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Criminal policy in efforts to overcome tax crimes in Indonesia

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Abstract
Criminal policy does not mean much if the social policy or development policy itself actually gives rise to criminogenic and victimogenic factors. When viewed from a criminal policy perspective, the strategic problem that must be addressed is dealing directly or indirectly with social problems or conditions that can give rise to crime. One of the crimes that must be addressed is crime in the field of taxation. Tax crimes are closely related to the implementation of tax law to direct tax officers, taxpayers, tax officials, or other parties to comply with the provisions of tax laws. This matter is based on the fact that tax law cannot provide benefits if the parties in their position as stakeholders do not have a sense of justice in carrying out their respective legal duties and obligations. Based on the background above, the author formulates several problems, namely the role of criminal policy in overcoming tax crimes, and regulating the relationship between criminal acts in the field of taxation and general crimes or special crimes using a normative juridical approach method, namely legal research carried out using how to research library materials or secondary data as basic material for research by conducting searches on regulations and literature related to the problem being researched. The research results show that law enforcement officers in the field of taxation must be qualified in the context of administrative law enforcement or criminal law enforcement. Tax crimes committed by taxpayers are divided into violations and crimes.

Keywords: Criminal policy, crime prevention, tax crime

Introduction

The problem of overcoming crime in society, of course, cannot be separated from the context of discussions regarding penal policy. Penal policy (*penal policy*) can be interpreted as a rational effort to overcome crime by using criminal law means. The term penal policy has the same meaning as the term criminal law policy (*criminal law policy*) and criminal law politics (*criminal policy*). Therefore, the use of these three terms in the field of thought contains the same meaning.

Criminal policy or criminal politics (*criminal policy*) is a rational and organized effort of a society to overcome crime. This definition is taken from Marc Ancel who formulated it as "*the rational organization of the control of crime by society*". According to Prof. Sudarto, criminal policy is defined as 3, namely: [1]

1. In a narrow sense, criminal policy is the totality of principles and methods that form the basis of reactions to legal violations in the form of crimes.
2. In a broad sense, criminal policy is the entire function of the law enforcement apparatus, including the workings of the courts and police.
3. In the broadest sense, criminal policy is the overall policy carried out through legislation and official bodies, which aims to enforce the central norms of society.

Criminal policy or*criminal policy* is part of the law enforcement policy (*law enforcement policy*) which includes policies in the fields of criminal law, civil law and administrative law, which are integrally part of social politics (*social policy*), which is an effort by a society to increase its social resilience (*social resilience*) which includes the welfare and security of its citizens [2].

Therefore, criminal policy is essentially an integral part of efforts to protect society (*social defence*) and efforts to achieve social welfare (*social welfare*). Therefore, the ultimate goal of criminal policy is community protection to achieve community welfare. Criminal policy does not mean much if the social policy or development policy itself actually gives rise to criminogenic and victimogenic factors. When viewed from the perspective of criminal policy, the strategic problem that must be addressed is dealing directly or indirectly with social problems or conditions that can give rise to crime. This means that handling this problem is a key and strategic position when viewed from a criminal policy perspective [3]. Criminal policy itself consists of a penal approach (*criminal law application*) and non-penal approaches (*prevention without punishment*).

One of the crimes that must be addressed is crime in the field of taxation. Tax crimes are closely related to the implementation of tax law to direct tax officers, taxpayers, tax officials, or other parties to comply with the provisions of tax laws. This matter is based on the fact that tax law cannot provide benefits if the parties are in their position*stakeholder* do not have a sense of justice in carrying out their respective duties and legal obligations. [4]

The emergence of crimes in the field of taxation is based on the rules or norms of tax law which attempt to distinguish between negligence and intentionality, but this distinction depends on the intentions of the perpetrator when carrying out their respective duties and responsibilities. Regulation of tax criminal sanctions is a rational thing, this can be seen by the existence of regulations regarding specific tax crimes in tax laws and regulations.

The low level of taxpayer compliance, from a legal perspective, can actually be minimized by formulating a criminal law policy in the taxation sector. The low level of taxpayer compliance has encouraged the birth of legal policies as an effort to overcome existing problems. In terms of formulation, the government has actually issued general

tax provisions, namely through Law Number 6 of 1983 concerning General Provisions and Procedures for Taxation, as amended and refined through Law Number 9 of 1994, Law Number 16 of 2000, Law Number 28 of 2007, Law Number 16 of 2009 which also regulates criminal sanctions.

