OPEN ACCESS
Scholars International Journal of Law, Crime and Justice
Abbreviated Key Title: Sch Int J Law Crime Justice
ISSN 2616-7956 (Print) |ISSN 2617-3484 (Online)
Scholars Middle East Publishers, Dubai, United Arab Emirates
Journal homepage: https://saudijournals.com

Original Research Article

Reconstruction of Fine in Taxation Criminal Sanctions Based on Justice Value

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DOI: 10.36348/sijlcj.2021.v04i06.004 | **Received:** 22.04.2021 | **Accepted:** 30.05.2021 | **Published:** 09.06.2021

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Abstract

The purpose of this research is to identify and analyze weaknesses in the application of criminal penalties in current tax crimes and to reconstruct criminal penalties in the field of value-based taxation. justice using the constructivism paradigm in empirical legal research using the Sociological juridical approach. The Source of research data consisted of primary data sources and secondary data sources, the research analysis used qualitative descriptive analysis.The research shows that the weaknesses of the application of fines in tax criminal cases as stipulated in Law Number 6 of 1983 is that the obligation to pay a fine is automatically annulled if the convict is serving a sentence of imprisonment, however, in a criminal case in the field of taxation, the amount of the penalty decided by the Court is still considered as "Tax Payable". this is not fair because it has not regulated subsidies in lieu of fines so that the Court's decision on fines cannot be implemented because the convict does not want to pay. The reconstruction of the law, according to the author, is basically not a form of revenge against perpetrators who are not cooperative and in order to pay their taxes, but as a means of increasing public awareness and obedience as taxpayers, so that in the end it is able to increase state revenue in the taxation sector. Therefore, The Law on General Provisions and Tax Procedures need to be reconstructed by adding new norms listed in Article 41 D.

Keywords: Reconstruction, Fine, Taxation Crime, Justice Value.

INTRODUCTION

Legal problems that need to be a concern in the future in Indonesia are the regulation and law enforcement regarding the resolution of tax disputes that have the potential to harm state revenue and criminal acts in the field of taxation, as well as creating the potential to misuse the funds originating from state revenues derived from taxes. Such problems need to be evaluated because in implementing taxes in Indonesia, that there are still many people who do not orderly and cooperatively carry out their obligations as taxpayers, namely paying taxes to the state.

The current tax collection system in Indonesia is the Self Assessment System, where taxpayers are entrusted with the listing, calculating, and paying their own taxes owed. Thus, the "Voluntary Compliance" of the taxpayer is the goal of this system. As a consequence of implementing this system, tax collection puts the full responsibility for collection on the taxpayer. Meanwhile, resistance to the tax collection process is a phenomenon that often occurs both by exploiting legal loopholes (Tax Avoidance) or through tax smuggling efforts (Tax Evasion) [1].

The issue of the formulation of fines in criminal cases of paying taxes has resulted in a sense of justice in society. This is because it is not uncommon for perpetrators who are marginalized groups, most of whom have a low economic level, must be sanctioned by imprisonment. The imprisonment sanction is very unfair because the tax is not paid by the marginalized mostly due to the problem of low economic capacity as by seeing the Gini ratio made by the Kompas daily that in March 2018 the Kompas daily recorded that the level of economic inequality reached 0.389 [2].

As seen by the number of poor people in Indonesia, it can be concluded that the problem of paying taxes in the country is still not over; this is because the poor of 25.95 million people will cause tax bottlenecks of 25.95 million people as well. In its development, the amount of data has decreased, in March 2017 the level of economic inequality reached

0.393, and 0.389 in 2018, measured from inflation in 82 cities.

This problem was not balanced with a just tax criminal law formulation as criminal imprisonment which is always a shadow in every tax crime case will only result in a person being socially isolated because of his status as a prisoner, which in turn will result in a person becoming antipathy to the state and the law which can lead someone to become a criminal who is actually only due to sanctions. imprecise and fair crimes. By taking a look at the form and purpose of the criminal formulation, it is the criminal penalty that can be said to be the fairest and most effective, because, with a fine, the state's losses can be economically covered.

