



Criminal Law Policy in Stopping Investigations in the Taxation

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Abstract

Taxes are a source of state income obtained from community contributions for the sustainability of the State, but in reality there are elements of the community who do not carry out their obligations as taxpayers, even misuse the money from the tax proceeds for personal interests which result in state losses, therefore The author aims to examine and analyze more deeply about how criminal law policies stop investigations in the field of taxation, because the Ministry of Finance regulations do not regulate that. As for the conclusion case this should go to court so as not to violate the provisions, must go through a court decision and be acquitted by a court decision so that it has legal force.

Introduction

Indonesia has a goal to create social welfare for all Indonesian people, as enshrined in the 1945 Constitution of the Republic of Indonesia. Because of this goal, it is necessary to have a policy regarding state income, one of which is regarding taxes. Tax is an important component, especially for Indonesia, which is still a developing country (Agustina, 2020). Tax is a form of state revenue which will be used for all government needs and activities in carrying out services and development in all fields, in order to create social welfare for all Indonesian people (Pamungkas et al., 2022).

Tax itself is the contribution of taxpayers obtained from the people to the state that is owed. Taxes are the largest state revenue used by the state to develop all regions in Indonesia. For this reason, citizen participation is required by obediently paying taxes in order to participate and participate in state financing and national development. In carrying out their obligations, taxpayers are given the trust to calculate, calculate and report their own tax obligations in accordance with the principle of the self-assessment system (Ohoiwirin & Ruslie, 2022).

Tax collection in Indonesia has also been based on justice based on the principle equality, namely tax collection by the state must be in accordance with the ability and income of the taxpayer, and the state must not act discriminatory against taxpayers. However, some of the facilities that have been provided by the government are sometimes still not followed by a high awareness of taxpayers to pay off their tax debts (Evantri et al., 2022).

There are individual taxpayers who do not pay their taxes even for years resulting in arrears in tax payment obligations. Based on data from the Financial Transaction Reports and Analysis Center (PPATK) there were 3,680 (three thousand six hundred and eighty) alleged tax crimes in Semester I/2022, an increase of 100.65% compared to semester I/2021 which was 1,834 (one thousand eight hundred and thirty four) cases. Allegations of tax crimes in the first half of this year also increased by 31.10% compared to semester II/2021 which was 2,807 (two thousand

eight hundred and seven) cases. On a monthly basis, the most suspected tax crimes were detected in March 2022. The Financial Transaction Reports and Analysis Center (PPATK) recorded the number of cases reaching 821. Meanwhile, allegations of tax crimes contributed significantly to the total indications of criminal acts in the financial statements of suspicious transactions during January-June 2022. The percentage was 8.04% of the total of 45,736 (forty five seven hundred and thirty six) cases. This data shows that the supervision aspect which is one of the functions of the Directorate General of Taxes at the Ministry of Finance has not been maximized. On that basis, the tax authorities need to improve their supervisory performance to close the loophole for the crim (Rizaty, 2022).

With the potential for state losses in the taxation sector, a settlement is needed, especially in the imposition of criminal sanctions in order to proportionally resolve alleged tax crimes. Considering that tax crimes are classified as organized crimes and are usually carried out through corporations (corporate crime) and can also involve tax officials, a different handling is needed from other general crimes. Given the existence of dualism in the settlement of alleged tax crimes (Virginia & Soponyono, 2021).

Based on the foregoing, to anticipate that state revenues are maintained, the Ministry of Finance issued a policy of Regulation of the Minister of Finance Number 55/PMK 03/2016 concerning Procedures for Requests for Termination of Investigation of Criminal Acts in the Taxation Sector for the Interest of State Revenue, as well as the settlement of tax criminal law. can be resolved through administrative channels as referred to in Article 6.