Regulations in the field of taxation are one of the implementing regulations of the norms contained in Article 23A of the 1945 Constitution. The aim, as explained in the General Explanation of Law No. 28 of 2007, aims to provide more justice, improve services to Taxpayers, increase legal certainty and enforcement, and anticipating advances in the field of information technology and changes in material provisions in the field of taxation. Apart from that, these changes are also intended to increase the professionalism of the tax apparatus, increase the openness of tax administration, and increase voluntary taxpayer compliance [5].

Juridically, crimes in the field of taxation always show that this crime is tax substance because tax law rules are violated. Sociologically, crime in the field of taxation has shown a real condition that occurs in society as a form of activity by tax officials, taxpayers, tax officials or other parties. Victims of crime in the field of taxation are not always focused on the state, but taxpayers can also become victims. If the victim is a taxpayer, it means that the person committing the crime is a tax employee or tax official. For example, in one example, tax officials do not provide services properly and appropriately to taxpayers. Then, if the victim is targeted at the state, it means that the party committing the crime is a tax official or taxpayer. In one example, the taxpayer submitted a notification letter, but the substance was incorrect or incomplete, which could result in losses to state revenue [6].

Crimes in the field of taxation can take the form of committing acts or not committing acts that comply with the provisions of tax laws and regulations. In essence, the provisions of tax laws and regulations are categorized as tax law rules which become the corridor for action or non-action. Thus, committing an act or not committing an act in the field of taxation is classified as a crime in the field of taxation when it meets the rules of tax law formulation [6].

The aim of criminal law policy in the field of taxation is basically not to find fault or provide punishment as revenge, but to create a level of public compliance as taxpayers so that in the end it can increase state revenues in the field of taxation. Legal formulation policies in the tax sector substantially involve reforming tax administration with the aim of increasing taxpayer compliance as well as strategies for dealing with violations and various forms of non-compliance with obligations in the tax sector [7].

Based on the background above, the author is interested in discussing "Criminal Policy in Overcoming Tax Crimes in Indonesia." Based on the description above, the problems that will be discussed in this paper are: 1. What is the criminal policy in dealing with tax crimes? 2 What are the weaknesses of tax law in resolving tax crimes?

Research methods

The approach method used in this legal paper is a normative juridical approach. According to Soerjono Soekanto, the normative juridical approach is legal research carried out by examining library materials or secondary data as basic material for research by conducting searches of regulations and literature related to the problem being studied.

Discussion

Criminal Policy in Overcoming Tax Crimes

Criminal policy is essentially an integral part of efforts to protect society (*social defence*) and efforts to achieve social welfare (*social welfare*), therefore it can be said that the ultimate goal or main objective of criminal policy is the protection of society to achieve social welfare. Thus, it can be said that criminal policy is essentially an integral part of social politics. Efforts to overcome crime, criminal politics can be described in various forms, including: [8]

1. Application of criminal law (*criminal law application*).
2. Prevention without punishment (*prevention without punishment*); and
3. Influencing people's views about crime and punishment through mass media (*influencing views of society on crime andpunishment*)

In enforcing criminal law in the field of taxation, there are two legal systems, namely administrative law and criminal law. For the scope of administrative law, it is known that administrative law enforcement is part of government authority. Administrative law enforcement is a procedure that must be passed first in the tax law enforcement process before using criminal law instruments.

In enforcing criminal law in the field of taxation, law enforcement officials have a big role in it. to meet the times. Law enforcement officers in the field of taxation must be qualified in the context of administrative law enforcement or criminal law enforcement. Administrative law enforcement officers are the tax authorities at the Director General of Taxes, Ministry of Finance. Meanwhile, criminal law enforcement is carried out through the criminal justice system starting from the PPNS at the Director General of Taxes, Ministry of Finance, the police are tasked with supervising the investigation process from the PPNS, prosecutors and judges at the district court. Law enforcement officers have an important role in the law enforcement process because law enforcement officers must have integrity to enforce the provisions of laws and regulations [9].

