

DECONSTRUCTION OF PENAL SYSTEM POLICY ON TAX LAW IN INDONESIA AGAINST CRIMINAL LIABILITY CORPORATE INCOME TAX EVASION

Annika Rahmawati

Universitas Bung Karno, Jakarta, Indonesia

E-mail: annikarahmawati44@gmail.com

ABSTRACT

The purpose of this study is to simplify legal policies in the Law on General Provisions and Tax Procedures by the values of Pancasila in technical and its implementation in the application of law and law implementation in tax crimes. Normative juridical research methods are processed qualitatively and descriptively, using sources of legal materials" secondary data" "primary" legal materials, and tertiary legal materials, laws, and regulations as rules or norms that become parameters of behavior. legal principles, as well as legal doctrines to answer growing legal issues. Such as the statute approach. Case approach, and conceptual approach. To achieve justice that is manifest in the imposition of criminal sanctions and can be implemented for perpetrators of tax evasion crimes, and focus on criminal purposes so that they can be held criminally accountable for their actions by the punishment given. The provisions in the special criminal law impose sanctions that are more severe than general crimes. At the same time as a consideration to answer the problem of how the deconstruction of the penal system policy on tax law in Indonesia against the criminal liability of corporate income tax evasion can be applied as a reference to make new legal constructions useful for the Indonesian state by deconstructing the diction or phrase of the criminal act of taxation and, technical management and separation of powers.

Keywords: Tax Evasion; Penal System; Policy Deconstruction

Introduction

The development of the tax system adopted by the tax system in Indonesia are: self-assessment system, It seems that this system requires supervision and improvement of the law, because community behavior is not ready to be built honestly and independently, it takes time and a long process to be able to implement the system (Subroto, 2019). If a country has not been able to facilitate the level of welfare and tranquility and all risks of change both in positive and negative terms. So, what will be faced is the impact of the Self Assessment System Instead, it becomes an opportunity for the entry of crime that can continue to grow and if it continues to lead to a low standard of living (Bahri, 2019). Thus, in the study of sociology of law is to investigate the behavior of people in the field of law so as to be able to express it. The behavior in question has two aspects, namely "outside" and "inside". Therefore, the sociology of law not only accepts behavior that appears from the outside, but also includes the motives of a person's behavior (Behavior). How a system forms itself without being equipped with a security system in the application of sanctions and the application of the appropriate

legal system, only provides tools but there is no control system over these tools. So, the author is very concerned about the many interests of legal interests that are not protected as a result of this one system (Self Assessment System). If the state does not create a supervisory body affiliated with other institutions that are more impartial (Ali, 2023).

In relation to the criminal act of tax evasion carried out becomes a habit for the perpetrators caused by several factors that encourage the occurrence of a criminal act. While criminology is defined as the science or discipline that studies crime and criminal behavior. In particular, the field of criminology concentrates on forms of criminal behavior, causes of crime, the definition of criminality and societal reactions to criminal activity (Ali, 2023). Which is interpreted as a grouping of elements that include an unlawful act of criminality in tax crimes.

Thus, this study can analyze the juridical relevance of the corporate income tax law in Indonesia; Law on Corporate Income Tax (PPh B) on Permanent Business Entities (BUT). Given that there have been several changes in tax regulations. laws and regulations related to the criminal act of tax evasion and other laws such as, Article 23 A of the Constitution of the Republic of Indonesia of 1945, Article 38, Article 39 paragraph (1), Article 44 paragraph (1), (2), Article 4 paragraph (4a) of Law number 28 of 2007 concerning General Provisions and Tax Procedures (KUP Law) Article 38 to Article 43A, Article 32 of Law 7.1983 jo. Law 36/2008 of the Corporate Income Tax Law (PPhB), Law Number 7 of 1983 concerning Income Tax or commonly abbreviated as Law 7/1983. In its development, Law 7/1983 underwent four changes and was refined with two other laws, namely the Job Creation Law and the HPP Law (Harmonization of Tax Regulations), Article 372 and Article 374 of the Criminal Code (KUHP). However, in the Law on General Provisions and Tax Procedures (KUP Law) has not been clearly detailed, regulating legal norms regarding tax evasion, the KUP Law only regulates criminal acts, namely Chapter VIII (Article 38 to Article 43A).

