

## **JURIDICAL ANALYSIS OF TAX CRIME (Case Study Judgment No : 268/Pid.B/2020/PN.SBY)**

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### **Abstract**

Taxes are the main source of national revenue, with a portion of approximately 83% of the total sources of national revenue for the Republic of Indonesia. No one is really willing to pay taxes, especially because the taxpayers receive no direct counter compensation for spending their money to pay the tax. So it is necessary to enforce the criminal tax law so that taxpayers are obedient in fulfilling their tax obligations. Tax crime are regulated in the Act on General Provisions and Tax Procedures.

**Keywords: Tax Crime, Tax Evasion, Concursus Idealis, Criminal Law Enforcement.**

### **Introduction**

In a life that upholds the values of the nation, peace, order, and security are very important in achieving social welfare. Therefore, legal norms must be structured in such a way as to be able to provide a sense of security and peace in people's lives.<sup>1</sup> Likewise, with the existence of positive law in Indonesia, which contains legal rules and aims to achieve a prosperous life that upholds the values of the nation.

What is meant by the latter is reasonable because Indonesian society is plural and therefore in dire need of a legal order that is able to protect the lives of the Indonesian people. One of the legal norms that are considered capable of providing protection and firmness is public law, such as Criminal Law. It is said so because Criminal Law is a set of legal rules that contain prohibitions accompanied by penalties in the form of punishment for those who violate them.<sup>2</sup>

Criminal law is part of the public law domain. Criminal law in Indonesia is generally regulated in the Criminal Code (KUHP), which comes from the Dutch colonial era. The

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<sup>1</sup> Satjipto Raharjo, "*Ilmu Hukum*", Citra Adytia, Bandung, 2001, h. 10

<sup>2</sup> Roeslan Saleh, "*Suatu Reorientasi Dalam Hukum Pidana*", Aksara Baru, Jakarta, 1978, h. 15

Criminal Code is a *lex generalis* (general law) for the Criminal Law regulation in Indonesia, where general principles are contained and become the basis for all criminal provisions regulated beyond the Criminal Code.

Criminal law is divided into two domains, namely general law and special law. The general law is a criminal law that applies to all groups without exception containing legal rules including prohibitions and obligations, which will be subjected to criminal penalties if violated. In comparison, special law is a criminal law that specifically applies to special groups, such as the military, and or criminal law that regulates certain norms because it is not found in the Criminal Code (KUHP).<sup>3</sup>

Regulations regarding criminal law beyond the Criminal Code are indeed possible, because according to Article 103 of the Criminal Code that "The provisions in Chapter I to Chapter VIII of this book also apply to acts which other act provisions are threatened by criminal law unless the act is determined otherwise".

Such a statement is indeed reasonable because society will continue to develop and be followed by the growing crime. For those that probably cannot use the provisions of the Criminal Code, regulations beyond the current Criminal Code are needed. Whether the regulation is through special law or administrative law, as long as the regulation does not contradict with the provisions as stipulated in the First Book of the Criminal Code, which among other things, contains the principles of criminal law, doctrine or teachings of criminal law, criminal penalties are still declared valid for legal provisions crimes regulated beyond the Criminal Code.

In the context of tax law, tax crime is defined as an event or action that violates the law or tax acts committed by someone whose actions can be accounted for and by the tax act has been declared a criminal act that can be sentenced. The Taxation Act does not explain what is meant by tax crime. Nevertheless, the definition of tax crime can be seen clearly in the explanation of Article 33 paragraph (3) of Act no. 25 of 2007 concerning Investment which states as follows :

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<sup>3</sup> Sathochid Kartanegara, *Hukum Pidana (Kumpulan Kuliah)*, Bagian Kesatu, Balai Lektur Mahasiswa, (tanpa tahun), h. 3

"What is meant by "tax crime" is false information regarding reports related to tax collection such as submitting a tax return but the contents are incorrect or incomplete or including false information that it can cause losses to the nation and other crimes regulated in the act governing taxation."

According to R. Santoso Brotodihardjo, tax is a contribution to the nation (which can be imposed) owed by those who are obliged to pay it according to the regulations, without getting a direct compensation, which can be directly appointed, with a purpose to habilitate general expenses regarding the nation's duty to administer the government.

Act Number 6 of 1983 concerning General Provisions and Tax Procedures as lastly amended by Act Number 16 of 2009 concerning Stipulation of Government Regulations in Lieu of Act Number 5 of 2008 concerning the Fourth Amendment to General Provisions and Tax Procedures is a positive law regarding taxation in Indonesia. In the provision of Article 1 number 1, it is regulated that tax is a mandatory contribution to the nation owed by an individual or agency that is coercive based on the act, without receiving direct compensation and being used for the purposes of the nation for the best prosperity of the people.

As it is known, taxes are coercive based on the act, so if they are not obeyed or violated, they will result in offenses or penalties for the suspects. In Indonesia, the Tax Collection System is a self-assessment in which taxpayers are entrusted with registering, calculating, considering, paying, and self-reporting the taxes owed. The consequences of this self-assessment implementation place a great responsibility on the taxpayer to comply voluntarily (Voluntary Compliance).

On March 30, 2020, the Panel of Judges of the Surabaya District Court was chaired by Dr. Johanis Hehamony, S.H., M.H on judgment No. 268/Pid.B/2020/PN.SBY tried the defendant Mr. X who was proven legally and convincingly, according to the law, guilty of committing a crime "intentionally not paying taxes that had been withheld or collected so as to cause losses to the national revenue."

Based on the description of the background that the author has described above, it can be concluded that the problem would be discussed in the paper is: How to implement the provisions of tax crime in the judgment of the Surabaya District Court No. 268/Pid.B/2020/PN.SBY?

