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LEGAL PROTECTION FOR TAXPAYERS IN TAX RESTITUTION REGISTRATION IN INDONESIA

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ABSTRACT:
Taxes have a coercive nature. Therefore, the basic consequence of that nature is a form of coercion in statutory provisions. It causes the taxpayers to willingly carry out their tax obligations neglecting the legal protection for the taxpayer when applying for restitution because of a criminal threat. Whereas, in this case, a criminal threat can be abolished. The legal research method used is normative juridical research with an analytical approach by conducting a search on legal materials as the basis for making legal decisions. The results of the study found that legal protection for taxpayers submitting claims for restitution, one of which is Value-Added Tax (VAT), provides no legal certainty because of overlapping penalty between administrative and criminal sanctions. Therefore, there is a need for changes in the Tax Law so that it does become un-contradictory in its daily application. Hence, it can provide legal protection to taxpayers who actually have an excess of tax payments so that they can take the excess through a restitution mechanism in accordance with the predetermined criteria.

Keywords: Protection, Taxpayers, Tax Restitution.

INTRODUCTION

Legal protection in the tax sector is required to protect the interests of taxpayers and tax bearers in dealing with the tax authorities[1]. To reiterate, the tax authorities have public legal authority allowing them to make unilateral decisions [2]. Such authority is prone to misuse which might negatively affect the society. Therefore, clear provisions should determine as the guide and basis for taxpayers and tax bearers in dealing with the tax authorities. Legal protection for taxpayers and tax bearers protects individuals from the impacts of government authority[3].

LITERATURE REVIEW

Tax is a major source of state revenue as it has dominant proportion in the national budget [4]. Tax gains great attention since, in the future, the government will need even greater amount fund. Therefore, the government has to encourage public participation regarding tax by guaranteeing good, fair and transparent taxation system. Thus, taxpayers would not feel burdened to fulfill their obligation, while their tax awareness also increases. Such system is undeniably important, especially regarding the tax self-assessment system requiring taxpayers' active participation and honesty in fulfilling their tax obligations. Taxpayers' personal interests must be protected since taxpayers are in weak position. Unlike tax authorities who are allowed to make unilateral decision, taxpayers do not have such authority. In fact, such authority opens up opportunities for abusing the authority. Therefore, taxpayers' rights should be protected by law, and they should be equally and fairly treated.

On the other hand, it is also necessary to take concern on the public interest of wider community. If the trust given to the Taxpayer or Tax Insurer in the self-assessment system is being misused, such as in the forms of tax evasion, falsified invoice issuance, document falsification, manipulation of tax debt, and so on; the state and the society in general are being aggrieved. Therefore, tax education plays an important role in the self-assessment system in reinforcing taxpayers' awareness to voluntarily pay their taxes properly. Legal protection in tax system is definitely important in ensuring the fulfillment of taxpayers' interests [5]. Within such condition, they would not evade from their obligation. Taxpayers' paid taxes are essential for the community, nation and state as they are major source of state's revenue[6]

RESEARCH METHODOLOGY

This study used qualitative normative as its research method supported by legal materials as a basis for making legal decisions on concrete legal cases. It is where the approach used in normative research allows researchers to take advantage of the results of the findings of empirical law and other sciences for the concerns of analysis and explanation of law without modifying the character of legal science as a normative science [7].

This study also used an analytical approach to analytically explore the solutions for restitution of value-added tax (VAT) so as it does not harm the income of the state and taxpayers [8]. The data to be utilized in this study are sourced from secondary data, including primary legal materials, secondary legal materials and tertiary legal materials

RESEARCH RESULTS

The relationship between tax law and civil and criminal law is understandable because all kinds of economic transactions in civil law are the target or object of tax law. The question of negligence and intentional regulated in Article 38 and Article 39 of Law on General Provisions and Tax Procedures (Indonesian: UU Ketentuan Umum dan Tata Cara Perpajakan abbreviated UU KUP) basically refers to the notion of negligence and intentional in criminal law [9]. Likewise, for example, the matter of a taxpayer transferring rights or damaging goods that have been confiscated for not paying off his tax debts will be threatened with Article 231 of the Indonesian Criminal Code (Indonesian: Kitab Undang-Undang Hukum Pidana abbreviated KUHP) .