In fact, the problem of criminal formulation in terms of punishment in tax criminal cases is in fact also unfair. The state of tax realization that is not right on target due to rampant corruption, and the loss of trust in the state in the tax sector by the public, as well as the criminal system in tax penalties, coupled with the existence of a self-assessment system, has resulted in the emergence of various tax crimes, mostly in the form of Tax Avoidance or Tax Avoidance, which is a transaction scheme aimed at minimizing the tax burden by exploiting the weaknesses or loopholes of taxation provisions. Then Tax Evasion, which is an effort to reduce the number of tax payable by violating existing tax provisions, or in other words, a tax smuggling. This situation will eventually results in the obstruction of tax objectives, one of which is related to state development.

In the Tax Procedure Law (KUP) itself, there is no confirmation regarding the conditions that must be fulfilled so that a person can sufficiently act as a subject to administrative sanctions even though a state loss does occur. Considering that the acts in Article 38 and Article 39 are common actions that occur in society, there are actually a lot of people who can be charged with criminal sanctions based on the existing tax criminal provisions.

The existence of criminal sanctions in the world of taxation is basically not a form of revenge against perpetrators who are not cooperative and orderly to pay their taxes, but as a means of increasing public awareness and obedience as taxpayers, so that in the end they are able to increase state revenue in the taxation sector. The policy formulation of law in the field of taxation substantially concerns tax administration reforms with the aim of increasing taxpayer compliance and strategies in overcoming violations and various forms of non-compliance with taxation obligations, however, what should get enough attention here is Law Number 6 of 1983 concerning General Provisions and the Tax Procedures as it has been amended several times, most recently by Law Number 16 of 2009 concerning General Provisions and Tax Procedures (UU KUP) as they still do not regulate imprisonment in lieu of fines.

Based on Article 30 jo. Article 31 of the Criminal Code, if the convicted person does not pay the fine money, then he is obliged to replace it by serving a prison sentence. If the convicted person pays part of the fine, then he is also obliged to undergo partial imprisonment. The obligation to pay a fine is automatically annulled if the convict is serving a sentence of imprisonment.

However, in a criminal case in the field of taxation, the amount of fine which is decided by the Court is still considered as "Tax Payable" and becomes the basis for the Director-General of Taxes to issue a Tax Assessment (SKP) whose calculation is determined, namely a fine plus an administrative sanction in the form of interest of at most 48% (forty-eight percent) of the payable tax (fine). This shows that criminal fines in tax criminal cases do not apply to tax amnesty or a reduction in fines which are also used as tax payable.

This can be seen in Article 13 paragraph (5) KUP, in that article it is clear that even though the 5 (five) year period as referred to in paragraph (1) has passed, an Underpaid Tax Assessment can still be issued plus administrative sanctions in the form of interest at most 48% (forty-eight percent) of the amount of unpaid or underpaid tax, if the Taxpayer after that period is convicted of committing a criminal offense in the field of taxation or other criminal acts which may cause losses to state revenues based on a court decision that has already the force of law remains. This is made even more complicated because the Criminal Code does not regulate provisions that state that imprisonment can replace the position of a fine.

It is very difficult to execute a fine sentence in the field of taxation so that it is constantly in arrears by the executing attorney. Court decisions related to fines do not include subsidiarity, because the Tax Law does not regulate it in a limitative manner, so that it cannot be compensated for by corporate punishment. This is what urges the author to study it further in a research with the main problem as follows:

1. What Are The Weaknesses In The Application Of Criminal Penalties In Tax Crimes In Indonesia Currently?
2. How Is The Reconstruction Of Criminal Penalties In The Field Of Taxation Based On Justice Value?

METHOD OF RESEARCH

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in social science is a critique of the positivist paradigm. According to the constructivism paradigm of social reality that is observed by a person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of a non-doctrinal research that seeks to describe and seek answers fundamentally about cause and effect by analyzing the factors that cause the occurrence and appearance of a particular phenomenon or event.

