of 6 (six) years and/or a maximum fine of four times the amount of tax payable.	Article 38 The Punishment is imprisonment for a minimum of 3 months or a maximum of 1 year or a fine of at least 1 times the amount of unpaid or underpaid tax payable and a maximum of 2 times the unpaid or underpaid tax payable. Article 39 paragraph 1 c and d imprisonment for a minimum of 6 months and a maximum of 6 years and a fine of at least 2 times the amount of tax owed and a maximum of 4 times the amount of tax payable
Acts of not registering oneself or abusing or using without the right of NPWP or confirmation number taxable entrepreneur (NPPKP)	Article 39 paragraph (1) letter a imprisonment for a maximum of 3 years and/or a maximum fine of 4 times the amount of tax owed which is less or not paid	Article 39 paragraph (1) letter a imprisonment for a maximum of 3 years and/or a maximum fine of 4 times the amount of tax payable which is not or underpaid	39 paragraph (1) letter a imprisonment for a maximum of 6 years and a maximum fine of 4 times the amount of tax payable which is not or underpaid	Article(1) a and b are sentenced to imprisonment for a minimum of 6 months and a maximum of 6 years and a fine of at least 2 times the amount of tax payable and a maximum of 4 times the amount of tax payable
. to carry out inspection of books or records; does not give opportunity and to enter the place/space and does not provide assistance for smooth inspection; does not provide the required information			Article 39 paragraph (1) letter d imprisonment for a maximum of 6 years and a fine of a maximum of 4 times the amount of tax owed which is not or underpaid	Article 39 paragraph (1) e is sentenced to imprisonment for a minimum of 6 months and a maximum of 6 months. years and a fine of at least 2 times the amount of tax payable and a maximum of 4 times the amount of tax payable
Acts related to bookkeeping or recording	Article 39 paragraph (1) letters d and e shall be punished with imprisonment for a maximum of 3 years and/or a maximum fine	Article 39 paragraph (1) letter d and e, imprisonment for a maximum of 6 years and a fine of a maximum of 4 times	Article 39 paragraph (1) letter e and f. imprisonment for a maximum of 6 years and a maximum fine of 4 times the amount of	Article 39 paragraph (1) letters f, g and h are 6 years and a fine of at least 2 times the amount of tax

	of 4 times the amount of tax payable which is underpaid or not paid	the amount of tax payable which is not or underpaid	tax owed which is not or underpaid	payable and a maximum of 4 times the amount of tax payable.
Acts of not depositing taxes that have been withheld or collected	Article 39 paragraph (1) letter f imprisonment for a maximum of 3 years and/or a fine of a maximum of 4 times the amount of tax owed which is less or not paid	Article 39 paragraph (1) letter f imprisonment maximum of 6 years and a maximum fine of	underpaid	Or paragraph (1) letter i, imprisonment for a minimum of 6 months and a maximum of 6 years and a fine of at least 2 times the amount of tax payable and a maximum of 4 times the amount of tax payable
Acts done by officials harming other people or other parties in relation to taxation	Article 41 paragraph (1) imprisonment for a maximum of 6 months and/or a maximum fine of one million rupiahs Article 41 paragraph (2) a maximum imprisonment of 1 year and/or a maximum fine of two a million rupiahs	Article 41 paragraph (1) a maximum imprisonment of 1 year and a maximum fine of two million rupiahs Article 41 paragraph (2) a maximum imprisonment of 2 years and a maximum fine of five million rupiahs	Article 41 paragraph (1) a maximum of 1 year and a maximum fine of four million rupiahs Article 41 paragraph (2) A maximum imprisonment of 2 years and a maximum fine of ten million rupiahs	Article 41 paragraph (1) a maximum imprisonment of 1 year and a maximum fine of Rp 25,000,000 00 (twenty five million rupiah), paragraph (2) shall be sentenced to a maximum imprisonment of 2 years and a maximum fine of Rp 50,000,000.00 (fifty million rupiah).
Acts committed by parties who are obliged to provide information or evidence		Article 41A The maximum imprisonment of 1 year and a maximum fine of 5 million rupiah	Article 41A A maximum imprisonment of 1 year and a maximum fine of 10 million rupiah	Article 41A shall be punished with imprisonment for a maximum of 1years and a maximum fine of Rp. 25,000,000.00 (twenty five million rupiahs)
Acts committed by parties that hinder or complicate tax investigations		Article 41B Imprisonment for a maximum of 3 years and a fine of a maximum of 10 million rupiahs	Article 41B Imprisonment a maximum of 3 years and a maximum fine of 10 million rupiah	Article 41B is sentenced to a maximum of 3 years in prison and a maximum fine of Rp 75,000,000.00 (seventy five million rupiah)
Acts related to the issuance and/or use of tax invoices, tax payments , tax levies that are not based on actual transactions and issuance of tax invoices but have not been confirmed as a taxable entrepreneur				Article 39A shalla minimum of 2 years and a maximum of 6 years and a fine of at least 2 times the amount of tax in invoices, levies, tax rebates and/or tax payments and a maximum of 6 times the amount of tax in invoices,