Furthermore, in legal doctrine, laws and regulations regarding taxes are included in the realm of state administration so that legal problems that arise related to violations of tax regulations and law enforcement are carried out through administrative legal settlement mechanisms. Even though it includes administrative law, tax laws have different characteristics from other administrative law, because the nature of tax law is to give broad authority to the state to collect taxes from taxpayers. The state has the authority to determine taxpayers and force taxpayers to fulfill their obligations (Mudzakkir, 2011).

As previous research conducted by (Virginia & Soponyono, 2021) regarding "The existence of a ministerial regulation regarding procedures for Requests for Termination of Investigation of Criminal Acts in the Taxation Sector, then the existence of a ministerial regulation regarding procedures for Requests for Termination of Investigation of Criminal Acts in the Taxation Sector, raises concerns about the rigidity of the law. criminal acts and violates the provisions of the Criminal Procedure Code In the future, the criminal law policy strategy in the field of taxation should be in line with the principle in taxation crime that criminal sanctions in taxation are *Ultimum Remidium*, which means that in enforcing tax law violations, administrative sanctions take precedence, while criminal sanctions are used if the method used is no longer effective to make taxpayers comply with tax provisions. In the field of taxation, one example of the *Ultimum Remidium* is the government issuing a Tax Amnesty policy, which is the abolition of taxes that should be owed, not subject to tax administration sanctions and criminal sanctions in the field of taxation, by disclosing assets and paying a ransom that is expected to increase tax revenue. Unfortunately, this policy is part of the *ius constituendum* or the law that is aspired to, so it is currently necessary to consider all government policies related to criminal acts in the field of taxation.

This study only discusses the application of criminal penalties in the field of taxation and the prevention of tax crimes within the scope of future criminal law reforms, while the process of stopping investigations through the regulation of the Ministry of Finance is not discussed, in this journal we will discuss the process of someone becoming a suspect in a criminal offence.

taxation and termination of the investigation process through the policy of the minister of finance associated with the criminal procedure law.

So the author aims to study and analyze more deeply the Criminal Law Policy in Stopping Investigations in the Taxation Sector, as for the first problem, how is the Criminal Law Policy in Stopping Investigations in the Taxation Sector through the Approval of the Minister of Finance? Then the formulation of the second problem, what is the termination of investigations in the field of taxation from the perspective of the Criminal Procedure Code?.

Methods

This research method employs a normative legal approach with the goal of discovering and developing legal arguments through subject matter analysis.(Hadjon & Djamiati, 2005). The use of normative legal research is done with the understanding that this research focuses on legal norms found in legislation, legal materials, or literature. While the research specification is descriptive analysis research, it will provide answers to problems concerning the Criminal Law Policy in Stopping Investigations in the Taxation Sector.

Results and Discussion

Criminal Law Policy in Stopping Investigations in the Taxation Sector Through the Approval of the Minister of Finance

In the process of determining the occurrence of a crime and a suspect based on Indonesian criminal law, it is based on two pieces of evidence and the investigator's belief that a crime or criminal act has occurred. As regulated in Article 1 point 14 of the Criminal Procedure Code, it requires preliminary evidence before establishing a person as a suspect, but the Criminal Procedure Code does not explain further what is actually meant by preliminary evidence, especially the definition of preliminary evidence that can be used as the basis for determining a suspect. Furthermore, that sufficient preliminary evidence that can be applied to general crimes is then based on Article 1 number 21 of the National Police Chief Regulation Number 14 of 2012 concerning the management of criminal investigations, which stipulates that "initial evidence is evidence in the form of a police report and 1 (one) valid evidence, which is used to suspect that a person has committed a crime as a basis for making an arrest".

In the regulation of the minister of finance number 238/PMK.04/2009 concerning procedures for stopping inspections, prevention, sealing. Actions in the form of not serving orders for excise stamps or other signs of payment of excise duty, and the form of a letter of order for prosecution of proof of action, hereinafter referred to as Ministerial Regulation No. 238/PMK.04/2009, action in the field of excise carried out by customs and excise officials is made a letter of proof of action. This is excluded from the provisions for making a letter of proof of action, which is an action carried out in the context of an excise audit.

