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Ultimum Remedium & Primum Remedium Sanctions in Tax Law Enforcement in Indonesia to Secure State Revenue

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ABSTRACT

This study aims to determine the types of tax sanctions imposed on taxpayers who do not carry out their tax obligations based on the provisions of the Law. The research method is the related tax laws and regulations, journals, books, and the internet related to the problems under discussion. Based on the Law of the Republic of Indonesia Number 7 of 2021 concerning the Harmonization of Tax Regulations (HPP), taxpayers who do not fulfill the obligation submit Periodic/Annual tax returns or submit Periodic/Annual tax returns but not based on actual conditions will be subject to sanctions in the field of taxation which apply in Indonesia. Based on the law, sanctions are given to taxpayers who violate and commit criminal acts of taxation either due to negligence or deliberately. Taxpayers who commit violations based on the tax law due to negligence and do not want to be subject to criminal sanctions are given the option to pay the principal owed along with fines, while taxpayers who violate tax provisions deliberately can immediately be subject to criminal sanctions in the field of taxation and obliged to pay the principal tax owed along with sanctions.

KEYWORDS

Ultimum Remedium Sanction;
Primum Remedium Sanctions;
Tax Law Enforcement



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INTRODUCTION

One of the functions of taxes is to regulate a country so that in operational activities funds from tax payments are used to finance the necessary expenses for a country including development. In addition, the function of taxes is also to regulate and implement economic policies, for example, the government provides high tax rates on imports which aim to protect the domestic industry.¹ Tax Procedures are regulated in Law number 6 of 1983 concerning General Provisions and Tax Procedures as amended lastly by Law number 7 of 2021 concerning Harmonization of Tax Regulations. This regulation was promulgated by the Government to provide legal certainty and attract investment from abroad and it is hoped that the economic level of harmonization can grow. According to the tax expert, Prof. Mardiasmo, the definition of tax is that tax is a contribution of the people to the state treasury based on the law (can be imposed) by not getting reciprocal services (countermeasures) directly demonstrable and used to finance public expenditures. Because of its nature that does not get reciprocity directly, the tax payments made by taxpayers can be felt by developments such as bridges, school buildings, health, security, and so on.²

Indonesia's taxation system adheres to the World Wide Income System, i.e. income originating from within the country and/or abroad will be taxed in the country of Indonesia both active income and passive income, while tax reporting, Indonesia adheres to Self-Assessment, i.e. taxpayers are given the freedom to calculate, pay and report taxes payable in the Periodic Tax Return (*SPT Masa*) and Annual Tax Return (*SPT Tahunan*).³ Based on the Tax Return that has been reported by the Taxpayer, the Tax Authority may conduct an audit to determine the amount of tax payable in a tax period/year, where the purpose of the audit is to test the Taxpayer's compliance which is regulated in the General Provisions and Procedures for Taxation (*KUP*).⁴ For taxpayers who agree to the audit results, they must be required to pay the tax deficiency to the state along with the fines that have been determined based on applicable regulations. However, if the taxpayer does not agree with the results of the Fiskus audit, then the taxpayer can file an objection, appeal, or judicial review. The state can also impose penalties on taxpayers who intentionally commit a criminal offense in the field of taxation without being preceded by an appeal (*Primum Remedium*) which is considered the main choice in tax law enforcement, for example issuing Tax Invoices that are not based on actual transactions and submitting Annual Tax Returns whose contents are deliberately incorrect. As for the punishment of taxpayers preceded by an appeal (*Ultimum Remedium*), the option is generally given so that taxpayers are not subject to criminal sanctions in the field of taxation.⁵

¹ Hari Agus Santoso, "Efektifitas Undang-Undang Cipta Kerja Terhadap Peningkatan Investasi" (2021) 6:2 J Huk POSITUM 254-272.