Administrative law enforcement is defined as "the application of administrative sanctions". The imposition of administrative sanctions as a form of law enforcement dominates the taxation process because what often happens is that minor violations occur. Administrative law enforcement is relatively easier to enforce because it does not need to go through a complicated litigation process and can be directly implemented by government officials in the tax sector. Therefore, an instrument is needed that allows officials to carry out law enforcement so that it is not hampered. The administrative law enforcement instrument is in the form of supervision and application of sanctions.

The low level of taxpayer compliance, from a legal perspective, can actually be minimized by formulating a criminal law policy in the taxation sector. The low level of taxpayer compliance has encouraged the birth of legal policies as an effort to overcome existing problems. In terms of formulation, the government has actually issued general provisions on taxation, namely through Law Number 6 of 1983 concerning General Provisions and Procedures for Taxation, as amended and perfected through Law Number 9 of 1994, Law Number 16 2000, Law Number 28 of 2007, Law Number 16 of 2009 which also regulates criminal sanctions.

The absence of parameters to determine the existence of administrative violations and crimes in the field of taxation has hurt the sense of justice and created legal uncertainty. Injustice occurs when someone, due to their negligence and ignorance of tax administration, is threatened and punished the same as those who had originally intended (mens rea) to commit crimes in the field of taxation [10].

Then, tax crimes committed by taxpayers are divided into violations and crimes. Violation is a minor criminal offense where the threat of punishment is imprisonment for a maximum of 1 (one) year or a fine of 2 (two) times or can be subject to administrative action if the violation only concerns administrative matters. The formulation of violations as regulated in the General Tax Provisions Law Number 6 of 1983 and its third amendment to the General Tax Provisions Law Number 28 of 2007 which reads: "*Any person who, due to negligence, does not submit a notification, or submits a notification letter but the contents are incorrect or incomplete or attaches incorrect information so as to cause losses to the state, he will be punished with imprisonment for a period of one year and a fine of 2 (two) times the calculated tax.*"

Apart from qualifying criminal acts as violations, the KUP Law also regulates criminal acts as regulated in Article 39 of the KUP Law, the elements of which are as follows: "*Any person who deliberately does not register or misuses or uses without the right to NPWP as intended in Article 2, or does not submit a SPT, and/or submits a SPT or information whose contents are incorrect or incomplete, and shows bookkeeping, recording or other documents fake." "The criminal threat is doubled if the convict commits another tax crime before one year has passed."*

The significant difference between an offense and a crime in the context of a tax crime is the deliberate or negligent act of not carrying out tax obligations. The regulation of criminal law in the field of taxation is an effort to provide a deterrent effect and prevent the recurrence of criminal acts. The regulation of criminal acts in the KUP Law aims to foster a sense of discipline and legal awareness in carrying out tax obligations.

According to Effendy, criminal law enforcement supported by the criminal justice system is supported by 4 (four) functions, namely: [11].

1. Law-making functions;
2. The function of law enforcement as a solution for social order;
3. The function of the trial examination is to determine the defendant's guilt and impose punishment or criminal sanctions;
4. The rehabilitation function of convicts includes correctional activities, related social services, and mental health institutions with the aim of recovering the convict's condition to a normal and productive life.

Violations of laws and regulations in the tax sector which fall into the category of tax crimes have given rise to controversy, especially regarding violations of tax law with administrative criminal sanctions in the tax sector with the use of general criminal law or special criminal law for criminal acts related to tax. This is caused by several things, namely:

1. Related to the authority to carry out investigations between criminal acts in the field of taxation which are administrative in nature and general criminal acts and special criminal acts which are pure criminal acts (generic crimes). If criminal acts in the field of taxation are used with general criminal law or special criminal law, it is contrary to the nature of tax criminal law which includes administrative criminal law.
2. Regarding the legal basis for the imposition of criminal sanctions, namely administrative criminal acts in the field of taxation which originate from the Tax Law which is included as administrative law and criminal sanctions in the field of administrative law (dependent crimes), while general and special criminal acts are regulated in the law which regulates general criminal law and special criminal law that is characterized by independent crimes. Based on the nature of taxation law, allegations that tax crimes have not occurred can be resolved through an administrative mechanism, namely paying the tax obligations owed along with fines can be used as a reason not to pursue a criminal case.
3. Violators of criminal acts in the field of taxation are committed by Taxpayers, officers/officials at the Directorate General of Taxes, or third parties, while investigations into alleged criminal acts in the tax field can only be carried out by certain Civil Servant Officials within the Directorate General of Taxes who are given special authority. as a criminal investigator in the field of taxation. Since the start of the investigation, notify the prosecutor and convey the results of the investigation to the public prosecutor through an official investigator from the Indonesian National Police. It is not explained regarding the authority of the police regarding the results of investigations carried out by Civil Servant Officials, whether the police have the authority to carry out further investigations or simply examine them and if they are incomplete, give instructions for them to be completed, or whether they are sufficient as a procedural entry point, but do not have any authority over the results of the investigation by the Civil Servant Official. However, if the Civil Servant investigator in the field of taxation finds indications of suspected general criminal acts committed by the Taxpayer, they can hand over their investigative authority to the police or other competent investigators.