The method of approach in research using the method (Socio-Legal Approach). The sociological juridical approach (Socio-Legal Approach) is intended to study and examine the reciprocal relationship that is associated in real terms with other social variables [3].

Sources of data used include primary data and secondary data. Primary data is data obtained from field observations and interviews with sources; While Secondary Data is data consisting of:

1. Primary legal materials, namely binding legal materials in the form of prevailing laws and regulations and have something to do with the issues discussed [4].
2. Secondary legal material, namely legal material whose nature provides an explanation of the primary legal material.
3. Tertiary legal materials are legal materials that provide further information on primary and secondary legal materials.

Research that is associated with the socio-legal approach is research that analyzes problems that are carried out by combining legal materials (which are secondary data) with primary data obtained in the field, supported by prior to secondary legal materials, in the form of writings of experts and existing legal policies [5].

RESEARCH RESULT AND DISCUSSION

1. Weaknesses in The Application Of Criminal Penalties in Tax Crimes in Indonesia Currently

Indonesia, by using a modern self-assessment tax administration system that entrusts taxpayers with the initiation of taxation, starting from the listing, calculation, payment, or settlement of tax payable, to reporting in the tax return (SPT) are able to greatly reduces much of the computational work of tax administration.

The assumption of tax debt in the Taxpayer's SPT is in accordance with the law (UU), the establishment of a valid, comprehensive, and integrated micro database in an electronic network (online) equipped with a taxpayer account, so supervision is oriented towards early detection of non-compliance with the approach The pre-populated tax return is very optimal in narrowing the chance of non-compliance. As a result, the online tax administration digitalization system leaves taxpayers with no choice but to comply with taxes. The narrowing of opportunities for non-compliance makes taxpayers in the self-assessment system forced to comply automatically with the tax system.

However in reality, in any country regardless of using a self-assessment administration system plus voluntary compliance or official assessment plus compulsory compliance because taxes are an economic burden, it is rational if taxpayers are always tirelessly trying to make it efficient. Therefore, as reinforcement so that optimal tax compliance and APBN revenue can be maximized, in the Law on General Provisions and Tax Procedures (KUP) administrative criminal sanctions are imposed to strengthen administrative sanctions. Administrative criminal sanctions are limited to taxpayers, tax officials, and related parties as seen in Article 1 (1) of the KUP Law states that Taxpayers are Individuals or Entities, including taxpayers, tax collectors, and tax-cutters, who have tax rights and obligations in accordance with the provisions of taxation legislation (tax provisions).

In contrast to these provisions, the tax criminal offense does not explicitly mention taxpayers, private persons or entities, but several articles of tax penalties in the KUP Law mention that the elements of tax crime (dader) are not directly individual or corporate taxpayers, but rather "everyone". (Articles 38, 39, 39A, 41B, and 43) and "a person" (Article 39 (2)). Whereas the elucidation of Article 38 explicitly states that the perpetrators of criminal acts in the field of taxation are taxpayers and Article 43 concerning the crime of "inclusion" (delnemingen) of other parties in tax crimes explicitly also mentions the representatives, attorneys and employees of the taxpayers.

As a Tax Procedure Law or formal law/ procedure of taxation, the main objectives of KUP include maximizing revenue for the fulfillment of government public services and maintaining the smooth flow of state revenues. The addition of criminal sanctions that have physical and financial impacts on the KUP Law is intended to effectively pressure taxpayers to be more compliant with paying taxes, and not to imprison them for disrupting the flow of revenues and the state economy. Therefore, the Elucidation of Article 13A of the KUP Law calls punishment as a last resort (ultimum remedium) to increase compliance after all administrative efforts are ineffective. However, the various formulations of criminal provisions in the KUP Law are ambiguous between ultimum and primum remedium [6].

