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Optimization Of Law Enforcement Against Tax Crimes In Indonesia

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Abstrak

Penelitian ini bertujuan untuk mengetahui dan menganalisis faktor-faktor yang mempengaruhi penegakan hukum tindak pidana di bidang perpajakan serta upaya yang dapat ditempuh dalam mengoptimalkan penegakan hukum di bidang perpajakan. Metode penelitian yang digunakan adalah penelitian yuridis normatif dengan menggunakan data sekunder. Teknik pengumpulan data melalui studi kepustakaan yang dianalisis secara kualitatif. Adapun hasil penelitian bahwa faktor-faktor yang mempengaruhi penegakan hukum di bidang perpajakan adalah faktor hukum, faktor penegak hukum, faktor sarana, dan faktor masyarakat. Selain itu, guna mengoptimalkan penegakan hukum di bidang perpajakan memerlukan penguatan kolaboratif antar lembaga dan epektifitas sistem peradilan pajak di tengah kompleksitas skema penghindaran pajak dengan berbagai modus operandinya. Peradilan pidana dilakukan sebagai respon dan tindakan terakhir karena tidak adanya upaya wajib pajak memenuhi segala kewajibannya. Olehnya itu, penegakan hukum yang optimal akan menciptakan efek jera bagi pelaku, meningkatkan kepatuhan wajib pajak hingga dapat meningkatkan penerimaan negara.

Kata Kunci : *Optimalisasi, Penegakan Hukum, Tindak Pidana, Pajak*

Abstract

This research aims to identify and analyze the factors influencing the enforcement of criminal law in the field of taxation and the efforts that can be made to optimize law enforcement in the field of taxation. The research method used is normative juridical research utilizing secondary data. Data collection techniques involve library study analyzed qualitatively. The research findings indicate that the factors influencing law enforcement in the field of taxation are legal factors, law enforcement officer factors, means or facilities factors, and societal factors. Furthermore, to optimize law enforcement in the field of taxation, it requires collaborative strengthening between institutions and the effectiveness of the tax judiciary system. Law enforcement is not only limited to the fulfillment of law enforcement officers resources but also requires cooperation between law enforcement agencies and other institutions amidst the complexity of tax evasion schemes with various modes of operation. In addition, the tax justice system also plays a crucial role in deterring taxpayers who commit violations. Criminal prosecution is pursued as a response and last resort due to the taxpayer's failure to fulfill all their obligations. Therefore, optimal law enforcement will create a deterrent effect for tax offenders, increase taxpayer compliance, and ultimately boost state revenue.

Keywords: *Optimization, Law Enforcement, Crime, Tax*

INTRODUCTION

Taxes are the main source of revenue for the state in financing development and the administration of government. In tax collection, the state must first obtain permission from the people. This is intended so that the state will not act arbitrarily when collecting part of the people's wealth, even if it is used again for development and governance. Therefore, Article 23A of the 1945 Constitution of the Republic of Indonesia has stipulated that taxes and other compulsory levies for the needs of the state are regulated by law.

Based on Article 1 number 1 of Law Number 28 of 2007 concerning the Third Amendment to Law Number 6 of 1983 on General Provisions and Tax Procedures, it is stated that tax is a mandatory contribution to the state owed by individuals or entities that is coercive based on the law, without receiving direct compensation, and used for the needs of the state for the greatest prosperity of the people. Because taxes are mandatory and coercive, the state imposes sanctions on taxpayers who do not pay taxes and/or deliberately refuse to pay taxes. However, the complexity of the tax system in Indonesia often creates opportunities for tax-related crimes, crimes that can hinder state revenue.

In the taxation system, taxation is highly administrative but has criminal penalties aimed at maximizing the taxation system. Evidence of the threat of criminal sanctions in tax administration can be seen in the provisions of Article 43A of Law Number 7 of 2021 concerning the

Harmonization of Tax Regulations, which regulates the examination of preliminary evidence before a criminal investigation in the field of taxation is conducted. The examination of Preliminary Evidence is conducted by Civil Servant Investigators (PPNS) within the Directorate General of Taxes based on the authority granted under Article 44 paragraph (2) of the Law on Harmonization of Tax Regulations.

The enforcement of tax-related criminal law poses a unique challenge for Civil Servant Investigators within the Directorate General of Taxes and other law enforcement officers. Criminal offenses in the field of taxation refer to all types of legal violations that occur within the context of taxation. This can include various actions such as tax evasion, tax fraud, tax embezzlement, providing false information to tax authorities, and other activities that violate applicable tax laws. Even sometimes, there is involvement from tax officials who commit tax embezzlement and manipulation by providing false information in the form of manipulated tax invoices from what should have been paid.