levies, deductions
and/or tax deposits.

Based on the table above, it can be explained that tax crimes can be written as follows:

a. Acts related to tax return (SPT)
b. Acts of not registering or abusing or using without rights the taxpayer identification number (NPWP) or taxable entrepreneur confirmation number (NPPKP) or other acts NPWP or NPPKP.
c. Acts related to bookkeeping or recording or criminal acts of bookkeeping or recording.
d. Acts of not depositing taxes that have been withheld or collected or criminal acts of tax cutters not depositing taxes that have been withheld or collected.
e. Acts committed by officials harming other people or other parties in relation to taxation or criminal acts of leaking secrets
f. Acts committed by parties who are obliged to provide information or evidence or criminal acts committed by parties who are obliged to provide information or evidence
g. of actions committed by parties obstructing or complicating tax investigations or criminal acts obstructing or complicating tax investigations
h. Acts that intentionally issue and/or use tax invoices, tax levy evidence, tax withholding evidence and/or tax collection evidence which are not based on actual transactions and issue a tax invoice but has not been confirmed as a taxable entrepreneur.

Types of criminal sanctions is in the form of imprisonment, fines, or imprisonment. In law no. 6 of 1983 concerning General Provisions and Tax Procedures, the types of crimes that are threatened to the perpetrators of criminal acts in the field of taxation are imprisonment, fines and imprisonment. If the act committed by the perpetrator due to negligence is threatened with imprisonment and/or a fine. This act or crime is a violation. Then if the act committed by the perpetrator is intentional, he is threatened with imprisonment and/or a fine. This act or crime is a crime. Likewise in Law no. 9 of 1994 concerning amendments to law no. 6 of 1983 concerning General Provisions and Tax Procedures and Law no. 28 of 2007 in conjunction with Law no. 16 of 2009 concerning the Stipulation of Perpu No. 5 of 2008 concerning the fourth amendment to Law no. 6 of 1983 concerning General Provisions and Tax Procedures.

In addition to the forms of sanctions in the various tax laws above, the following explains the length of criminal threats from Law no. 6 of 1983, law no. 9 of 1994, law no. 16 of 2000 and Law no. 28 of 2007 in conjunction with Law no. 16 of 2009

TABLE IV
DURATION OF CRIMINAL THREATS

No	Law	Article	Length		Fines (in rupiah)
			Year	Month	
1	Law no. 6/1983	38 39 paragraph (1) 41 paragraph (1)	1 (confinement) 3 - 1	- - - 6 -	2 times the tax payable 4 times the tax payable One million rupiah Two million rupiah

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		paragraph (2)			
2	Law no. 9/1994	38 39 paragraph (1) paragraph (3) 41 paragraph (1) paragraph (2) 41A 41B	1(confinement) 6 2 1(confinement) 2 1 3	- - - - - - - - -	2 times tax payable 4 times tax payable 4 times requested Datu million rupiah Five million rupiah Five million rupiah Ten million rupiah
3	Law no. 16/2000	38 39 paragraph (1) paragraph (3) 41 paragraph (1) paragraph (2) 41A 41B	1(confinement) 6 2 1(confinement) 2 1 3	- - - - - - - - -	2 times tax payable 4 times tax payable 4 times requested Four million rupiah Ten million rupiah Ten million rupiah Ten million rupiah
4	laws. No. 28/2007 in conjunction with UU. No. 16/2009	38 39 paragraph (1) 39 paragraph (3)	Max 1(confinement) Max 6 Max 2 Min 2, max 6	Min 3 Min 6 Min 6 - -	Min 1 time, max 2 times tax payable Min 2 times, max 4 times the tax payable Min 2 times, max 4 times the amount of restitution Min 2 times, max 6 times Twenty five million rupiah