Even in the Indonesian Civil Code (Indonesian: Kitab Undang-Undang Hukum Perdata abbreviated KUHPerdata), especially the third book on Agreements, it can be stated that all of them are civil economic transactions that have tax law aspects [10]. Various kinds of agreements regulated in civil law will generally have an impact on the tax aspect, except for certain agreements such as grants that do not have an impact on the taxation aspect, as regulated in Article 4 paragraph (3) letter a number 2 of Law Number 7 of 1983 which has been amended by Law Number 36 of 2008 concerning Income tax [11]. It is stated in full as follows: What is excluded from the object of taxation is donated assets received by biological family in a straight line of one-degree, religious institutions, educational institutions, social institutions including foundations, cooperatives or individuals running micro and small businesses, the provisions of which are regulated by or based on Regulation of the Minister of Finance.

A clear relationship appears that in tax law always, it looks for the possible basis for tax collection based on civil law actions. Covenants, property and inheritance are examples of civil rights on which the tax laws may be collected. Hence, all economic activities will be monitored in terms of taxation for the benefit of the state. This tax administration process (taxation) is regulated in tax law, including the legal settlement process as part of administrative law.

The taxation process itself is part of the tax administration activities. The term tax administration can be interpreted narrowly and broadly. In a narrow sense, tax administration is the administration and service of the rights and obligations of taxpayers. Meanwhile, in a broad sense, tax administration is seen as a function, system and institution [12].

As a function, tax administration includes the functions of planning, organizing, and controlling taxation [13]. As a system, tax administration is a set of elements, namely statutory regulations, facilities and infrastructure, related tax authorities and taxpayers who jointly carry out tasks to achieve certain goals[14]. Meanwhile, as an institution, tax administration is an institution managing the system and carrying out the taxation process. From the aforementioned description, it can be perceived that tax collection (taxation) is a series of administrative processes aimed at obtaining tax money based on the tax laws that govern it. This series of administrative processes is a tool for the government to achieve the purpose of tax revenue, including the law enforcement process through administrative law methods or mechanisms which have also been regulated in the tax law itself. The process of law enforcement in tax law has absolutely clearly had its own legal route with legal remedies regulated in Article 25 and Article 27 of UU KUP concerning legal remedies for objections, as well as the existence of Law Number 14 of 2002 concerning the Tax Court processing legal remedies for appeal and judicial review. Unfortunately, legal remedies clearly regulated in the tax law often do not get the same understanding as other law enforcement officials.

In fact, if the opposite happened, all law enforcement officials would refer to the same understanding according to the tax law [15]. It is certain that the business world, including the tax apparatus, will not become restless. The anxiety of the business world and tax officials regarding criminal practices deserves attention from law enforcement circles. The paralysis of the Tax Law shows that there is anxiety for tax officials in carrying out their duties because they can be criminalized. Whereas, tax officers carry out administrative duties in accordance with tax laws. It would be dangerous if the target of tax revenue was disrupted due to inappropriate criminal practices carried out by law enforcement agencies (police, prosecutors and judges of general courts). Continuation of the development program based on tax funds will not work due to punishment in the practice of tax law.

The Memorandum of Understanding (MoU) held by the Police and the Directorate General of Taxes, some time ago, also seems to have not achieved the target regarding the explanation of administrative law in tax law that the police should know. The MoU signed by both parties seemed to be just a cooperative effort without being accompanied by the completion of a common understanding between the two agencies. Mochamad Tjiptardo, as Director General of Taxes at that time, said that the MoU represent a legal umbrella in an effort to collect tax debts for tax arrears [16]. Researchers consider this statement to be inaccurate. The MoU is not a legal umbrella that can be used by tax officials and the police. The MoU is merely a letter of understanding between two agencies to take legal steps in accordance with the applicable law. The MoU has no binding legal force for both tax officials and the police, including in collecting tax debts. Hikmahanto emphasized the document of MoU theoretically does not constitute a law that binds the parties [17]. To be legally binding, it must be followed up with an agreement. The MoU agreement is more of a moral bond. The MoU can be analogized as an "initial" institution, not a "final" institution.