The following are some of the modus operandi used by perpetrators of tax crimes (Achmad, 2016):

- a. abusing or using the Taxpayer Identification Number without right;
- b. refusing to undergo an audit;
- c. presenting false bookkeeping or documents;
- d. failing to deposit taxes that have been withheld or collected, causing losses to state revenue;
- e. issuing and/or using false tax invoices, tax withholding evidence, tax deduction evidence, and/or false tax deposit evidence (not based on actual transactions).

The law enforcement process for tax-related criminal offenses, as seen at the Jambi High Prosecutor's Office against Andri Tan, who is the oil boss in Jambi City in a tax embezzlement case worth IDR 3.5 billion. The investigation into the tax embezzlement was previously handled by the Civil Servant Investigator (PPNS) of the West Sumatra-Jambi Regional Office of the Directorate General of Taxes. The suspect Andri Tan is charged under Article 39A letter a and Article 39 paragraph (1) letter d, Law Number 6 of 1983 as amended by Law Number 16 of 2009 concerning General Provisions and Tax Procedures in conjunction with Law Number 11 of 2020 concerning Job Creation. In addition, the evidence submitted to the prosecutor will be presented in court (<https://kejati-jambi.kejaksaan.go.id>).

In addition, violations of tax regulations that led to criminal charges also occurred in the case of Dermawati Turnip, a businesswoman who failed to submit the Corporate Income Tax

Return. Dermawati did not report her company's tax returns, CV. LJ, from 2011 to 2014. Due to her actions, Dermawati has caused the state a loss of Rp 6.6 billion. For her actions, Dermawati was charged with violating Article 39 paragraph (1) letter c of Law Number 6 of 1983 concerning General Provisions and Procedures for Taxation, as amended several times, most recently by Law Number 7 of 2021 concerning Harmonization of Tax Regulations. The Medan District Court judges sentenced the defendant to 2 years in prison and a fine equivalent to twice the unpaid tax, amounting to Rp13.2 billion (<https://www.cnbcindonesia.com>).

The involvement of Civil Servant Investigators and law enforcement officers can be an effective key in combating tax-related crimes. Firmness in taking action against tax crime perpetrators can create a deterrent effect and increase taxpayer compliance. However, law enforcement in this field certainly faces complex challenges and factors that can influence the optimization of law enforcement.

The research aims to identify the factors influencing law enforcement in the field of taxation and the efforts that can be undertaken to optimize law enforcement in the field of taxation. Through law enforcement in the field of taxation, justice can be created and it is expected to increase state revenue.

RESEARCH METHODS

The type of research used is normative legal research. Normative legal research is research conducted by examining the applicable laws and regulations or their application to a specific legal issue. The approach used is a legislative approach. (Marzuki, 2009). The data source used is secondary data consisting of primary legal materials and secondary legal materials. The data collection technique is through literature study to obtain information related to the research object. The data analysis technique used is qualitative.

RESULTS AND DISCUSSION

A. Factors influencing the enforcement of criminal law in the field of taxation

The concept of criminal law enforcement is understood in two ways: criminal law enforcement in abstracto, which is an effort to combat crime through the establishment of criminal law rules that prohibit certain activities. Next, criminal law enforcement in concreto refers to the concrete actions of law enforcement officers to enforce those still abstract criminal law rules (Ali, M. 2008).

Criminal acts in the field of taxation are a serious problem faced by Indonesia. In the enforcement of tax crime law, it is also not easy because the tax system is highly administrative. Criminal threats serve as an alternative if administrative law enforcement efforts are ineffective, then the resolution can be pursued through the criminal justice process. The implementation of criminal justice, which is a network utilizing criminal law, continues to prioritize the enforcement of just law. (Nur, F. 2023).

Likewise, tax regulations such as the Harmonization of Tax Regulations Law have special characteristics that are more *lex specialis systematis* in nature, consisting of legal provisions regulated within the substance of the law, which differ from general legal provisions, both substantive and procedural (<https://www.mkri.id>).

In the process of law enforcement against tax crimes, it must first begin with indications of tax crimes based on Information Data Complaint Reports, which is then followed by the examination of preliminary evidence by the investigation of tax-related criminal acts. However, this can also be stopped if the Taxpayer acknowledges the error, pays the principal amount, and the administrative sanction in the form of a 100% fine of the underpaid tax amount as stipulated in Article 8 of the Tax Regulation Harmonization Law. However, if the investigation has already proceeded and the taxpayer wishes to compensate for the loss to state revenue as stipulated in Article 44B of the Tax Regulation Harmonization Law, the investigation against the taxpayer or suspect can be terminated.