² Dewan Redaksi, "Pengaruh UU HKPD bagi Kemakmuran dan Kesejahteraan Masyarakat pada Sektor Pajak", (2022), online: *HnG Consult* <<https://hng.co.id/pengaruh-uu-hkpd-bagi-kemakmuran-dan-kesejahteraan-masyarakat-pada-sektor-pajak/>>.

³ T Ismail, *Potret Pajak Daerah di Indonesia* (Jakarta: Kencana, 2018).

⁴ Yusuf Hafandi & Romandhon, "Pengaruh Pajak Daerah, Hasil Pengelolaan Kekayaan Daerah yang Dipisahkan, Retribusi Daerah, dan Lain-Lain Pendapatan Daerah yang Sah Terhadap Pendapatan Asli Daerah Kabupaten Wonosobo" (2020) 3:2 J Econ Manag Account Technol 182-191.

⁵ Binsar Sitorus, "Independensi Hakim dalam Sistem Peradilan Pajak di Indonesia" (2013) 28:1 J Yuridika 29-43.



This is certainly very detrimental to the state if carried out by taxpayers, therefore the provision of criminal sanctions in the field of taxation is needed so that the Indonesian people are aware and obedient to the government even though there are pros and cons to tax payments. This is also done by many developed countries such as the United States, Singapore, and Japan in securing tax revenue in their countries. Of course, the provision of criminal sanctions in the field of taxation is not a tool to “criminalize” someone, but rather to provide an understanding that tax is a very important sector of state revenue.⁶

Ultimum remedium is a principle for the application of tax sanctions where there is an “option” if the taxpayer does not wish to be sanctioned in the field of taxation. Meanwhile, *Primum Remedium* is the principle of imposing sanctions in the field of taxation that are directly imposed without any options. Human nature is not happy if their property is taken by force, this applies to all humans on earth without exception.⁷ Tax levies are coercive and regulated in law, requiring humans to give up their assets to be deposited with the state. This also underlies tax evasion, which is aggressively carried out by taxpayers who do not want to comply with tax regulations.

Multinational companies also do a lot of tax evasion which is generally done to minimize the tax burden on companies located in several countries around the world. In taxation, it is known as Tax Evasion, which is tax evasion by violating the rules and using methods that are not justified by law to reduce the amount of tax that must be paid. Generally, taxpayers who are not willing to pay taxes and do things that are prohibited to minimize the tax payable, for example by showing documents that are not based on actual transactions, not reporting all assets and liabilities, minimizing income, and increasing expenses (expenses).⁸ In contrast to tax avoidance, which is a tax avoidance scheme to minimize the tax burden by utilizing loopholes in a country's tax provisions. Taxpayers who understand the tax rules will take advantage of this method and certainly do not violate the tax provisions and is not a crime. An example of tax avoidance is the establishment of a business entity, either *Commanditaire Vennootschap* (CV) or Limited Liability Company (PT) where the tax on these two business entities is set at 22%, but if using an individual business is taxed at 35% if the profit is above 5 (five) billion. Of course, the difference between corporate and individual tax rates is very large, which is 13%.⁹

Therefore, many taxpayers create a business entity to get tax savings and this does not conflict with the applicable tax regulations in Indonesia. Another example is investing dividends received by individuals in the Unitary State of the Republic of

⁶ Kementerian Hukum dan Hak Asasi Manusia, *Hasil Penyelarasan Naskah Akademik Rancangan Undang-Undang tentang Ketentuan dan Fasilitas Perpajakan untuk Penguatan Perekonomian* (2019).

⁷ Dwi Nurferiyanto & Yoshi Takahashi, “first_page settings Order Article Reprints Open AccessArticle Establishing Boundaries to Combat Tax Crimes in Indonesia” (2024) 13:3 *Laws* 13–29.

⁸ Fitriya, “Tax Avoidance: Praktik Pelanggaran dan Dampak bagi Perusahaan”, (2023), online: *mekari klikpajak* <<https://klikpajak.id/blog/tax-avoidance/>>.