Then, criminal sanctions in the field of taxation in Article 39, Article 39A, Article 40, Article 41A, Article 41B, Article 41C of Law Number 6 Year 1983 concerning General Provisions and Tax Procedures, As Amended Several Times, Lastly By Law Republic of Indonesia Number 16 of 2009, which is summarized from the opinions of tax officials actually shows that the philosophy is not on the

sanctions, but on the compliance with paying taxes so that there is an increase in state revenue. State revenue increases when there is awareness from the public about taxes and the way to raise awareness is by means of good counseling and services so that when the public already understands and is aware of taxes, only sanctions in the KUP Law will be applied.

By taking a look at the number of poor people in that data, it can be concluded that the problem of paying taxes in the country is still not over, this is because the poor of 25.95 million people will cause tax bottlenecks of 25.95 million people as well.

In its development, this problem was not balanced with a just taxation criminal law formulation. Criminal imprisonment which is always a shadow in every tax crime case will only result in a person being socially isolated because of his status as a prisoner, which in turn will result in someone becoming antipathy to the state and the law which can lead someone to become a criminal who is actually only due to criminal sanctions. Which is less precise and fair. By looking at the form and purpose of the criminal formulation, it is the criminal penalty that can be said to be the fairest and most effective. This is because with a fine, the state's losses can be economically covered by the payment of existing fines.

Based on the various explanations that exist, it can be seen that tax criminal behavior occurs as a result of the corruption problem in the taxation institution which results in the birth of various tax problems. The obstruction of economic development due to corruption has had an impact on the problem of poverty which has resulted in the problem of public disorder in paying taxes. This situation clearly creates public distrust of the government, especially the tax sector.

Public distrust of the tax bureaucracy in the end leads to various kinds of tax violations by the tax order so that if the criminal sanctions in tax criminal cases still use imprisonment, it can be said to also injure the Fifth Principle of Pancasila, Article 28D number 1 of the 1945 Constitution which states that "everyone has the right to recognition, guarantees, protection and legal certainty that is just and equal treatment before the law."

This is also the basis for stating that the chaos in the formulation of penalties in tax criminal cases can result in the destruction of Pancasila as the basic philosophy and ideology of the state and the mandate of the Indonesian constitution to be harmed. This situation clearly shows that the tax criminal law has gone far from the frame of the source of all the laws and basic laws of the Indonesian state which in the end have resulted in many human rights violations, especially for marginalized groups in Indonesia.

The state of tax realization that is not right on target due to widespread corruption, and the loss of trust in the state in the tax sector by the public, as well as the criminal system in tax penalties, coupled with the existence of a self-assessment system, has resulted in the emergence of various tax crimes, mostly in the form of Tax Avoidance or Tax Evasion.

Criminal law policy can be implemented through several stages, namely the formulation stage (the law enforcement stage in-abstracto by the lawmaking body), the application stage, namely the in-concreto criminal law application stage by law enforcement officials starting from the police, to the court and the execution stage, namely The stage of implementing criminal law in a concrete manner by criminal law enforcement officers. In this case, Satjipto Rahardjo [7] argues that in carrying out its function as a regulator of life with humans, law must undergo a long process and involve various activities of different quality. In general, these activities are in the form of law-making and law enforcement.

Over time, in bridging various interests that are increasingly dynamic and increasingly complex. Written law will continue to change according to the times and human development. Furthermore, Satjipto argues that the sources of criminal law are written and some are not written (customary criminal law) [8]. In order for people to know how the law is about a problem, the legal rule must be formulated with the aim of increasing taxpayer compliance and strategies in overcoming violations and various forms of non-compliance with taxation obligations.

2. Reconstruction Of Criminal Penalties In The Field Of Taxation Based On Justice Value

Criminal law policy in the field of taxation in its development in the implementation sector raises various problems, especially in relation to the application of the provisions of articles regulating criminal sanctions. One of these problems arises because law enforcers in taking action against the same legal act use different policies. Article 3 paragraph (1) of Law Number 16 of 2009, which is a legal means of curbing taxes in the form of a tax collection administration control that adheres to a self-assessment system through the submission of tax returns, in reality, is not running well. This can be seen in the process of filing an SPT or notification letter, if there is an untruth in filling and submitting the SPT, then the efforts made by the Tax Directorate officers should first issue a Tax Assessment Letter (SKP) because the main purpose of the taxation law is to maximize state revenue, so that economic-based legal policies must be put forward. The reality in the field shows that often the Tax Directorate officers directly conduct preliminary evidence examinations and investigations through the criminal justice mechanism which should be the last alternative (ultimum remidium).