		39A 41 paragraph (1) 41 paragraph (2) 41A 41B 41C paragraph (1) Paragraph 2 Paragraph 3 Paragraph 4	1 (confinement) 2 1 (confinement) 3 1 (confinement) - - 1 (confinement)	- - - - 10 10 -	Fifty million rupiah Twenty five million rupiah Seventy five million rupiah One billion rupiah Eight hundred million rupiah Eight hundred thousand rupiah Five hundred thousand rupiah

From the table above shows that in determining the amount or duration of criminal threats, legislators use an *indefinite system,* namely the determination of the maximum penalty for each criminal act. The use of this system has advantages, namely: (a) can show the level of seriousness of each crime; (b) provide flexibility and discretion to the judicial power; (c) protect the interests of the offender himself by setting limits on freedom from criminal powers.[22] From the three points mentioned above, there are aspects of community protection and aspects of individual protection. The aspect of community protection is seen by the stipulation of the maximum penalty size which is a symbol of the quality of the central norms of the community that it wants to be protected. Aspects of individual protection can be seen from the determination of the limits of authority of the apparatus in imposing a crime. By looking at Table IV above, it can be seen that there have been developments in securing the tax sector from criminals. Such developments can be seen from the length of imprisonment as well as from the amount of fines that are threatened.

Implementation of Tax Criminal Sanctions

In the period 2009-2012, data indicated that criminal acts or crimes in the field of taxation were recorded at the Directorate General of Taxes were dominated by cases of fictitious tax invoices and treasurers. The biggest perpetrators are corporate or corporate taxpayers, which are 68 cases, treasurer taxpayers are 14 cases and personal taxpayers are 10 people.[23] When compared to several previous years, the largest tax crime committed was the crime of value added tax refunds (VAT refunds).[24]

In the 2009 to 2012 period, quite a number of people indicated that they had committed criminal acts in the field of taxation by entities or entrepreneurs to manipulate taxes. Of these cases, some were resolved out of court (administrative sanctions) meaning that they were resolved by the Directorate General

[22] Barda Nawawi Arief, *Anthology of Criminal Law Policy*, Bandung : PT. Citra Aditya Bakti, 1996, pages 131 – 132.
[23] Data are obtaines from the Directorate General of Taxes.
[24] *Ibid.*

of Taxes and some were resolved through court (criminal sanctions). If it is possible that the taxpayer can still be fostered (able to pay the tax debt and fines and to maintain the good name of the taxpayer) then the case will be settled out of court (Directorate General of Taxes).[25] However, if it is difficult to develop or to resolve out of court, then the case is settled through the court. This can be seen from the existing data in the period 2009 to 2012 that there are 92 (ninety-two) cases of tax crimes that have entered the prosecution stage. Of the number of cases, 69 (sixty nine) cases have been decided by the court with a sentence of imprisonment and a fine of almost 4.3 (four point three) trillion rupiah.[26]

To find out that taxpayers fulfill their tax obligations, the first step taken by the Directorate General of Taxes is to conduct an audit. According to the tax law, audit is a series of activities to seek, collect, and process data and/or other information in the context of supervising compliance with the fulfillment of tax obligations under the provisions of tax laws. It is clear that the act of tax audit is to test compliance with the fulfillment of tax obligations and for other purposes in order to implement the provisions of tax legislation. One type of tax audit for other purposes is a tax audit in the context of seeking preliminary evidence regarding an alleged criminal act in the taxation sector. Initial evidence itself includes conditions and/or evidence in the form of statements, writings, actions or objects that can provide an indication that a criminal act is being or has occurred committed by a taxpayer that can cause losses to the state.[27] If from the results of the examination there is a strong suspicion that a crime in the field of taxation has occurred, the tax audit report shall state the acts, evidence of such acts and the amount of state loss, in the form of the amount of underpaid tax from each type of tax. However, it should be stated that before the preliminary evidence examination is carried out, it is necessary to carry out supporting activities. The supporting activity is by carrying out observation actions, namely to match the facts, discuss and further develop information, data, reports and/or complaints containing indications of allegations of criminal acts in the taxation sector. If the examiner finds that a crime in the taxation sector has occurred, then the investigation can be continued. Investigations into criminal offenses in the taxation sector are carried out by civil servants within the Directorate General of Taxes (Article 44 paragraph (1) of Law No. 28 of 2007 in conjunction with Law No. 16 of 2009). Meanwhile, the authority of this investigator is regulated in Article 44 paragraph (2), namely:

a. to receive, seek, collect, and examine information or reports relating to criminal acts in the taxation sector so that the information or report becomes more complete and clear;
b. examine, seek, and collect information regarding individuals or entities regarding the truth of the acts committed in connection with criminal acts in the taxation sector;
c. requesting information and evidence from individuals or entities in connection with criminal acts in the taxation sector;
d. examine books, records, and other documents relating to criminal acts in the taxation sector;
e. conduct searches to obtain evidence of books, records, and other documents, as well as confiscate such evidence;
f. request assistance from experts in the context of carrying out the task of investigating criminal acts in the taxation sector;
g. order to stop and/or prohibit someone from leaving the room or place while the inspection is in progress and check the identity of the person and/or the documents brought as referred to in letter e;
h. photographing a person related to a crime in the field of taxation;
i. summon people to hear their statements and be examined as suspects or witnesses;
j. stop the investigation; and/or

[25] Interview with investigators of the Directorate General of Taxes.
[26] Information from the Director General of Taxes.
[27] Decree of the Director General of Taxes Number: KEP-2/PJ.7/1990 concerning Instructions for Implementation of Observations. Examination of preliminary evidence and investigation of criminal acts in the taxation sector.

k. take other necessary actions for the smooth investigation of criminal offenses in the taxation sector according to the provisions of laws and regulations.

Furthermore, tax investigation activities are carried out based on the instructions of the Director General of Taxes, in the form of an investigation order signed by the Directorate General of Taxes or the appointed Head of the Regional Office of the Directorate General of Taxes. In the implementation instructions, the preparation of the case file by the tax investigator consists of making an official report, opinion/resume, compiling the contents of the file and filing. The case file is then handed over to the public prosecutor through the police investigator.

In tax cases, it is rarely processed until the investigation stage, 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 has the authority not to conduct investigations and only apply administrative sanctions. If administrative sanctions are applied, then the settlement is successively the Director General of Taxes issues a tax assessment letter (SKP) which must be paid by the taxpayer within one month of issuance (article 9 paragraph (3) of Law No. 28 of 2007). If the taxpayer does not pay until maturity, a tax invoice is issued and the application of a tax bill with a forced letter is issued. The implementation of this tax bill with a forced letter follows Law no. 19 of 2000 concerning amendments to Law no. 19 of 1997 concerning tax collection by force letter.

In the tax law, it is not specified or there are no certain guidelines or parameters for reference for PPNS of the Directorate General of Taxes in determining when and what forms of violations or criminal acts in the field of taxation can or cannot be continued to the investigation stage or only sufficient until the examination stage only, so that the settlement is administratively (out of court). In practice, as the author described above, the guidelines in determining a violation or criminal act are only up to the examination level or until the investigation stage "can be fostered or not". If it can be fostered, it means being able to pay the tax debt and the fine, then the violation or criminal act does not need an investigation, just an examination. On the other hand, if it cannot be fostered, then the examination will be continued until the investigation stage. In the absence of guidelines or parameters in the tax law and in practice such guidelines, it is possible to produce policies that are biased, discriminatory and without legal certainty. In addition, it is still possible for criminal acts in the taxation sector that have been investigated to be dismissed, this is stated in Article 44B of Law no. 28 of 2007 in conjunction with Law no. 16 of 2009 which states that in the interest of state revenue, the Attorney General may stop the investigation of criminal acts in the field of taxation at the request of the Minister of Finance, but the termination of this investigation if the taxpayer has paid off taxes that are not or underpaid or that should not be returned, plus a fine of Rp. 4 (four) times the amount of tax not paid or underpaid. From this provision, it can be seen that “state revenue orientation” is the most prioritized policy in this taxation sector. This orientation is so strong that the handling of criminal acts in the taxation sector, which should be resolved through a court process, can be resolved by an approach to receiving the payment of tax debts and their fines (administrative).