Taxes are not the only factor that drives investment interest, but the tax system that applies in a country determines which countries investors invest in, and whether there is a relatively low tax burden or tax exemption in a country. matters for individual consideration. This is very attractive to investors because it has become a sign of society. In any given country, people tend to pay, and even avoid or avoid, relatively small amounts of taxes. Such actions clearly have a negative impact on government revenue from taxes (Alisyahbana, 2007; Iskandar, 2019). Furthermore, through the policy, the idea of tax amnesty and termination of investigations in tax crimes was raised, but this was used as an excuse for taxpayers not to pay off their tax obligations.

According to research conducted by Meiliana Kurniawati and Agus Arianto Toly, unfair treatment of taxpayers will cause people to reduce the amount of taxes they pay, the greater the

sense of injustice, the greater the taxes they do not pay (Kurniawati & Toly, 2014). With regard to law enforcement in taxation, as regulated in Article 24 of the KUP Law, where the law gives the Minister of Finance the authority to write off tax receivables and the amount of receivables written off. In this case, the abolition of tax receivables must be different from debt relief and tax amnesty as article 24 of the KUP requires that the taxpayer dies and does not leave any inheritance or inheritance or taxpayers who have completed the bankruptcy process or taxpayers who are already taxpayers or have the right to do so. tax collection has reached its expiration date (Iskandar, 2019).

In accordance with the provisions of Article 13 paragraph (1) of the KUP, the Director General of Taxes has the authority to issue an SKPKB (Tax Underpayment Assessment Letter) within a grace period of five (five) years from the date on which the tax became payable or the conclusion of the Tax Period, part of the Fiscal Year, or the Fiscal Year itself. According to the first paragraph of Article 8 of the KUP, not in terms of grace time, but included in terms of expiry, the grace period is 5 (five) years, as mentioned in the paragraph that is above this one in Article 13. (determination). As a result, the provision of certainty in law is not provided by paragraph 5 of Article 13 of the KUP. By granting the Director General of Taxes the authority to issue SKPKB in the event that after a period of 5 (five) years the taxpayer commits a crime in the field of taxation or other criminal acts that can cause a loss to state revenue based on a court decision that has the force of law, the SKPKB will be issued. fixed (inkracht van gewijsde)

In the literature on tax law, in addition to being referred to as the expiry of determination, this time period is also referred to as the expiration of collection. In accordance with the provisions of Article 22 paragraph 1 of the KUP, the period of time during which a collection is valid is set at 5 (five) years, beginning with the date of issue of the STP, SKPKB/T, SK for Correction, SK for Objection, Decision on Appeal, and Decision on Review. According to Article 13 paragraph (1) and Article 8 paragraph (1a) in combination with Article 22 paragraph (1) of the KUP, the phrase "strong expiration" refers to the situation in which an expiration in tax comprises both the expiration of determination and the expiration of collection (sterke werking).

In addition, according to Article 40 of the KUP, the statute of limitations for prosecuting illegal conduct in taxation is ten years from the time of taxation, the end of the Tax Period, or the Tax Year, depending on which comes first: the time of taxation or the end of the Tax Period or the Tax Year. It is based on Article 38 and Article 39 of the KUP, which are both in accordance with the article. According to Law no. 20 of 2001 concerning Amendments to Law no. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, there are elements that can cause losses to state revenues in tax crimes as formulated in the two articles above as reasons to be charged with corruption. These reasons are regulated by the law.