Thus, the problem of controlling or overcoming crime by using criminal law is not only a social problem, as stated by Herbert L. Packer [9], but also a problem of policy.

According to Bassiouni [10], the goals that the criminal wants to achieve are generally manifested in social interests that contain certain values that need to be protected where these social interests are the maintenance of community order; Protection of citizens from crimes, losses, or unjustifiable dangers committed by others; and Re-socializing the violators of the law; Maintain or maintain the integrity of certain basic views regarding social justice, human dignity, and individual justice.

Civil Servant Investigators, in processing the case often use Article 39 paragraph (1) of Law Number 6 of the Year 1983, even though the taxpayer who is considered negligent has fulfilled his obligation to pay tax arrears.

Some of the cases in the field of taxation filed by the Directorate General of Taxes Civil Servant Investigators (PPNS) to the Public Prosecutor use the provisions of Article 39 of Law Number 16 of 2009.

Apart from the aforementioned problems, the unregulated authorities in calculating state financial losses due to tax issues are not regulated in various tax laws and regulations. Furthermore, there are also other problems related to the application of fines in tax criminal cases. Based on Book One of the Criminal Code Article 30, if the fine is not paid, then it is replaced by imprisonment (subsidies). The application of imprisonment as a substitute for fines (subsidies) stipulated in Book One of the Criminal Code Article 30 in the direction of criminal offenses in the field of taxation is based on Article 103 of the Criminal Code that "The provisions in Chapter I to Chapter VIII of this book also apply to acts which are punishable by other statutory provisions unless otherwise stipulated by law."

Meanwhile, Law Number 6 of 1983 concerning General Provisions and Tax Procedures as amended several times, most recently by Law Number 16 of 2009 concerning General Provisions and Tax Procedures (UU KUP) does not regulate imprisonment in lieu of fines.

Based on Article 30 jo. Article 31 of the Criminal Code, if the convicted person does not pay the fine, then he is obliged to replace it by serving a sentence of imprisonment. If the convicted person pays part of the fine, then he is also obliged to undergo partial imprisonment. The obligation to pay a fine is automatically annulled if the convict is serving a sentence of imprisonment. However, in a criminal case in the field of taxation, the amount of the fine which is decided by the Court is still considered as "Tax Payable" and become the basis for the Director-General of Taxes to issue a Tax Assessment Letter (SKP) whose calculation is determined, namely a fine plus an administrative sanction in the form of an interest of at most 48% (forty-eight percent) of the payable tax (fine). This shows that criminal fines in tax criminal cases do not apply to tax amnesty or a reduction in fines which are also used as tax payable.

This can be seen in Article 13 paragraph (5) KUP, where even though the 5 (five) year period as referred to in paragraph (1) has passed, an Underpaid Tax Assessment can still be issued plus administrative sanctions in the form of interest of at most 48% (forty eight percent) of the amount of unpaid or underpaid tax. This means that if the Taxpayer after that period is convicted of committing a criminal offense in the field of taxation or other criminal acts, it may cause losses to state revenues based on a court decision the force of law remains. This is made even more complicated because the Criminal Code does not regulate provisions that state that imprisonment can replace the position of a fine.

The issue of the formulation of fines in criminal cases of paying taxes has resulted in a sense of justice in society. This is because it is not uncommon for perpetrators who are marginalized groups, most of whom have a low economic level, must be sanctioned by imprisonment. The imprisonment sanction is very unfair because the tax is not paid by the marginalized mostly due to the problem of low economic capacity [11].