Basically, the purpose of corporate punishment is related to the purpose of integrative punishment, which includes; **first**, the purpose of punishment is for prevention, both in general and in particular, that is, the criminal is considered to have the power to educate and improve, and prevent others from committing a criminal act. **Second**, the purpose of punishment for the protection of society, broadly is the fundamental purpose as the goal of all punishment, and narrowly as a matter of court through its rulings so that the community is protected from the repetition of criminal acts. **Third**, the purpose of the crime is to give birth to community solidarity, that is, to prevent people's customs and prevent individual revenge or unofficial revenge (private revenge or unofficial retaliation). **Fourth** The purpose of punishment is to compensate, namely the existence of a comparability between the criminal and the individual responsibility of the perpetrator of the crime. Some theories that are widely adopted as theories used to assess corporate criminal liability, namely; First, the doctrine of strict statutory liability (strict liability), so corporate liability is solely based on the sound of the law regardless of who did wrong. In strict liability the element of guilt does not need to be proven. Second, the doctrine of vicarious liability (vicarious liability), which emphasizes accountability by the management of the corporation as an "agent" of the act

based on doctrine Superior Respondent, Employment principle and The Delegation Principle. Is an exception to individual liability held in criminal law based on adagium nemo punitur pro alieno delicto (No one is punished for the deeds of others.) Fourth, the theory of aggregation which states that criminal liability can be imposed on a legal entity if the act is committed by a number of people who fulfill the elements of offense where each other is interrelated and not stand alone. Fifth, the doctrine Corporate Culture model or model of work culture. The legal entity authorizes or permits the act, authorizes or permits the act to be done (Hiariej, 2016).

Research Method

Normative juridical research methods that are processed qualitatively and descriptively, using sources of legal materials" secondary data" "primary" legal materials and tertiary legal materials, laws and regulations as rules or norms that become parameters of behavior. legal principles, as well as legal doctrines to answer growing legal issues. Such as the statute approach. Case approach, and conceptual approach.

Result and Discussion

The Relation of Special Criminal Law and General Criminal Law to the Criminal Act of Corporate Income Tax Evasion in the Conception of Criminal Liability

The capacitance of the Criminal Responsibility Theory must be used in this study, that the implementation of accountability of tax evasion perpetrators who are subjects of tax law can also be subject to criminal law in accordance with the special criminal system that has been applied. The implementation of the law and the application of the law must be proportionate in imposing sanctions in accordance with the actions of the perpetrator. On the principle **Lex specialis derogat legi generalis** No longer effective because of **Cons** with positive law prevailing in a Society (das sollen) between concrete legal events occurring in a Society (Das sein) as a legal reference can apply the principle **Systematic specialist lex** and principles **Lex Consumen Derogate Legi Consumte** (NABILLA, 2022).

The representation is as follows: In the elements of article 38 and article 39 of the KUP Law, there are too many qualifications for the norm of action to consume other provisions (**Lex Consumen Derogate Legi Consumte**) (Nurchalis, 2018). Meanwhile, in other provisions of the Criminal Code in article 372, it is quite clear that the norms of action are regulated and in this general crime, the sanctions imposed are more severe than the special criminal provisions (tax crimes), the imposition of lighter sanctions so as to cause injustice, and **CONTRADICTION**. Therefore, in the implementation of the law and the application of the law, more systematic improvements must be made where special crimes must be more severe sanctions than general crimes in accordance with the principles **Systematic specialist lex** as a derivate or derivative of **Lex Specialist Derogate Generalist** Legal improvements or updates are made from special crimes to pure (general) crimes. So that perpetrators of corporate income tax evasion can be held accountable for their actions that harm state revenue with severe prison sanctions to prevent the public from repeating tax crimes as Deterrent Effect (Prime, 2021). This

representation has answered the issue of the problem or the formulation of the problem in point A. What is the relationship between special criminal law and general criminal on the criminal act of corporate income tax evasion that can be criminally liable? As a reference in the chart below to illustrate constructively the deconstruction of diction/phrases article by article as follows (Ruslan Renggong, 2017):

Deconstruction on diction or phrases article by article of tax crimes;