As described above, tax law is classified as public law, including state administrative/ administrative law. The path of administrative law (tax law) has its own way of resolving it in accordance with the rules that have been confirmed in the tax laws that govern it. In that case, resolving tax administration problems by criminal means becomes contradictory when the state needs tax funds as a source of development

financing, the number of which continues to increase every year. The issue of convicting taxpayers clearly brings its own anxiety to business actors. It means business actors are afraid of being punished when a fairly complex tax calculation issue will be questioned as a matter with indications of a criminal act.

The same vision views that taxes should be unpenalized because it is part of administrative law, and it must be a common concern. Tax law as part of state administrative law is indeed rooted in civil events, in which if violated, it can be threatened with criminal violations. Tax law contains elements of (i) constitutional law and state administrative law, (ii) civil law, and (iii) criminal law. Equating such perceptions is not easy. A strong coordination is required. The president as the chief executive should lead the coordination process.

The legal argument can actually be seen from the spirit regulated in the provisions of Article 44 B of UU KUP which also emphasizes the aspect of paying money as a substitute for criminal sanctions. The article expressly states that "in the interest of state revenue, at the request of the Minister of Finance, the Attorney General may terminate the investigation of criminal acts in the taxation sector at the latest within 6 months from the date of the letter of a request." The meaning of the words "in the interest of state revenue", is not explained in the law. However, in the point view of the researcher, the purpose of "in the interest of state revenue" is nothing but to emphasize that taxes are not aimed at punishing a person but rather in the interest of collecting tax money for the benefit of state revenues. State revenue can be interpreted as an amount of money that should be collected for the benefit of state revenue. The purpose of the tax is to raise money for the benefit of the state to build various kinds of public facilities.

In the UU KUP, it is indeed regulated that in the event that the taxpayers are not correct in carrying out their tax payment obligations, an audit should be carried out. At the end of the audit action, a tax assessment letter is issued. It is explicitly regulated in Article 15 of the UU KUP, which states "The Director General of Taxes may issue an additional underpaid tax assessment within 5 years after the time the tax becomes due or the end of the tax period, part of the tax year, or tax year if new data is found that result in an increase in the amount of tax payable after an audit is carried out in the context of the issuance of an additional underpaid tax assessment.

From all the articles mentioned above, principally, it can be concluded that the tax law provides more solutions for tax settlement by emphasizing on the administrative aspects through tax payments by means of a tax assessment letter, not on criminalizing taxpayers. The tax audit process is not intended to convict taxpayers but prioritizes the administrative process by issuing tax assessment letters as the basis for collecting tax debts. If so, the question is why is there a criminal element in tax law? In the study of the researcher, the criminal article regulated in the tax law is inappropriate or less appropriate. An example that is inappropriate and almost never used in practice is Article 39 paragraph (1) letter a of the UU KUP, concerning people who intentionally do not register to obtain a Taxpayer Identification Number (Indonesian: Nomor Pokok Wajib pajak abbreviated NPWP). This article seems to be a death criminal article because it is a bit odd when used. Criminal threats for a minimum of 6 months and a maximum of 6 years have never occurred.

Criminal articles may be included in the tax law, but their role becomes unimportant or less important. Even at the extreme, the criminal article no longer needs to be in the tax law if the tax law is seen as a pure administrative law. The mistake of including a criminal article in tax law seems to be based on two reasons based on the point view of the researcher. First, taxes are a means for the state to finance the state development for the welfare of society as in the State Budget (Indonesian: Anggaran Pendapatan dan belanja Negara abbreviated APBN) which is ratified by the House of Representatives (Indonesian: Dewan

Perwakilan Rakyat abbreviated DPR) every year. It is firmly stated that tax revenues dominate (becoming main source) of all revenues for APBN. More than 70% of state funding sources come from taxes.