It was further emphasized that criminal sanctions must be matched with the need to protect and defend these interests. Crime is only justified if there is a need that is useful to society; unnecessary crimes cannot be justified and harmful to society. In addition, the limits of criminal sanctions are determined based on these interests and the values that embody them. Based on such a view, the discipline of criminal law is not only pragmatic but also a discipline that is based on and is value-oriented (not only pragmatic but also value-based and value-oriented).

In its development, this problem was not balanced with a just taxation criminal law formulation. Criminal imprisonment which is always a shadow in every tax crime case will only result in a person being socially isolated because of his status as a prisoner, which in turn will result in someone becoming antipathy to the state and the law which can lead someone to become a criminal who is actually only due to criminal sanctions, which is less precise and fair.

The problem of criminal formulation in terms of punishment in tax criminal cases is in fact also unfair, this is because there are still many corruption cases within the tax agency that result in people's

money not returning to the people in the form of prosperous development, but on the contrary, it only makes a group of corrupt individuals happy.

Based on the description above, it is necessary to carry out a Value Reconstruction of Criminal Actions in the Field of Taxation Based on Justice Values, namely in Law Number 6 of 1983 concerning General Provisions and Tax Procedures, As Amended Several Times Recently with the Republic Act Indonesia Number 16 of 2009 was reconstructed by adding new norms listed in Article 41 D namely:

1. If the convicted person does not pay the fine as referred to in Article 39, Article 39A, Article 40, Article 41A, Article 41B, Article 41C, no later than 1 (one) month after the court decision has obtained permanent legal force, the object can be confiscated by the prosecutor and auctioned off to pay a criminal fine.
2. In the event that the convicted person does not have sufficient assets to pay the fine as referred to in paragraph (1), then the sentence shall be punishable by imprisonment for a long period of time not exceeding the basic sentence.

From the reconstruction above, it can be concluded that in carrying out criminal law policies including criminal law policies, a policy-oriented approach that is more pragmatic and rational is needed, as well as a value judgment approach. So it should be that the policy approach and the value approach should not be viewed in a dichotomous way. Where in the policy approach, value factors should be considered.

The humanistic approach in the use of criminal sanctions, not only means that the punishment imposed on the offender must be in accordance with human values but also must be able to awaken the violator's awareness of human values and social values in social life.

It is very difficult to execute a fine sentence in the field of taxation so that it is constantly in arrears by the executing attorney. Court decisions related to fines do not include subsidiarity because the Tax Law does not regulate it in a limitative manner so that it cannot be compensated for by corporate punishment.

Based on the value of justice, court decisions related to tax penalties, the prosecutor is no longer the executing prosecutor as an executive function. However, the tax penalties are submitted to the Directorate General of Taxes for collection as state receivables, so that there are no arrears at the Prosecutor's Office and subsequently can return the tax debt which is a source of state revenue.

CONCLUSION

1. The Weaknesses, Based on Book One of the Criminal Code Article 30, is that if the fine is not paid, then it is replaced by imprisonment (subsidies). The imposition of imprisonment as a substitute for fines (subsidies) as stipulated in Book One of the Criminal Code Article 30 in tax crimes is based on Article 103 of the Criminal Code that "The provisions in Chapter I to Chapter VIII of this book also apply to acts of crime-conduct which is punishable by other statutory provisions unless the law stipulates otherwise." However, in Law Number 6 of the Year 1983 concerning General Provisions and Tax Procedures, As Amended Several Times Recently, the Law of the Republic of Indonesia Number 16 of the Year 2009 does not regulate imprisonment as a substitute for fines.
2. The reconstruction of the value of criminal sanctions in the world of taxation is basically not a form of revenge against perpetrators who do not cooperate and pay their taxes in an orderly manner, but as a means of increasing public awareness and obedience as taxpayers, so that in the end it is able to increase state revenue in the field, Taxation. Therefore, Law Number 6 of the Year 1983 regarding General Provisions and Tax Procedures, As Amended Several Times, and Lastly With Law of the Republic of Indonesia Number 16 Year 2009 need to be reconstructed by adding new norms listed in Article 41 D.

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