Tax evasion that impacts Development Infrastructure and Economic Infrastructure (Susanto et al., 2022). The application of Criminal Sanctions on tax evasion is not a negative meaning that can reduce state revenue due to the imposition of laws on criminal fines can be replaced by confinement. The inverse variable is how to stop the crime of tax evasion without having to cause losses and avoid imposing criminal sanctions or administrative sanctions (Manullang, 2020). The elements of corporate income tax evasion are; elements of "embezzlement" article 372, elements in this article 372 of the Criminal Code which specifies that, whoever intentionally and unlawfully owns something that wholly or partly belongs to another person, but which is in his power not because of a crime, is threatened with embezzlement, with a maximum imprisonment of 4 (four) years with a maximum fine of nine hundred rupiah. So the elements of embezzlement; 1. Whose goods, 2. It has been deliberately regulated in the Criminal Code regarding tax evasion, because tax evasion of money originates not from crime but from income (corporate taxpayers themselves), but is not deposited as an obligation to pay taxes to the state). So that the phrase in article 372 of the Criminal Code is quite clear about the elements of tax crimes. Meanwhile, in the Law on General Provisions and Tax Procedures as in article 38 and article 39 there are incomplete legal norms (that the provisions in the Criminal Code in articles 372 and 374 are very clear and completely regulated norms). The provisions of article 372 of the Criminal Code should be more appropriate as a reference to articles 38 and 39 of the Law on General Provisions and Tax procedures. While in article 374 as "embezzlement with incrimination", the elements of article 374 of the Criminal Code in translations are as follows; 1. Embezzlement, 2. What is done by the person whose possession of the goods (who holds the goods) is due to an employment relationship or because of a search or because of remuneration for it (Joka, 2022). The provisions of article 374 of this Criminal Code can also be used as a reference to Corruption and Money Laundering. Application of the current tax criminal law or positive criminal law (*ius constitutum*) in a society can be ideally applied to the implementation of the law and the application of the law to the criminal act of taxation accordingly **Criminal Liability Theory** with the purpose of the punishment itself.

Conception of Justice in the Deconstruction of the Penal System Policy for Corporate Income Tax Evasion

The capacitance of the Theory of Legal Justice when related to research in the application of law and the application of sanctions to tax crimes must be in accordance with the actions committed by the perpetrators. Where in special crimes, the punishment must be more severe than general crimes in order to realize Justice. This means that the focus of criminal law science is the current criminal law or positive criminal law. How

to make efforts so that the norm is not violated and review and form criminal law that can be accounted for and realize the value of Justice (BUDIANTO, 2018).

The representation is as follows: In the implementation of the penal system policy, there must be a separation of powers between the Directorate General of Taxes and the Indonesian National Police and the Judge as God's representative who examines, tries and decides a case (Yusmad, 2018). Because the contradiction that occurs in point A above causes counter-management and technicalities in the criminal justice system (law enforcement) where it is found that the application of tax criminal sanctions that prioritize the return of losses and asset seizure is a civil law system, not a special criminal system that should be a *primium remedium* prison sanction. However, what happens to the prosecution system in the criminal act of tax evasion, imprisonment sanctions as the ultimate *remedium* so that it loses its criminal nature, especially and reflects the civil nature (Koeswanto et al., 2023). In cassu the Panel of Judges may use **Interpretation of argumentum a contrario** in accordance with **The principle of idealistic concursus** and **The principle of concursus realis** in his decision to apply legal considerations over the legal facts and the application of his criminal sanctions (Handoko, 2017). Where on **Interpretation of argumentum a contrario** Judges can decide a case outside of other similar events, so that the application of law and the application of sanctions are more idealistic and realist to be implemented. and the achievement of a Justice where in general crimes the punishment is more severe while in special crimes it is lighter (this is the benchmark if Justice will be upheld) moreover everyone in the eyes of the law has the same right to get access to the law (due process) terms in legal principles **Equality Before The Law**. Because it is very unfair if, for example, the act of embezzlement of a car or the procurement of a car is more severe than the act of corporate income tax evasion which in fact is carried out by skilled people who have a skill person and collude affiliated with intellectual actors in an institution of the Directorate General of Taxes. So in tax crimes, the perpetrator must be processed legally through the District Court, not the Tax Court if with a letter of reprimand or a warrant, mediation or coaching efforts by the Directorate General of Taxes. However, the perpetrator still heeded non-litigation efforts, the Directorate General of Taxes should issue a referral letter or letter of recommendation to continue the investigation process by the Indonesian National Police to be able to continue to the stage of the District Court process so as to obtain or produce a decision with permanent legal force (*Inkracht van Gewijsde*). In accordance with legal adagium **Res Judicata Pro Veritate Habetur**; "The judge's decision is considered correct and must be implemented". Legal remedies are not carried out by the Directorate General of Taxes, those who carry out the litigation process are law enforcement officials. The Directorate General of Taxes acts as a fiscal apparatus or tax apparatus limited to non-litigation processes. This representation has answered the issue of the problem or the formulation of the problem in point B. What is the conception of justice in the deconstruction of the penal system policy for the criminal act of corporate income tax evasion? As a reference in the chart below to illustrate the separation of powers referred to as follows (Juliansyah & Djaja, 2023).