⁹ Dina Lathifa, “Hubungan Tax Avoidance, Tax Planning, Tax Evasion & Anti Avoidance Rule”, (2019), online: *online pajak* <<https://www.online-pajak.com/tentang-pajak/hubungan-tax-avoidance-tax-planning-tax-evasion-anti-avoidance-rule>>.



Indonesia (*NKRI*) for 3 (three) years by the conditions set by the Government. The dividend distribution is exempted from tax imposition because the taxpayer places the dividend in the country, as well as many more examples of tax avoidance that do not violate the provisions of tax regulations or are legal and do not constitute a criminal offense in the field of taxation.¹⁰

METHOD

In this article, the author uses the type of normative juridical legal research, namely legal research conducted by examining primary legal materials in the form of laws and regulations and secondary legal materials or legal materials in the form of supporting library materials for primary legal materials.¹¹ The approach used is a statute approach and comparative approach, namely research on legal products. This statutory approach is carried out to examine the laws and regulations relating to the research to be studied. This statutory approach will open up opportunities for the author to study whether there is consistency and conformity. This approach is a type of approach used to investigate and understand a legal product by comparing and contrasting laws and regulations.

RESULT & DISCUSSION

I. Imposition of Criminal Sanctions for Alfa and Intentionally (*Ultimum Remedium*)

Criminal investigation in the field of taxation is a series of actions taken by investigators to seek and collect evidence with which the evidence makes light of criminal acts in the field of taxation that occur and find the suspect. According to Faure, Oudijk, and Schaffmeister (1991), "criminal law is only applied to someone who violates the law with a relatively severe level".¹² *Ultimum Remedium* is one of the principles in criminal law which states that criminal law should be the last resort of law enforcement. In enforcing tax law, it is necessary to have regulations that regulate between taxpayers and the government even in the category of negligence.¹³ In the Big Indonesian Dictionary (*KBBI*) Alfa is negligent in obligations; less heed; less attention; careless. From this definition, it can be concluded that the action was carried out without intent, however, negligence in the Tax Law is still subject to sanctions. This means that every taxpayer must have awareness of what has become his obligation to the state. Chapter VIII on Criminal Provisions and regulated in Article 38 of Law no 7 of 2021 concerning Harmonization of Taxation states:

Every person who through their failure:

- a. does not submit a notification letter; or

¹⁰ Fitriya & Ambhia Widhi, "Dasar Cara Menyusun Tax Planning", (2024), online: *mekari klikpajak* <<https://klikpajak.id/blog/tax-planning/>>.

¹¹ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2011).

¹² Michael G Faure, JC Oudijk & D Schaffmeister, *Zorgen van heden: Opstellen over het milieustrafrecht in theorie en praktijk* (Arnhem: Gouda Quint, 1991).

¹³ Isya Anung Wicaksono & Fatma Ulfatun Najicha, "Penerapan Asas *Ultimum Remedium* Dalam Penegakan Hukum Di Bidang Lingkungan Hidup" (2021) 5:1 *Pagaruyuang Law J* 47-56.



- b. b. submits a Notification Letter, but the contents are untrue or incomplete, or attaches information whose contents are incorrect to cause a loss to the state revenue, shall be fined 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, or shall be sentenced to imprisonment for a minimum of 3 (three) months or a maximum of 1 (one) year.

Looking at the excerpt of the regulation above, “every person who due to his negligence” can be subject to sanctions in the field of taxation in the form of payment of tax fines owed or imprisonment. Even though this act is done unintentionally, the state still punishes taxpayers for their mistakes made negligently. However, generally, the practice in the field of tax officers (tax authorities) will give a written warning or appeal to taxpayers to immediately submit a notification letter and make corrections to the notification letter if there are errors related to the contents that are incorrect or incomplete. The provision of a written appeal is usually known as a Letter of Request for an Explanation of Data and/or Information, abbreviated as SP2DK, which is a letter issued by the Head of the Tax Service Office to request an explanation of data and/or information to the Taxpayer on allegations that tax obligations have not been fulfilled by the provisions of laws and regulations in the field of taxation.