Efforts in law enforcement in the field of taxation are a crucial aspect in ensuring taxpayer compliance and optimizing state revenue. However, this effort is influenced by three interrelated factors that constitute a legal system. According to Friedman (1975), a legal system is a legal unity consisting of three elements: legal structure, legal substance, and legal culture.

The legal structure comprises existing legal institutions intended to implement the existing legal framework. The substance of law pertains to the applicable legislation that has binding force and serves as a guideline for law enforcement officers. Meanwhile, the legal culture concerns the legal culture, which is the attitude of individuals (including the legal culture of law enforcement officers) towards the law and the legal system.

These three subsystems are interconnected in creating optimal law enforcement. Marpaung (2005) argues that no matter how well the legal structure is organized to implement the established legal rules, and no matter how good the quality of the legal substance created, without the support of a legal culture by the people involved in the system and society, law enforcement will not run effectively.

In relation to law enforcement that occurs in the field, the effectiveness of the law enforcement process is not independent of various factors. Soekanto (2008) argues that there are several factors that tend to influence the law enforcement process, including the following:

- a. The law itself,
- b. The law enforcement officers, namely the parties who create and apply the law,
- c. The means or facilities that support law enforcement,
- d. The community factor, namely the environment in which the law is applicable or enforced,
- e. The cultural factor, namely the products of human creativity, thought, and feeling in social interactions.

In relation to the optimization of law enforcement in tax-related criminal offenses, it is also closely tied to Friedman's legal system theory and Soekanto's theory of factors influencing law enforcement. The factors that influence law enforcement in the field of taxation are as follows:

1. Legal factors

Legal factors are related to the quality and clarity of tax regulations. Tax regulations serve as the main foundation in law enforcement. Law enforcement has limitations, especially in enforcement efforts if there is no clarity in tax regulations. The enforcement of tax criminal offenses in Indonesia is regulated by Law Number 28 of 2007 concerning General Provisions and Tax Procedures. In Law Number 28 of 2007, it is explained that taxpayers who refuse to pay taxes in accordance with the provisions of tax legislation may be subject to administrative sanctions and/or criminal sanctions.

Tax administrative sanctions consist of fines, interest penalties, and increased penalties. Tax sanctions in the form of fines are aimed at violations related to reporting obligations.

Sanctions in the form of interest charges are aimed at taxpayers who pay their taxes after the due date and will be subject to a fine of 2% (two percent) per month calculated from the due date until the payment date. Lastly, the increase sanction is aimed at taxpayers who commit certain violations, such as falsifying data by underreporting income on the Tax Return after 2 years before the issuance of the Tax Assessment Letter.

Related to tax crimes, in the General Provisions and Tax Procedures Law, tax crimes are divided into two main categories: (1) Offenses, and (2) Crimes. The sanctions that can be imposed range from fines to imprisonment, depending on the type and severity of the crime committed.

The criminal sanctions regulated in Article 39 paragraph (1) letter i of the General Provisions and Tax Procedures Law, which states that any person who intentionally fails to deposit taxes that have been withheld or collected, causing a loss to state revenue, shall be punished with imprisonment for a minimum of 6 months and a maximum of 6 years, and a fine of at least 2 times the amount of unpaid or underpaid tax and at most 4 times the amount of unpaid or underpaid tax.

Likewise, in Law Number 7 of 2021 on the Harmonization of Tax Regulations, which regulates the enforcement of criminal acts in the field of taxation. However, if it has already proceeded to the investigation process and the taxpayer wishes to compensate for the loss to state revenue as stipulated in Article 44B of the Tax Regulation Harmonization Law, the investigation against the taxpayer or suspect can be terminated.

In the event that taxpayers do not comply with their obligations after the use of administrative law with administrative sanctions remains ineffective in encouraging taxpayers to pay taxes according to their obligations, then the use of criminal sanctions becomes the appropriate choice to impose on taxpayers. The imposition of criminal sanctions is in accordance with the principle of subsidiarity, which means that the lightest sanction threat is used first, and if it is not effective, then the threats of lighter, heavier, up to the heaviest criminal sanctions are applied (Mudzakir, 2011).

Laws and regulations that are unambiguous, comprehensive, and adaptive to economic developments will facilitate implementation and enforcement. Conversely, unclear or frequently changing rules can cause confusion and legal loopholes that could potentially be exploited. Silalahi (2023) also highlights the challenges in the implementation of tax crime laws, including complex regulations.