Technical Governance Deconstruction and Separation of Powers;

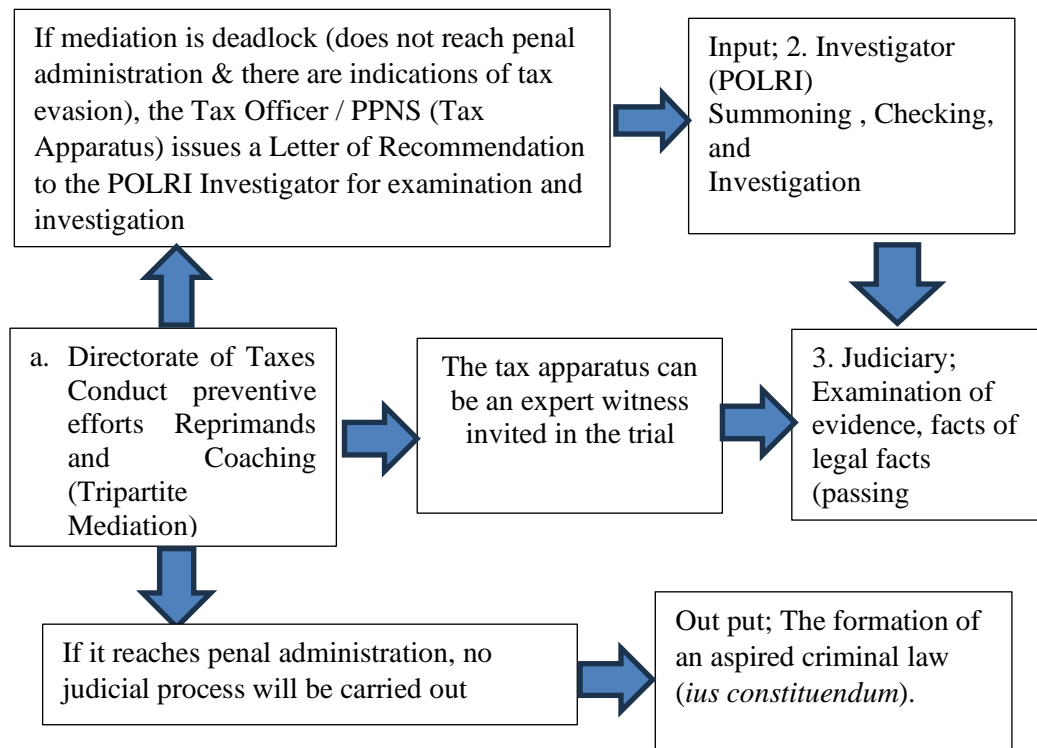


Figure 1

Considering the Judicial Power as one type of power separated from the process of state administration, especially in executive power, is a consequence of the establishment of Indonesia as a State of Law, as contained in article 1 paragraph (3) of the Constitution of the Republic of Indonesia Year 1945. Where in the context of the classical principle of the legal state affirmed by FJ. Stahl covers several important elements, namely based on Human Rights; to properly protect human rights there must be separation of powers; government must be based on law; and the existence of administrative justice. (Padmo Wahyono, *Cultivating the 1945 Constitution*, Jakarta; Ind-hill.co.1991.

In this study, it can provide solutions to policy deconstruction in the penal system, on the implementation of the law and the application of the law can be criminally accounted for by corporate taxpayers on the corporate income tax itself. For the criminal act of corporate income tax evasion (ie criminal tax sanctions on corporations). It is appropriate in carrying out his duties and authorities that judges are guided by the law, laws, and values of justice that live in society. If the application of laws and regulations causes injustice, the judge must side with normative (moral justice), and set aside legal certainty or laws and regulations (legal justice). Which is substantively a good law is a law that is in accordance with the law that lives in society (the living law) which is

certainly also in accordance or is a reflection of social justice (values that apply in society) in accordance with the conscience of the judge

Conclusion

Considering the self-assessment system in the tax law system opens up opportunities for the entry of taxation feudalism in Indonesia. Taxes on feudalism were interpreted as tributes of no-man's property for corporate taxpayers. Meanwhile, the implementation of the law in the penal system shows injustice. This background is the purpose and reason that the Theory of Justice and the Absolute Theory on the crime of tax evasion must take precedence and become a priori. In carrying out policies in the Law on General Provisions and Tax Procedures, rights and authorities will arise; Corporate taxpayers, audits by tax officials, fiscal officials, judicial proceedings, and law enforcement officials colluding together constitute an extraordinary crime committed continuously and continuously (affiliated) to one another. So that in the criminal act of corporate income tax evasion, all those involved in it, both corporate taxpayers, tax officials, fiscal officers must be punished for harming state revenue

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