In addition, the concept of "state finances" may be found in Law no. 20 of 2001, which is referenced in Articles 28 and 29 of the KUP. The right of the state to collect taxes is considered to be within the purview of state finance according to a methodical interpretation that is based on Article 1 point 1 in combination with Article 2 of Law no. 17 of 2003 concerning State Finance. It is possible to interpret that the scope of state finances, almost all cases of criminal acts in the tax field committed by taxpayers can be constructed as criminal acts of corruption so that they are ensnared by Legal Certainty in the Enforcement of Taxation Law. This is so that it can be interpreted that the state finances are the scope of the criminal act (Iskandar, 2019)

The provisions of Article 13 A, Article 38, Article 39, and Article 44 B KUP that pertain to criminal law policies may be found in the sphere of taxes. According to article 13 A, "A

taxpayer who because of his hunger does not submit a notification letter or submits a notification letter but the contents are not correct so that it can cause losses to state income, are not subject to criminal sanctions if the negligence was first committed by the taxpayer and the taxpayer pays off the deficiency." This provision states that a taxpayer is not subject to criminal sanctions if the negligence was first committed by the taxpayer and the taxpayer pays off the deficiency. payment of the amount of tax as stated in addition to administrative sanctions in the form of an increase of 200% (two hundred percent of the amount of underpaid tax determined through the issuance of an underpaid tax assessment); or, 2) submission of a Notification Letter. does not submit a Notification Letter; or, 3) payment of the amount of tax as stated. But the contents are incorrect or incomplete, or you attach information whose contents are not correct, so that it can cause loss to state income, and the act is an act after the first act as referred to in Article 13A, then you will be subject to a fine of at least 1 (one) times the amount of tax payable that is not or underpaid, and a maximum of 2 (two) times the amount of tax payable that is not or underpaid. In other words, the fine will be at least 1 (one) Or faces the possibility of being imprisoned for a period ranging from a minimum of three months to a maximum of one year.

Furthermore, according to the provisions described in Article 39 of the UUKUP, it is stated that: 1) Any person who intentionally: a) fails to register for a Taxpayer Identification Number or fails to report his business in order to be confirmed as a Taxable Entrepreneur; b) misuses or makes unauthorized use of the taxpayer identification number or taxable entrepreneur confirmation; c) fails to submit the Notification Letter; d) submits a Notification Letter that is inaccurate or incomplete; 2) fails to pay the unpaid or underpaid, as well as a maximum of four times the amount of tax that is owed but either not paid or paid in an insufficient quantity. 2) The penalty that is referred to in paragraph (1) is increased by one (one) time, making it two (two) times the criminal sanction if someone commits another crime in the taxation sector before one (one) year has passed, beginning from the completion of the imprisonment sentence that was imposed. This is the case if someone commits another crime in the taxation sector before one (one) year has passed, starting from the completion of the imprisonment sentence that was imposed. 3) Any person who makes an effort to conduct a criminal act, misuses or uses without right the Taxpayer Identification Number or the Confirmation of a Taxable Entrepreneur as referred to in paragraph (1) letter b. will be subject to the following penalties: or files a tax return and/or information with the Internal Revenue Service that contains information that is either erroneous or incomplete, as described in paragraph (1) letter d. In the context of submitting an application for restitution or performing tax compensation or tax credit, shall be punished with incarceration for a minimum of six (six) months and a maximum of two (two) years, as well as a fine that is at least two (two) times the amount of restitution that was requested. And/or the amount of compensation or crediting that was awarded, up to a maximum of four times the amount of restitution that was requested and/or the amount of compensation or crediting that was awarded.

Article 48 B of the UUKUP governs issues that pertain to criminal law policies in the taxation sector. These issues are in addition to those that are covered by the articles indicated above. Which says that (1) For the purpose of state income, the Attorney General may, at the request of the Minister of Finance, cease the investigation of criminal actions in the taxation sector no later than within one year if it is requested to do so by the Minister of Finance. (2) The completion of the criminal inquiry into tax evasion that is referred to in paragraph (1) must only be carried out after the Taxpayer has paid off the tax liability that is either not paid or underpaid or that should not be returned. And comes with an administrative punishment in the form of a fine that is equal to four times the amount of the tax in question.