2. Law enforcement officer factor

The law enforcement officers factor is related to the capacity and integrity of law enforcement officers. Law enforcement institutions do not only come from the police, the prosecutor's office, and the courts. Instead, the Directorate General of Taxes, which is a government institution with some of its authority being judicial in nature, becomes part of law enforcement. This is because the Directorate General of Taxes is a tax authority that can be coercive for the purpose of tax revenue. Therefore, due to the judicial nature possessed by the Directorate General of Taxes, it is appropriate for Civil Servant Investigators to also be referred to as law enforcement officers, particularly in the field of taxation.

As law enforcement officers, the capacity and integrity of these Civil Servant Investigators can determine the effectiveness of law enforcement. The Directorate General of Taxes, acting as tax investigators, must have a deep understanding of tax law, especially in the current era of digitalization and economic globalization. Moreover, integrity is key to preventing corruption practices that can undermine the law enforcement system.

The need to enhance the integrity of human resources for tax investigators by providing moral and spiritual guidance in accordance with their respective beliefs (Darman, 2020). Increasing the number and quality of Civil Servant Investigators in the Directorate General of Taxes through adequate recruitment, training, and certification programs. Therefore, tax investigations conducted by Civil Servant Investigators can provide a deterrent effect for taxpayers who intend to commit similar crimes and can increase the level of taxpayer compliance in fulfilling tax obligations. Therefore, the importance of professionalism as law enforcement can be seen from the level of mastery of legal knowledge, skills, and personality in carrying out their responsibilities in law enforcement (Zulfadli, M. et al, 2017).

3. Factor of means or facilities

The factor of means or supporting facilities in law enforcement is related to the infrastructure and technology possessed by law enforcement. Moreover, the digital era has brought revolutionary changes in various aspects of life, including the world of taxation.

The rapid development of information and communication technology has created a new and complex landscape for the tax system and its enforcement. On one hand, the digital era offers opportunities to enhance efficiency and transparency in tax administration. On the other hand, it also opens new gaps for increasingly sophisticated and hard-to-detect tax crimes.

Therefore, the infrastructure and technology of law enforcement officers play an important role in the digital era. Integrated information systems, big data analysis capabilities, and digital forensics tools have become fundamental needs to detect and address increasingly sophisticated tax violations, such as tax evasion that harms the state.

The improvement of digital tax services opens opportunities for the government to be more effective in collecting data and information, thus cybersecurity must also be a primary focus for the government and law enforcement agencies. Efforts to combat tax crimes require the government and law enforcement officers to develop stronger digital system security policies and invest in cybersecurity technology.

4. Societal Factors

One of the important components that influence the success of law enforcement in tax-related criminal cases is societal factors. Society functions as a legal subject with tax obligations and also as a component that influences the success of tax policy implementation.

The factor of society, related to the legal awareness of the community, also has a significant influence. Moreover, there are a handful of people who are trying to evade taxes. This certainly reflects a low level of legal awareness. This is exacerbated by the habit of poor administration, especially in recording business transactions, which ultimately complicates the process of tax law enforcement.

Therefore, the success of law enforcement in tax crimes does not solely depend on law enforcement officers, but is also greatly determined by the participation and support of the community. There is also a need for synergy between the government and the community in building an effective and fair tax system. For this reason, the community component becomes an important factor in the enforcement of tax crime law. Law enforcement efforts will be very difficult to implement without active support and participation from the community.

B. Efforts to Optimize Law Enforcement in the Field of Taxation

Efforts to optimize law enforcement in the field of taxation, besides addressing various issues ranging from legal factors, law enforcement officers, facilities, and the community. It is also necessary to optimize other efforts in law enforcement in the field of taxation, such as:

1. Strengthening inter-agency coordination

In the criminal justice system in Indonesia, law enforcement efforts involve subsystems with their respective scopes and tasks. The investigative agency is one of the subsystems of the criminal justice system. The other subsystems consist of the prosecution agency, the court, and the correctional institution. Just like the police who have the duty to investigate criminal offenses, the authority to investigate certain criminal cases is also carried out by Civil Servant Investigators. In the case of tax-related criminal offenses, they are handled by Civil Servant Investigators at the Directorate General of Taxes, who also play an important role in law enforcement in society.