Most of the tax violations/crimes tend to be resolved using administrative sanctions. Indeed, the choice of giving administrative sanctions has its advantages, namely that tax money can immediately enter the state treasury and the amount is as desired. With the policy of the Director General of Taxes that tends to settle criminal acts in the taxation sector by administrative means, the provisions of criminal sanctions regulated in the tax law do not function or are not functioning. In fact, if the provisions of criminal sanctions are applied or functioned against criminal acts in the taxation sector, they will have *effect* a fairly good *(special prevention)* and potential perpetrators *(general prevention)*, so that deviations or violations will decrease and This results in greater tax revenues entering the state treasury. This is in accordance with Umar Said's opinion in the relative theory or purpose (*doeltheorien)* in criminal law stating:

> that punishment is not only to punish crimes that have been committed but also to 1) prevent other people from committing tax crimes, 2) improve the taxpayer concerned. so that in the future they do not repeat similar actions, and 3) protect other compliant and non-compliant taxpayers

to carry out their tax obligations properly so that tax revenues can continue to be achieved [28].

Starting from the description above, it is clear that the tax law has provided a considerable opportunity for the Directorate General of Taxes in resolving a case or criminal offense in the taxation sector by administrative means, namely paying tax debts and fines. This payment is considered to have covered state losses, so the provisions for criminal sanctions do not need to be used. Cases of criminal acts in the field of taxation that have been delegated to the court it turns out that most or almost all of them, the prosecutor as the public prosecutor bases his indictment on individuals or individuals as perpetrators, not on entities or corporations as the perpetrators. Likewise, the decisions of the District Courts, the High Courts to the Supreme Court also decide or punish individuals or individuals as perpetrators of tax crimes. Even though it has been recognized in Law 28 of 2007 jo Law no. 16 of 2009 concerning Stipulation of Government Regulation in Lieu of Law no. 5 of 2008 concerning the fourth amendment to Law no. 6 of 1983 concerning General Provisions and Tax Procedures that taxpayers or tax legal subjects are individuals or entities (corporations). Under such circumstances, the criminal provisions contained in the tax law are not fully functional, for example in Supreme Court Decision No. 1933 K/PID.SUS/2015 which ensnared Vinna Sencahero.

From the Supreme Court's decision above, it is clear that in prosecuting the criminal acts committed by Vinna Sencahero, the HO carried out by the Public Prosecutor is incomplete, the claim should not only be directed at Vinna Sencahero, HO personally but the demands are also directed to the CV body or corporation. The Earth Archipelago Award was done because Vinna Sencahero's brother, HO was the director of the company and he acted on behalf of the company. In this case the Prosecutor as the Public Prosecutor filed two indictments, namely the first as the Public Prosecutor demanding that the Defendant be sentenced to imprisonment and a fine for violating Article 39 paragraph (1) letter a of Law no. 6 of 1983 concerning General Provisions and Tax Procedures as amended by Law no. 16 of 2000. Second, the Prosecutor as Public Prosecutor demanded that the Defendant be sentenced to imprisonment and a fine for violating Article 39 paragraph (1) letter c of Law no. 6 of 1983 as amended by Law no. 16 of 2000. In the trial at the Surabaya District Court, all the demands of the Prosecutor were dismissed by the Panel of Judges on the grounds that the Defendant was not guilty of committing a tax crime, therefore the Defendant was acquitted.

Then considering the decision at the Surabaya District Court to acquit the Defendant, the Prosecutor as the Public Prosecutor filed an cassation to the Supreme Court. By the Supreme Court, the appeal filed by the Prosecutor as the Public Prosecutor was granted. Furthermore, the Supreme Court adjudicated itself with a commendation stating that the Defendant has been legally and convincingly proven guilty of a criminal act of "submitting a Notification Letter and/or information whose contents are incorrect or incomplete on an ongoing basis" (in violation of Article 39 paragraph (1) letter c of Law No. Law No. 6 of 1983 concerning General Provisions and Tax Procedures as amended by Law No. 16 of 2000). For violating these provisions, the Supreme Court sentenced the Defendant Vinna Sencahero HO to imprisonment for 1 (one) year and a fine of 2 (two) times the amount of restitution requested, namely Rp. 3,033,911,520.00 (three billion thirty three million nine one hundred eleven thousand five hundred and twenty rupiahs) provided that if the fine is not paid, it is replaced with imprisonment for 6 (six) months.