The task of the state is to provide prosperity and justice from various aspects of life that are needed by the community, especially in terms of building various public facilities. If the source of tax revenue is not achieved, various development programs will not run smoothly, like the construction of social facilities such as schools and health centers, funds for School Operational Assistance (Indonesian: Bantuan Operasional Sekolah abbreviated BOS) and roads, becoming a necessity that cannot be postponed. Second, taxes are the only instrument providing the fairest level of welfare for the community. Only with tax instruments will every nation be able to create the welfare and justice expected by its people.

Unfortunately, law enforcers do not understand tax law issues. If only the understanding of tax law could be understood while understanding the historical background of tax civilization from a long time ago, actually, the criminal act does not need to be done. From the time of the prophet to the colonial period (colonialism), and until now, the payment aspect has always been the main focus. During the colonial era, for example, people were forced to pay taxes with money. If taxes are unpaid, the invaders will take various kinds of goods or animals owned by the people. In other words, goods or animals are a substitute for money that is unpaid by the people.

The pattern of thinking that includes criminal elements in tax law becomes biased when taxes always emphasize administrative sanctions in many articles that regulate it. If there is a view of reducing administrative sanctions by replacing them with criminal sanctions, it is certainly not appropriate. According to the researcher, even administrative sanctions can even provide a more deterrent effect than the deterrent effect in criminal sanctions as long as the size of the sanctions is aggravated. It is because administrative sanctions can make a person bankrupt by confiscation of one's wealth to pay off his tax debt. It is because Article 12 of Law no. 19 of 1997 concerning Billing as amended by Law no. 19 of 2000 confirms that if the tax debt is unrepaid by the Tax Bearer within the period as referred to in Article 11 (2x24 hours), the official may issue an Order to Execute the confiscation. Even in its Article 33, it is affirmed that it is possible for taxpayers to take hostage action in the form of temporary restraint on the freedom of the tax bearer by placing them in a certain place.

Administrative sanctions are often seen as light because they still provide physical freedom to a person. If the measure of physical freedom in criminal sanctions is a measure of assessing the severity of the sanctions, it is certainly not appropriate. Therefore, it is necessary to review again so that the application of criminal sanctions does not become counter-productive in the application of sanctions in tax law.

The magnitude of the importance of administrative sanctions as a substitute for criminal sanctions is also seen in the provisions of Article 44 B paragraph (2) as a substitute for stopping the investigation. The penalty for stopping the investigation is only 4 times the amount of tax that is underpaid or less paid. Perhaps, the compilers of the tax law at that time viewed the amount of the sanctions as quite large because the explanation of Article 44 B paragraph (2) of the UU KUP only stated quite clearly. The law does not provide further explanation as to why the number of administrative sanctions is only four times.

The point of view of tax law enforcement by way of punishment must be changed immediately. The tendency to use criminal sanctions in tax law is felt to be abandoned for the sake of tax law as well as tax revenue itself. The law enforcement approach using administrative sanctions in tax law provides greater benefits in carrying out development in various fields of life in which its funds are sourced from taxes. Even with the various developments in various sectors of life, in the end, it will provide other benefits in creating change in society. Changes in the sense of providing welfare for the community will be felt in the

implementation of tax law enforcement. At one time, if the state wishes to change society into a modern industrial society, at that time, a new value is entered, namely development.

CONCLUSION:

Based on the research discussion in the chapters above, it can be concluded that a common point of view is required from all Law enforcers on the application of tax crime must be the main priority of all stakeholders so as to ensure that if indeed the realm of administration must remain, administration should not be diverted. Towards punishment, although it is unavoidable to have to go to criminal, the effort must be considered by law enforcement to stop the ongoing criminal process if the settlement efforts being carried out by the taxpayer show the seriousness of returning the proceeds of restitution that are considered incorrect.

Legal protection from the state must be ensured that all taxpayers can feel it through tax collection and tax law enforcement by changing the law, which currently has rules that still overlap between administrative and criminal sanctions for taxpayers who will apply for restitution. Therefore, a need for changes can provide certainty to taxpayers who actually have excess tax payments so that they can take the excess through the restitution mechanism in accordance with predetermined criteria.

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