From this letter, the tax authorities will see whether the action can be categorized as negligent or intentional. If the taxpayer has received SP2DK related to the appeal to submit or correct the Tax Return and the taxpayer ignores it after being given a sufficient period, then this act can be categorized as a deliberate act and subject to criminal sanctions. This principle is also known as *Ultimum Remedium*, which is one of the principles in criminal law that states that criminal law should be used as a last resort in law enforcement. This means that the Directorate General of Taxes still provides an opportunity for taxpayers to correct tax returns through SP2DK before applying sanctions in the field of taxation.

Taxpayers who commit acts due to alpha are subject to sanctions as stated in Article 38 of Law No. 7 of 2021 concerning Harmonization of Tax Regulations, but taxpayers who do not want to be subject to these sanctions, are given the option of substitution even though the act was committed intentionally as in Article 39 of Law No. 7 of 2021 concerning Harmonization of Tax Regulations:

Article 39 paragraph (1)

Any person who intentionally:

- c. did not submit tax return;
- d. submitting SPT and/or information whose contents are untrue/incomplete to cause losses to the state revenue shall be punished with imprisonment for a minimum of 6 (six) months and a maximum of 6 (6) years and a fine of at least 2 (two) times the amount of tax payable that is not or underpaid and a maximum of 4 (four) times the amount of tax payable that is not or underpaid.

The options given to taxpayers who commit tax crimes both by mistake and intentionally based on Article 38 and Article 39 paragraph (1) letters c and d can still be given “forgiveness” by the Directorate General of Taxes as long as the investigation has not been given to the public prosecutor and the outstanding tax



must be paid along with the sanctions. This sanction can also be called *Ultimum Remedium* because there is an option if the taxpayer does not want to be charged with a criminal offense in the field of taxation by self-disclosing (self-assessment) through a written statement regarding the untruth of his actions and accompanied by payment of taxes payable along with fines as in the article below:

Article 8 paragraph (3) COGS Law

Despite the preliminary evidence audit action, the Taxpayer may voluntarily disclose with a written statement regarding the untruthfulness of his/her actions, namely:

- a. does not submit a notification letter; or
- b. submitting a notification letter whose contents are incorrect or incomplete, or attaching information whose contents are incorrect, as referred to in Article 38 or Article 39 paragraph (1) letter c and letter d, as long as the commencement of the investigation has not been notified to the Public Prosecutor through an investigating officer of the Indonesian National Police.

Article 8(3a) of the COGS Law

Disclosure of the untruth of the act as referred to in paragraph (3) is accompanied by repayment of the underpayment of the amount of tax owed along with administrative sanctions in the form of a fine of 100% (one hundred percent) of the amount of tax underpaid.

Looking at the excerpts of article 8 (3) and article (3a) of Law number 7 of 2021 concerning the harmonization of Tax Regulations, it can be seen that the nature of the *Ultimum Remedium* where taxpayers can avoid criminal sanctions as long as they disclose the untruth of the act and pay the tax owed along with fines. When viewed from the obligation to submit tax returns by taxpayers, officers from the Directorate General of Taxes are also included in the category of taxpayers as long as they meet the subjective and objective requirements under the Taxation Law. Many taxpayers are criminally processed and even imprisoned based on a judge's decision for violating the provisions in articles 38, 39, and article 39A of the Law on Harmonization of Taxation, for example not submitting a tax return or annual tax return or submitting an annual tax return but not based on the actual situation. Then the fundamental question arises, is the penalty also applied fairly to tax officers who commit such violations? Then the facts in the field have never encountered a case that drags tax officers related to the submission of tax returns or submitting tax returns whose contents are not true even though tax officers can easily conduct asset tracing or analyze the correctness of filling out the Annual Tax Return.