From the Supreme Court's decision, it shows that the perpetrators of corporate or corporate taxpayers are not touched at all, both from the demands of the Prosecutor as a Public Prosecutor and from the Supreme Court's decision. In fact, if you look at the law, entities or corporations are also taxpayers. This confirms that law enforcement has not paid attention to the sense of justice among taxpayers. If you look at the loss of state revenue, the decision of the Supreme Court will also not be able to restore the losses suffered by the state. This happens because in the criminal penalty decision there is a clause that says if the fine is not paid, it will be replaced with imprisonment for 6 (six) months.

The same thing is also found in the Supreme Court Decision No. 2806 K/PID.SUS/2015 which ensnared Lin Handy Kiatarto. From the decision above, it is clear that from the beginning the defendant

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[28] Umar Said, 2009, *Introduction to Indonesian Law* (in Supreme Court Decision No. 2239 K/PID.SUS/2012.

was an individual, while a body or corporation was not a party that could be made a defendant, both from the demands of the Prosecutor as a Public Prosecutor and decisions from the Panel of Judges of the District Court, High Court and from the Supreme Court. In fact, when viewed from the position of the defendant is as Director of CV. Tira Persada. And besides that, in committing this crime it also involves a company or corporation from CV. Tira Persada. Because they are not involved in this case, the agency or corporation is not involved in tax law enforcement.

The Supreme Court's decision in this case does not grant the prosecutor's claim as a public prosecutor and rejects the cassation of the prosecutor's application as a public prosecutor. The Supreme Court revised the decision of the Yogyakarta High Court which upheld the decision of the Sleman District Court where the decision stated that the defendant Lin Handy Kiatarto had been legally and convincingly proven guilty of committing a tax crime continuously and was sentenced to prison for 1 (one) year probationary period of 2 (two) years and a fine of Rp. 468,503,260.00 (four hundred and sixty eight million five hundred three thousand two hundred and sixty rupiah) provided that if the fine is not paid, it will be replaced with imprisonment for 5 (five) months. This decision from the Supreme Court is a light decision because the sentence for imprisonment is only a probationary sentence, while the penalty for fines is substituted if they cannot pay.

Another case that has similarities is the Supreme Court Decision No. 2239 K/PID.SUS/2012. Suwir Sea aka Liu Che Sui aka Atak. Suwir Laut was accused of committing several acts, even though each of them was a crime or a related violation so that it must be viewed as one continuous act. Taxpayer's representative, proxy, or employee, who orders to commit, participates in committing, recommends, or assists in committing a crime in the taxation sector, intentionally submits a tax return and/or information whose contents are incorrect or incomplete so as to result in loss in state revenue. From his actions, he was threatened or prosecuted by the prosecutor as a public prosecutor, with imprisonment for 3 (three) years and a fine of Rp. 5,000,000,000.00 (five billion rupiah) subsidiary to imprisonment for 6 (six) months. The Central Jakarta District Court in its decision granted Prematur's exception from the Lawyer and did not accept the indictment from the Prosecutor as a Public Prosecutor. Then the decision from the Jakarta High Court strengthened the decision from the Central Jakarta District Court. Furthermore, from this case, the Supreme Court sentenced the defendant Suwir Laut to prison for 2 (two) years with a probationary period of 3 (three) years and gave the Asian Agri Group company a fine of Rp. 2,519,955,391,304.00. (two trillion five hundred nineteen billion nine hundred fifty five million three hundred ninety one thousand three hundred and four rupiah) in cash. This decision is quite strange because the agency or corporation from the beginning was never prosecuted by the Prosecutor as a Public Prosecutor, but the Supreme Court's decision instead gave a criminal penalty of Rp. 2,519,955,391,304.00 (two trillion five hundred nineteen billion nine hundred fifty five million three hundred ninety one thousand three hundred four rupiah).

Conclusion

Refrensi

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Minimum 40 journal