The criminal law policy approach based on the four articles mentioned above is based on Article 13 A and Article 44 B, there are types of administrative criminal sanctions, one of which is the sentence "no content found in the article which states "error due to first negligence" there is an interest in state revenue" "not subject to criminal sanctions if the tax payer's negligence is first committed" "at the request of the minister of finance the attorney general can stop the investigation".

In line with this, it is clear that tax law is an administrative law and that problems in the field of taxation can be resolved through an administrative approach because the purpose of tax law itself is for state income. Even though it rigidly creates legal uncertainty if it is confused with the objectives of criminal law, stopping the investigation by the attorney general through an application from the minister of finance is a form of ultimum remedium on the grounds that the taxpayer can correct his mistake but the State has obtained only first.

Termination of Investigations in the Taxation Sector Perspective of the Criminal Procedure Code

The enactment of Law Number 16 of 2009 concerning General Provisions and Tax Procedures (UU KUP) marks the development of the tax collection system in Indonesia which began in the Ordination period during the colonial period in 1983 until the Tax Reform period (Arifki, 2019). A criminal act is an event which is expressly stated by law to be subject to criminal sanctions, so in the public interest, state law enforcement tools are obliged to carry out investigations (opspring) which the Criminal Procedure Code calls investigations and investigations (Saputra & Bahri, 2020). The results of the investigation are submitted to the Prosecutor as material for prosecution. The definition of a tax investigation is a series of actions or actions carried out by civil servant investigators in this case investigators from the Directorate General of Taxes which aim to seek and collect evidence ± related evidence to find the perpetrators of the crime. criminal or suspect (Bawoleh et al., 2021).

The KUP Law specifies in Article 44 paragraph 2 the scope of the Tax Investigator's jurisdiction and responsibilities. According to Article 44 paragraph 2 letter j of the KUP Law, one of the authorities that the tax investigator has is the ability to put an end to the inquiry. In addition to this power, according to Article 44 (4) of the KUP Law, investigators who are carrying out investigations may seek help from other law enforcement authorities. An investigation may come to a close for any one of the following reasons: the investigator calls it quits because there is insufficient evidence; the event in question does not constitute a tax offense; the investigation comes to an end because the time limit for the event has passed; the person under investigation passes away or becomes ne bis in idem. This is spelled out in Article 44A of the KUP Law, and it gives the Attorney General the authority to halt the inquiry if the Minister of Finance makes a formal request to do so. This inquiry was shut down because it was determined to be detrimental to the interests of the state. Article 44B of the KUP Law outlines the specifics of this provision. (2) The investigation of criminal acts in the field of taxation, which is referred to in paragraph (1), will not be terminated until the Taxpayer has paid off the unpaid or underpaid tax debt or which should not be returned; and Paying administrative sanctions in the form of a fine that is four (four) times the amount of tax that is not or underpaid, or which should not be returned.

Based on the Criminal Procedure Code, the end of the investigation is not rigidly regulated. However, in article 8, article 110 and article 138 of the Criminal Procedure Code, two things were found that vaguely ended the investigation. First, the investigation ends when the handover of juridical responsibility for the suspect and evidence from the investigator to the public prosecutor has been carried out, or the public prosecutor has notified the investigator

that the results of the investigation are complete (P-21). Second, the investigation ends if the investigator is unable to continue the investigation for reasons as regulated in Article 109 paragraph (2) of the Criminal Procedure Code or Article 44A and Article 44B of the UUKUP. In this case, the investigator issues an Investigation Termination Order (SP3).