Taxpayers who fill out the SPT incorrectly can be known based on analysis by tax officers called Account Representatives (AR) who have a function for taxpayer supervision and consultation. Generally, the AR will send a Request for Explanation of Data and/or Information (SP2DK) if there are irregularities or irregularities in filling the Annual Tax Return, for example, the increase in assets in the current year



exceeds the amount of income.¹⁴ Of course, this is quite easy for tax officials to carry out law enforcement processes against recalcitrant taxpayers that can cause losses to the state. Not to mention information from third parties, namely banks, public accountants, notaries, tax consultants, administrative offices, and/or other parties, all of which can assist tax officials in securing the state. But once again, can tax officers apply the tax law to fellow Directorate General of Taxes officers without being selective and honest in the implementation of their obligations as they do to other taxpayers?¹⁵

Reflecting on the case of the Directorate General of Taxes employee, Gayus Tambunan, who was quite popular in 2010, he was sentenced to 29 years, which is a heavier sentence than his previous sentence after submitting a review to the Supreme Court.¹⁶ Gayus has a fantastic account of Rp 28 billion and assets in the form of cars, houses, and gold bars. From the assets owned by Gayus, the Tax Officer should be able to identify whether the taxpayer who submits the Annual Tax Return is correct or not, and through the role of the tax officer can also help other agencies such as the Police, the Attorney General's Office and the Corruption Eradication Commission (KPK) to collaborate in prevention and law enforcement actions. The identification/verification of assets can be done based on the Annual Tax Return that has been reported and also reports from other agencies that can be used as a reference in law enforcement in the field of taxation.¹⁷

The latest case is Rafael Alun Trisambodo who also has a very fantastic asset based on the State Organizer Asset Report (LHKPN) and has a total asset of IDR 14.31 billion based on data submitted on February 7, 2022. Of course, this is very odd and strange considering that Rafael only serves as Head of the General Section at the Jakarta II Regional Office of the DGT, and based on the wealth report on the LHKPN website, Rafael last reported his assets on February 17, 2022, and was recorded to have assets of Rp 56.1 billion.¹⁸ This value is not a small number, because based on the findings of the Corruption Eradication Commission (KPK) Rafael also has a Safe Deposit Box with a value above Rp 1 (one billion), which data can be obtained by the Directorate General of Taxes from Financial Institutions that must report the amount of customer funds above Rp 1,000,000,000 (one billion).¹⁹

The Directorate General of Taxes through authorized officers should be able to carry out a supervisory function whether the assets obtained are reasonable and whether the assets reported in the LHKPN and the Annual Income Tax Return are appropriate or not. This process can be easily known by the Directorate General of Taxes because every state official is required to report assets in the LHKPN which can be accessed publicly and just match the data between the LHKPN and the Annual

¹⁴ Tomi Wiranto, "Mengenal Pemeriksaan oleh Account Representative", (2021), online: *Direktorat Jenderal Pajak* <<https://pajak.go.id/id/artikel/mengenal-pemeriksaan-oleh-account-representative>>.

¹⁵ Nur Hakim, *Legal Protection for Taxpayers Related to Filing for Value Added Tax Restitution* Universitas Jayabaya, 2021 [unpublished].

¹⁶ Ika Widiastuti, "Korupsi Birokrasi (Studi Kasus Gayus Tambunan Pegawai Direktorat Jenderal Pajak)" (2018) 5:1 *J Ilm WIDYA* 1-8.

¹⁷ *Ibid.*

¹⁸ Putri Novita Sari Simanjuntak & Sholihul Abidin, "Analisis Framing Pemberitaan Kasus Rafael Alun Trisambodo di Media Online CNN Indonesia.com dan Kompas.com" (2023) 5:5 *Sci J* 1-8.

¹⁹ *Ibid.*



Income Tax Return that has been reported. Coupled with information from various parties by the mandate of the Government Regulation instead of the Law of 2017 concerning Access to Financial Information for Tax Purposes, again is quite easy to see the reasonableness and correctness of the filling of the taxpayer's Annual Tax Return, as stated in the text:

Article 2:

“The Director General of Taxes is authorized to obtain access to financial information for tax purposes as referred to in 1 from financial service institutions that carry out activities in the banking sector, capital market, insurance, other financial service institutions, and/or other entities categorized as financial institutions by the standards of financial information exchange based on international agreements in the field of taxation”.