If there are indications of criminal acts committed by officers/officials at the Directorate General of Taxes, the Minister of Finance can assign an internal audit unit within the Ministry of Finance to carry out preliminary evidence examinations. The inspection process carried out by internal auditors within the Ministry of Finance regarding indications of criminal acts carried out by officers/officials at the Directorate General of Taxes is intended to ensure the truth or falsity of indications of criminal acts. As a result, if there are indeed indications of a criminal act, the case is handed over to another investigator who is competent to carry out the investigation and prosecution of the criminal act.

1. Funds sourced from taxpayers are funds that fall into the category of state finances or state financial revenue funds and criminal acts against them can certainly harm state finances, while criminal acts that can harm state finances are included as elements of criminal acts of corruption, but the legal basis for imposing criminal acts of corruption There is no reference in the law in the

field of taxation. There are two possibilities in the future:

2. Corruption crimes related to criminal acts in the field of taxation are each independent and not related to each other, as stated in Article 43A paragraph (3); or
3. Corruption crimes relate to criminal acts in the field of taxation and the Taxation Law contains provisions as intended in Article 14 of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Corruption Crimes, so that there are Criminal acts in the field of taxation which are examined based on tax law are the competence of certain Civil Servant Officials within the Directorate General of Taxes and there are tax crimes which include criminal acts of corruption.

Weaknesses of Tax Laws in Resolving Tax Crimes

In adjudicating criminal matters in the field of taxation, of course we use the General Tax Provisions Law Number 6 of 1983 and its third amendment to the General Tax Provisions Law Number 28 of 2007, but it turns out that this law also has several weaknesses in resolving cases, that is: [12]

Weaknesses of the Tax Collection System

The first weakness is the system, mechanisms and procedures for implementing taxation rights and obligations in Indonesia *self assesment*. This system gives taxpayers confidence to calculate, calculate, pay and report the amount of tax owed themselves. In this system, taxpayers have obligations, including:

1. Register yourself to get a Taxpayer Identification Number (NPWP) and report your business to be confirmed as a Taxable Entrepreneur (PKP);
2. Organizing bookkeeping or recording;
3. Showing or lending books or records if checked;
4. Withholding or collecting other people's taxes for those appointed as cutters or collectors;
5. Pay or deposit the tax owed; And
6. Submit a Notification Letter (SPT) that has been filled in correctly, completely and clearly.

Based on the tax collection system in Indonesia (*self assessment*), the low level of tax efficiency and the high number of potential taxpayers can be caused by the lack of awareness of the Indonesian people to register themselves with the tax office.

Legal Dualism in Prosecuting Tax Crimes

There is a weakness that Taxpayers are faced with the power and authority of the Director General of Taxes to decide, grant in whole, in part, reject or increase the amount of tax that still has to be paid as stated in Article 26 paragraph 3 (UU KUP) rather than the authority and power of judges at the Tax Court in decide tax disputes as regulated in the Tax Court Law.

With dualism like this, the fundamental question becomes, why are objections at the Directorate General of Taxes rejected, but at the appeal level most of the objections are accepted by the Tax Court? Tax complaints that are handled outside the tax court are a wide open door to the occurrence of "case brokering" and bribery, because supervision for this matter is not regulated.