Departing from articles 110 and 138 above, there is a picture of the end of an investigation in the field of taxation, this is close to the contents of article 44B of the UUKAP which in essence the investigation can be stopped through the Attorney General on the grounds that it is in the interest of the state with a legal standing request from the Minister of finance on condition that the suspect has paid the tax debt and administrative sanctions. With the existence of a warrant for the termination of the investigation, it is legally valid that the investigation has ended. In this case, the Order for Termination of Investigation is a formal requirement for the termination of the investigation. What is meant by formal requirements is the completeness that must be met in relation to everything related to formalities/requirements, letters or documents, such as: Minutes, Orders, Permits/approvals from the Chief Justice of the court as stipulated in the attachment of the Prosecutor's Technical Instructions. Agung Muda General Crimes Number B-401 /E/9/1993 concerning the Implementation of Pre-Prosecution Duties.

On the basis of the foregoing, that with the issuance of an Investigation Termination Order by the Attorney General through a request from the Minister of Finance with the fulfillment of terms and conditions, this becomes a formal requirement that needs to be fulfilled in the process of stopping an investigation, so administratively the termination of an investigation can be considered valid if has been published by investigators. Considering that tax investigators are Civil Servant (PPNS) investigators, then in KUHAP Article 7 paragraph 1 letter (i) it states that the police investigators have the authority to stop investigations as well as PPNS investigators. Referring to article 80 of the Criminal Procedure Code, there are several parties who can apply for / or examine the validity of the prosecution and the validity of the termination of the investigation. In this case, the law provides a fairly clear definition but does not mean the parties outside the reporting party and/or the reported party, but the Criminal Procedure Code provides an illustration that those who are interested without providing explanations for the parties outside the reporting party and the reported party have an interest.

Furthermore, after the decision of the Constitutional Court Number 76/PUU-X/2012, it was emphasized that other parties or third parties concerned were not only the complainant and the reported party but also involved the community, in this case represented by community organizations. Regarding the termination of the investigation of criminal acts, there are several considerations that must be known by a judge: 1) The authority of the prosecutor as a public prosecutor is to examine the case file whether the suspect's case file can be transferred to trial in court on the basis of reasons that are really important according to law, in the interest of examining the prosecution, or cannot be transferred to a trial court on the grounds that the criminal elements are not fulfilled; and 2) The reason for stopping the prosecution as stated in Article 140 paragraph 2 letter a of the Criminal Procedure Code, the reasons for stopping the prosecution are: because there is not enough evidence, the incident is not a criminal event, the case is closed for the sake of law. However, this reason can be used not to sue by the public prosecutor as stipulated in Article 46 paragraph (1) letter b of the Criminal Procedure Code, meaning that the case has not yet been transferred to the court. So if the case file is forced to be transferred to a court session, of course the judge will decide on the case, namely in the form of an acquittal (*vrijpraak*) or a decision free from all lawsuits (*onslag van rechtvervilging*). So if the case is continued at a later date and it turns out that there is new evidence, evidence that is very reasonable can be reprocessed and transferred to a court session (Resmini & Taufikurahman, 2019).

Conclusion

That in the event of a criminal case being dropped for a number of reasons as outlined in the Criminal Code's Articles 44, 48, 49, 50, 78, and 83, an SP3 may be issued in accordance with Article 109 paragraph (2), the full text of which reads as follows: "If the investigator terminates the investigation because there is insufficient evidence, the incident does not constitute a criminal act, or the investigation is terminated for legal reasons, the investigator must notify the public prosecutor, Insufficient evidence, the case does not include a criminal conduct, and for the purpose of the law are the three grounds that might justify the issue of a Special Procedure 3 (SP3). These reasons can be derived from the rules that have been presented above. Therefore, it is abundantly obvious that the payment of tax arrears by the suspect in accordance with the rule issued by the minister of finance is in direct violation of the Criminal Procedure Code. This is due to the fact that the money that was made is not a ground for erasing the crime, and it is abundantly evident that the taxpayer is not a person, as specified in Article 44 of the Criminal Code. Therefore, the case ought to be brought before a court in order to ensure that it does not breach the requirements. The case ought to be cleared of wrongdoing by a court ruling in order for it to have the force of law.

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