The number of assets in the form of accounts can also be known easily because the Ministry of Finance also gets delegation of authority through Minister of Finance Regulation Number 19/PMK.03/2018 concerning technical guidelines regarding access to financial information for tax purposes article 19 (4) which reads:

“The balance or value of the Financial Account submitted as referred to in paragraph (1) letter d, the following provisions apply:

- a. For Depository Institution is a financial account held by an individual, the balance or value of one or more financial accounts with an amount of at least IDR 1,000,000,000 (one billion) or with foreign currency equivalent value”.

Both regulations are usually used by Directorate General of Taxes officers to carry out supervisory functions regarding the correctness of filling out the taxpayer's Annual Tax Return which can be easily found by matching the taxpayer's assets in the Annual Tax Return with data obtained from Financial Institutions. The tools provided by the government make it possible for tax officers to carry out supervisory functions to taxpayers, including for government officials who have met the subjective and objective requirements in tax regulations to pay and report Periodic / Annual Tax Returns based on the provisions of tax regulations in force in Indonesia. From the analysis of the Rafael case, tax officials should be able to be fair for tax law enforcement considering that the Financial Transaction Reports and Analysis Center (*PPATK*) has also sent data to the Ministry of Finance which should be used for analysis of the fulfillment of tax obligations and also report to the authorities (e.g. Corruption Eradication Commission) on the assets obtained, even though the tax law does not recognize “Halal and Haram Assets” as long as the income is paid by the taxpayer and even if the money is obtained from gambling, because the definition of income is the following:

“Any additional economic capacity received or obtained by the Taxpayer, whether originating from Indonesia or from outside Indonesia, which can be used for consumption or to increase the wealth of the Taxpayer concerned, by name and in any form whatsoever”.

II. Imposition of Criminal Sanctions on Purpose (*Primum Remedium*)

Primum Remedium in criminal law is enforced as the main choice in law enforcement and is considered the most effective to reduce and eradicate crime. According to Bambang Poernomo “Criminal sanctions are one of the most effective means used to



*tackle crime, but punishment is not the only means, so if necessary, a combination with social efforts is used.*²⁰ Therefore, it is necessary to develop the principle of multimum remedium instead of primum remedium. In the field of Taxation, the Government and the DPR provide articles related to tax crimes that do not provide options for taxpayers, this is deemed necessary to provide a deterrent effect and to secure state revenues so that the public can comply with applicable tax regulations and the state can obtain optimal tax revenue. This means that if the taxpayer commits a violation, it can be directly subject to criminal acts in taxation and it is hoped that this rule will make “recalcitrant” taxpayers fulfill their tax obligations.

This method is considered effective in reducing tax crimes such as deliberately not registering to obtain an NPWP, not registering as a Taxable Entrepreneur (PKP) issuance of fictitious tax invoices, issuing tax invoices not based on actual transactions, not keeping books/records, not depositing taxes that have been withheld or collected, and others. Tax criminal acts are regulated in articles 39 and 39A of Law Number 7 of 2021 concerning the harmonization of tax regulations:

Article 39 (1)

Any person who intentionally:

- a. Does not register NPWP or PKP;
- b. NPWP/PKP misuse;
- c. –
- d. –
- e. Refuse to be examined;
- f. Showing false/non-actual books, records, or other documents;
- g. Not organizing bookkeeping/recording, not showing/not lending documents;
- h. Does not keep Bookkeeping/records;
- i. Does not remit the tax that has been withheld or collected.

So that it can cause losses to state revenues shall be punished with imprisonment for a minimum of 6 (six) months and a maximum of 6 (six) years and a fine of at least 2 (two) times the amount of tax payable that is not or underpaid and a maximum of 4 (four) times the amount of tax payable that is not or underpaid.