### **Juridical Analysis of Tax Crime**

Based on the results of the hearing in the trial process, on the indictment of the Public Prosecutor, in the period January 1, 2011, to January 31, 2013 (for the tax period of January 2011 to December 2012), Mr. X through PT. RPP committed a criminal offense in the field of taxation successively by intentionally not paying the Value Added Tax (VAT) that had been collected with the following modus operandi:

- Collecting VAT from the buyers by issuing a Tax Invoice on the delivery of goods/services;
- Taxpayers did not report/calculate all/part of the VAT that has been collected in the Annual Tax Return of its VAT period (all/part of the value of VAT in each Tax Invoice), so there is VAT collected that is not deposited into the national treasury.
- The buyers had calculated the tax that has been collected as an input tax credit in his VAT period's Annual Tax Return.

Then the defendant was indicted by the Public Prosecutor with an Alternative indictment, namely the First Indictment for violating Article 39 paragraph (1) letter I of the Act of the Republic of Indonesia Number 6 of 1983 concerning General Provisions and Tax Procedures as last amended by the Act of the Republic of Indonesia Number 16 of 2009 concerning the Stipulation of Government Regulation in Lieu of the Act Number 5 of 2008 concerning the Fourth Amendment to the Act of the Republic of Indonesia Number 6 of 1983 concerning General Provisions and Tax Procedures to become the Act in conjunction with Article 64 paragraph (1) of the Criminal Code or the Second Indictment of violating Article 39 paragraph (1) letter d of the Act of the Republic of Indonesia Number 6 of 1983 concerning General Provisions and Tax Procedures as last amended by the Act of the Republic of Indonesia Number 16 of 2009 concerning Stipulation of Government Regulation in Lieu of Law Number 5 of 2008 concerning the Fourth Amendment Based on the Act of the Republic of Indonesia Number 6 of 1983 concerning General Provisions and Tax Procedures to become the Act in conjunction with Article 64 paragraph (1) of the Criminal Code.

Because the indictment was prepared alternatively, the Panel of Judges also considered which indictment was in accordance with the facts at the trial, namely the First Indictment

Article 39 paragraph (1) letter i of the Act of the Republic of Indonesia Number 6 of 1983 concerning General Provisions and Tax Procedures as last amended by the Act of the Republic of Indonesia Number 16 of 2009 concerning Stipulation of Government Regulation in Lieu of the Act Number 5 of 2008 concerning Fourth Amendment to the Act of the Republic of Indonesia Number 6 of 1983 concerning General Provisions and Tax Procedures to Become the Act in conjunction with Article 64 paragraph (1) Criminal Code. Thus, as the First Indictment has been proven, the Panel of Judges no longer needed to consider the Second Indictment.

According to the author, tax crime by not depositing taxes that had been withheld or collected VAT based on Article 39 paragraph (1) letter i of the Act of General Provisions and Tax Procedures, in this case, cannot be separated from the tax crime of submitting incorrect or incomplete tax returns and/or information in Article 39 paragraph (1) letter d of the Act of General Provisions and Tax Procedures. As the facts revealed in the trial, in the period January 2011 to December 2012, Mr. X submitted the PT. RPP's incorrect Annual Tax Return in the VAT period to Pratama Surabaya Krembangan tax service office, causing losses to national revenues.

Thus according to the author, the main article that is indicted can be linked-to article 63 paragraph (1) of the Criminal Code concerning Combinations in an Action (*Concursus Idealis*). Eddy O.S Hiariej quoted Nyoman United Putra Jaya that *Concursus Idealis* occurs when an act that has fulfilled the element of an offense, inevitably (*eo ipso*) is also included in other regulations. However, the threat of criminal penalties is only imposed on one of them because the two rules of criminal law that are violated are of the same weight and type.

However, for this matter, the judge who is basically limited could only give a judgment based on the indictment submitted by the Public Prosecutor in accordance with the provisions of Article 182 paragraph (4) of the Criminal Code. While the indictment made by the Public Prosecutor is based on the results of the investigation conducted by the Civil Servant Investigator of the Tax Directorate General at the Regional Office of the Tax Directorate General of East Java 1, which is contained in the Closure Report and is a summary of the incident witness report, expert witness report, and suspect report are made alternatively.

Based on the Circular Letter of the Attorney General of the Republic of Indonesia number SE-004/J.A/11/1993 concerning the Preparation of the Indictment in point V concerning the Form of the Indictment, it is stated that in Alternative Indictment there are several indictments arranged in layers. One layer is an alternative and excludes charges at another layer. This form of an indictment is used when there is no certainty about which crime can be most accurately proven. Although the charges consist of several layers, only one charge will be proven.

### **Conclusion**

According to the author, the facts that have been revealed at the trial have proven the two charges presented alternatively by the Public Prosecutor. Because to fulfill the provisions for tax crime, not paying taxes that had been withheld or collected so as to cause losses to national revenues based on Article 39 paragraph (1) letter i of the Acts on General Provisions and Tax Procedures deliberately also fulfill the provisions in Article 39 paragraph (1) letter d of the Acts on General Provisions and Tax Procedures regarding submitting incorrect or incomplete tax returns. This also fulfills the provision in Article 65 paragraph (1) of the Criminal Code, which states that if an act is included in more than one criminal law, only one of those rules is charged.

Therefore, based on the results of the discussion above, the author would suggest that the law enforcement elements which handle tax crime cases, such as judges and public prosecutors to, further increase their knowledge of taxation knowledge through education and training together with the Tax Directorate General so that they can achieve better information and understandings regarding tax regulations and practices that occur in fulfilling the implementation of tax obligations by the taxpayers.

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