Civil Servant Investigators, as part of law enforcement, cannot work alone without coordination and mutual assistance with other law enforcement officers, especially the police. The coordination relationship is regulated in Law No. 8 of 1981 on the Criminal Procedure Code. In addition to their relationship with the police, Civil Servant Investigators also have working relationships with other law enforcement officials such as prosecutors and judges. However, in the administration of criminal justice, the most important working relationship is between Civil Servant Investigators and the police, because Civil Servant Investigators must always coordinate and be under the supervision of the police.

The working relationship between tax civil servant investigators and police investigators in handling tax crimes includes notification of the commencement of investigations, provision of instructions, investigative assistance in the form of technical assistance, tactical assistance, or coercive measures, submission of case files, submission of suspects and evidence, termination of investigations, and transfer of the investigation process for criminal acts. Seeing this relationship, the State Civil Apparatus tax investigator must coordinate with the police in conducting the investigation (Maimana et al, 2013).

The improvement of coordination between tax civil servant investigators, police investigators, and other law enforcement officers involves functional work relationships that include activities such as operational work relationships and developmental work relationships. Additionally, in terms of taxation, a tangible form of inter-agency coordination can be achieved by forming a special task force or coordination forum.

The enforcement of tax crime laws is not only limited to the fulfillment of law enforcement resources but also requires cooperation between law enforcement agencies and other institutions amidst the complexity of tax evasion schemes with various modes of operation. Therefore, effective law enforcement against tax crimes will impact the increase in state revenue, create a deterrent effect for offenders, enhance taxpayer compliance, and restore public trust in the tax system, which is expected to provide justice, efficiency, and be free from tax crimes that harm the state.

Consistent and sustainable law enforcement is an important prerequisite for the realization of the rule of law and the establishment and strengthening of the pillars of a legal state. However, if law enforcement is not carried out consistently, it can at least lead to injustice and legal uncertainty. The same consequence also arises if there is inconsistency in the enforcement of tax-related criminal law (Waluyo, B., 2006). Law enforcement officers must act decisively and consistently against every tax-related criminal case to create a deterrent effect and increase taxpayer compliance.

2. The effectiveness of the tax justice system

The functioning of the tax justice system is a determining factor in providing a deterrent effect. A fast, fair, and transparent judicial process will increase public trust and create strong legal precedents. Irawan (2022) emphasizes the need for the concept of sustainable action renewal in tax crimes. Hasibuan (2019) shows significant financial losses for the state due to tax evasion by legal entities, and suggests the need for different sanctions.

The effort of the criminal justice process against tax crimes is carried out as a response and last resort due to the suspect's failure to fulfill all their obligations as a taxpayer. The application of criminal penalties as a last resort for taxpayers who commit tax-related offenses. Taxpayers who commit tax crimes are still given the opportunity to fulfill their obligations, so their cases can be requested to be terminated under certain conditions. The investigation of tax-related criminal offenses is a series of actions taken by investigators to search for and gather evidence that clarifies the tax-related criminal offenses that have occurred and to identify the perpetrators. Efforts to terminate the investigation of banking crimes as regulated in the Minister of Finance Regulation No. 129/PMK.03/2012 concerning Procedures for Requesting the Termination of Investigation of Criminal Acts in the Tax Sector for the Benefit of State Revenue.

A request for the cessation of the investigation can be made if the taxpayer is willing to pay all outstanding taxes that have not been paid or have been underpaid, along with administrative sanctions in the form of fines. The policy certainly has a greater purpose than merely imposing penalties on tax offenders. The goals to be achieved are to increase state revenue from the taxation sector, encourage tax reform, and enhance sustainable economic growth in Indonesia. Therefore, the optimization of law enforcement in the taxation field requires a holistic approach that considers all these factors. By understanding and managing these factors effectively, it is hoped that a fair, efficient tax system can be created, capable of optimizing state revenue from the taxation sector without sacrificing the investment climate and economic growth.

CONCLUSION

The conclusion of this research is that there are factors influencing law enforcement in the field of taxation, such as legal factors, law enforcement officer factors, means or facilities factors, and societal factors. Furthermore, to optimize law enforcement in the field of taxation, it requires collaborative strengthening between institutions and the effectiveness of the tax judiciary system. Law enforcement is not only limited to the fulfillment of law enforcement officers resources but also requires cooperation between law enforcement agencies and other institutions amidst the complexity of tax evasion schemes with various modes of operation. In addition, the tax justice system also plays a crucial role in deterring taxpayers who commit violations. Criminal prosecution is pursued as a response and last resort due to the taxpayer's failure to fulfill all their obligations. Therefore, optimal law enforcement will create a deterrent effect for tax offenders, increase taxpayer compliance, and ultimately boost state revenue.

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