Article 39A

Any person who intentionally:

- a. Issues and/or uses tax invoices, tax collection receipts, tax withholding receipts, and/or tax deposit receipts that are not based on actual transactions; or
- b. Issues tax invoice but has not been confirmed as a Taxable Entrepreneur shall be punished with imprisonment for a minimum of 2 (two) years and a maximum of 6 (six) years and a fine of at least 2 (two) times the amount of tax in the tax invoice, tax collection slip, tax withholding slip, and/or tax deposit slip and a maximum of 6 (six) times the amount of tax in the tax invoice, tax collection slip, tax withholding slip, and/or tax deposit slip.

²⁰ Eduard Awang Maha Putra et al, “Aspek Hukum Administrasi dan Hukum Pidana dalam Pengadaan Barang dan Jasa: Peranannya dalam Mewujudkan Pengadaan Barang dan Jasa yang Akuntabel” (2024) 9:1 Lex Renaiss 179–202.



Seeing the contents of the two articles, it is clear that the criminal acts contained in articles 39 and 39A can be directly charged as tax crimes through a court that decides whether or not the taxpayer is proven and has permanent legal force. Therefore, every taxpayer should understand or comply with all regulations to avoid the risk of crimes in the field of taxation because everyone is deemed to know when the regulation is promulgated (legal fiction) and this is also regulated in the explanation of article 81 of Law number 12 of 2011 concerning the Formation of Legislation, namely “with the promulgation of Legislation in the official gazette as referred to in this provision, everyone is deemed to have known it”.

However, not all taxpayers can understand all of these regulations considering that a person is limited by many business activities, so taxpayers can use the power/services of professionals such as registered tax consultants or other parties who have certain competencies in taxation aspects. Certain competencies include a certain level of education, certification, and/or coaching by an association or the Ministry of Finance. Therefore, the power of attorney can be exercised by tax consultants or other parties as long as they meet the requirements under the provisions of the laws and regulations in the field of taxation. Punishment is not only given to taxpayers who commit criminal acts but can also be given to tax officers who commit preliminary evidence violations. Preliminary Evidence is a situation, action, and/or evidence in the form of information, writings, or objects that can provide indications of strong suspicion that there is or has been a criminal offense in the field of taxation committed by anyone who can cause losses to state revenue.²¹ Meanwhile, the Preliminary Evidence Examination is an examination conducted to obtain preliminary evidence regarding the alleged criminal offense in the field of taxation. In Chapter IX on Investigation, article 43A states:

- (2) If there is an indication of a criminal offense in the field of taxation involving an officer of the Directorate General of Taxes, the Minister of Finance may assign an internal audit unit within the Ministry of Finance to conduct a preliminary evidence examination.
- (3) If from the preliminary evidence, an element of corruption crime is found, the Directorate General of Taxes employee involved shall be processed according to the provisions of the Corruption Crime law.

Article 43A reads that criminal offenses can also be imposed on officers from the Directorate General of Taxes, meaning that there is no difference related to crimes committed both by taxpayers and tax officials. If you look at the previous chapter on Criminal Sanctions due to alpha and intentional (*Ultimum Remedium*), it has been explained that taxpayers who are State Officials are also required to report their assets to the Corruption Eradication Commission (*KPK*) through the State Officials Asset Report (*LHKPN*), which if the official does not report the LHKPN will be subject to sanctions according to Government Regulation number 94 of 2021 concerning Civil Servant Discipline. However, the disciplinary penalties given to Civil Servants for reporting matters that harm state finances and reporting official assets are not comparable to the sanctions given to taxpayers according to Law Number 7

²¹ Eddy Hiariej, “Eddy Hiariej: Pemeriksaan Bukti Permulaan Merupakan Penerapan Sunrise Principle”, (2023), online: *Mahkamah Konstitusi RI* <<https://www.mkri.id/index.php?page=web.Berita&id=19617&menu=2>>.



of 2021 concerning General Provisions and Tax Procedures. The reporting obligation is regulated in Article 4 which reads:

Mandatory civil servants:

- d. Report immediately to his/her superior if he/she becomes aware of any matter that may jeopardize the security of the state or harm the state finances;
- e. Reporting assets to authorized officials by the provisions of laws and regulations;

Meanwhile, penalties for civil servants who violate Government Regulation Number 94 of 2021 concerning Civil Servant Discipline in Article 4 are only subject to light punishment, medium punishment, and severe punishment. Of course, this is not comparable to the punishment given to taxpayers, which seems as if the regulation only applies to taxpayers who work in the private sector. The author tries to compare the most severe disciplinary punishment based on the regulation related to the obligation to submit LHKPN with the punishment for taxpayers who do not submit the Annual Tax Return.

Table 1. Comparison of Taxpayer and State Official Sanctions

Did not submit the LHKPN Article 8(4) of Government Regulation No. 94/2021	Did not submit an annual tax return Articles 38 and 39A of Law No. 7/2021
Demotion to a lower level for 12 months	Imprisonment for a minimum of 6 months and a maximum of 6 years
Release from office for 12 months	A fine of 2x or 4x the tax payable
Dismissal with honor not on one's own accord	Punishment for a minimum of 2 years and a maximum of 6 years and a fine of 2 times and or 6 times in the tax invoice, proof of collection, and proof of withholding

Government Regulation No. 94 of 2021 concerning Civil Servant Discipline also does not regulate penalties for employees who report LHKPN but are not based on actual circumstances, this is of course different from the sanctions given to taxpayers for errors in submitting Annual Income Tax Returns whose contents are incorrect. Criminal sanctions await taxpayers who submit tax returns but the contents are incorrect based on the provisions of Article 39 of Law number 7 of 2021 Article 1 letters c & d concerning Harmonization of Taxation, namely:

Any person who intentionally:

- c. Failure to submit notification letter;
- d. Submitting a Notification Letter and/or information whose contents are untrue or incomplete.

So that it can cause losses to state revenues shall be punished with imprisonment for a minimum of 6 (six) months and a maximum of 6 (six) years and a fine of at least 2 (two) times the amount of tax payable that is not or underpaid and a maximum of 4 (four) times the amount of tax payable that is not or underpaid.



The excerpt of the regulation directly provides criminal penalties for taxpayers who do not submit tax returns or submit tax returns but the contents are incorrect. In contrast to disciplinary penalties for civil servants who do not submit *LHKPN* or submit *LHKPN* the contents are incorrect. Government Regulation number 94 of 2021 only regulates severe penalties for those who do not submit *LHKPN*, but does not regulate penalties or sanctions regarding incorrect or late filing either intentionally or by mistake not submitting *LHKPN* based on the Law. This is certainly felt to be unfair because of the difference in treatment between taxpayers and civil servants, regarding penalties, fines, and sanctions given. There is truth if we look at the words of international tax experts who say that:

“Taxation is a transfer of resources from the private sector to the government sector that occurs not as a result of a violation of the law, but must be implemented based on predetermined provisions, without receiving direct and proportional compensation, for the government to perform its functions”.

CONCLUSION

Taxes are compulsory levies regulated in the provisions of laws and regulations in force in Indonesia, all tax revenues are used for the needs and interests of the state, one of which is to carry out equitable development, and more than 80% of state revenue is generated from taxes which are the backbone of state revenue. Therefore, it is necessary to have awareness of tax payments from taxpayers without waiting for a Tax Assessment Letter (SKP) issued by the Directorate General of Taxes (DGT) through an audit mechanism.

The self-assessment system treated by the law by the state is intended so that the awareness and honesty of taxpayers increase and can avoid the risk of fines and sanctions in the field of taxation. As for taxpayers who are reluctant to pay taxes, they must know the risks, fines, and even criminal sanctions in the field of taxation. Of course, this must be avoided and taxpayers must comply with predetermined tax regulations such as paying taxes on time, reporting Periodic / Annual Tax Returns by actual circumstances, and on time in submitting tax returns.

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