The next weakness in the Tax Court Law is that the Tax Court is not integrated under the Supreme Court (MA). This of course contradicts Law No. 48 of 2009 concerning Judicial Power which mandates a one-roof court under the Supreme Court. The Supreme Court's powers are only limited to the technical guidance of the judiciary as confirmed in Article 5 paragraph (1) of the Tax Court Law, while matters of organizational, administrative and financial guidance are carried out by the Ministry of Finance which has now become the Ministry of Finance as confirmed in Article 5 paragraph (2). Tax Court law.

The position of the Tax Court, which is currently under the Ministry of Finance, can actually weaken the supervisory function and independence of judges in the Tax Court. Any state institution in a country's government structure uses a system of checks and balances. Internal supervision is of course not enough and requires external supervision. For this reason, the circles and practices of mafia cases in the Tax Court are difficult to decide because it is difficult for the Supreme Court and other external supervisors to penetrate further into the tax justice system.

Conclusion

From the explanation that the author has outlined above, several conclusions can be drawn, namely:

1. In enforcing criminal law in the field of taxation, law enforcement officials have a big role in it. to meet the times. Law enforcement officers in the field of taxation must be qualified in the context of administrative law enforcement or criminal law enforcement. Tax crimes committed by taxpayers are divided into violations and crimes. Violation is a minor criminal offense where the threat of punishment is imprisonment for a maximum of 1 (one) year or a fine of 2 (two) times or can be subject to administrative action if the violation only concerns administrative matters.
2. Violations of laws and regulations in the tax sector which fall into the category of tax crimes have given rise to controversy, especially regarding violations of tax law with administrative criminal sanctions in the tax sector with the use of general criminal law or special criminal law for criminal acts related to tax.
3. There are 2 weaknesses in tax law in resolving tax crimes, namely weaknesses in the tax collection system and legal dualism in prosecuting tax crimes.

Suggestion

1. The preparation of various criminal law regulations in the economic sector by legislative institutions should pay attention to the principles of synchronization and harmonization between various existing legal regulations, so that law enforcement will be easier and more certain.
2. Criminal law in the economic sector should continue to place criminal law in its secondary function. This means that law enforcement must prioritize law enforcement through administrative and civil law mechanisms.
3. Various criminal law regulations should pay more attention to synchronization in the use of legal concepts such as in investigation, prosecution, trial, elements and criminal responsibility so that existing legal regulations are more systematic and integrated.
4. Coordination between various law enforcers involved in criminal acts in the economic sector should refer to general criminal law provisions, namely the Criminal Procedure Code and refer to the Integrated Criminal Justice System.

Reference

1. Ahmad Kamil, Fauzan. *Legal Rules of Jurisprudence*. Jakarta: Kencana, 2011.
2. Barda Nawawi Arief. *Anthology of Criminal Law Policy.*Jakarta: Prenadamedia Group, 2016.
3. Effendy, Marwan. *Discretion, Legal Discovery, Corporations, and Tax Amnesty in Law enforcement*. Jakarta. Reference, 2012.
4. Muhammad Djafar Saidi. *Crimes in the Field of Taxation.*Jakarta: PT. King, 2011.
5. Grafindo Persada. Muladi, Diah Sulistiyani. *Records of Four Decades of Struggle Help to Guard Realization of the National Criminal Code, 1980-2020, I.* Semarang: University Semarang PRESS.
6. Soerjono Soekanto, Sri Mamudji. *Normative Legal Research (A Review Short).* Jakarta: Rajawali Press, 2001.
7. John Kennedy. "*Criminal Policy in the Indonesian Legal State: Efforts to Improve Community Welfare (Social Welfare)*". Journal of Islamic Government and Politics, 2017:2:1.
8. Muddzakir. *Criminal Law Regulations in the Field of Taxation and Their Relationships With General and Special Criminal Law*". Indonesian Legislation Journal,2011:8:1.
9. Rizky Supit. "*Legal Protection for Suspects in Tax Cases*". Journal of Private Law, 2016:4:2.
10. Rudi Kurniawan. "*The Politics of Criminal Law in the Field of Taxation*". Pamator Journal, 12, 2.
11. Suranta Ramses. "*Prevention and Eradication of Tax Crimes Through Implementation of Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering*". USU Law Journal,2014:2:2.
12. *Strategy to Increase Taxpayer Compliance*, http://www.pajak.go.id, accessed on, 2023, 17. at 00.02 WIB