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Jurisdictional analysis of termination of tax criminal actions in accordance with the provisions of article 44b law number 28 of 2007 concerning general provisions and taxation procedures

Heriantonius Silalahi

University of North Sumatera, Medan, Indonesia

Corresponding Author: Heriantonius Silalahi

Abstract

Tax is obligations of citizens which are expressly stated in Article 23 of the 1945 Constitution. This thesis raises the legal issue of stopping the investigation of criminal acts in the field of taxation for the benefit of state revenues. The problems that will be investigated in this thesis include how criminal acts can be requested for termination of their investigation, how is the mechanism for stopping the investigation of tax crimes, and what is the legal status of criminal cases whose investigations have been terminated in accordance with the provisions of Article 44B of Law number 28 of 2007 concerning General Provisions and Tax Procedures (KUP).

This research is a normative legal research with a statutory approach. The data sources in this study are primary legal sources, namely Law number 28 of 2007 concerning General

Provisions and Tax Procedures and secondary legal materials in the form of journals, books and other relevant sources, as well as tertiary legal materials, especially legal dictionaries. In its application, criminal acts that can be investigated according to the provisions of Article 44B of the KUP Law are criminal acts that result in taxes that are not or underpaid or which should not be returned, including criminal acts related to requests for tax overpayments (restitution). The investigation is terminated after the Minister of Finance receives the application from the taxpayer and forwards it to the Attorney General, provided that the taxpayer pays the tax debt that is not or underpaid or which should not be returned and is added with an administrative sanction in the form of a fine of 4 (four) times the amount of tax. which are not or underpaid, or which should not be returned.

Keywords: Termination of Investigation, Tax Crime

1. Introduction

Indonesia is a state of law ^[1]. Law is used as a tool to protect the entire Indonesian nation and the entire homeland of Indonesia and to promote public welfare, educate the nation's life, and participate in carrying out world order based on freedom, eternal peace and social justice.² Justice must be positioned in a neutral manner, meaning that all people are equal before the law and are entitled to equal protection of the law without any discrimination (all are equal before the law and are entitled without any discrimination to equal protection of the law) ^[3]. To achieve this goal, the state must have a sovereign economic independence. Therefore we need a source of financing from the Indonesian people themselves through taxes. The tax collection must be based on statutory regulations as regulated in article 23 (2) of the 1945 Constitution which is also the same as the tax philosophy adopted in the UK known as "No Taxation Without Representation", as well as the tax philosophy in the United States which known as "Taxation without Representation is Robbery" ^[4].

In accordance with the philosophy of tax law, paying taxes is not only the obligation of every citizen, but it is the right of every citizen to participate and participate in state financing and national development ^[5]. Tax collection is a function that must be carried out by the state as an absolute condition (condition qua non) with a benefit approach that can be enjoyed by all citizens. Tax is one of the sources of state revenue that contributes the largest percentage compared to other income sectors in the country State Revenue and Expenditure Budget (APBN).

¹ Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia.

² Preamble to the 1945 Constitution of the Republic of Indonesia.

³ Pangaribuan, Luhut, Criminal Procedure Law, Papis Sinar Sinanti, Jakarta, 2015, Article 7 of Universal Declaration of Human Rights page 1546.

⁴ Soemitro, Rochmat and Dewi Kania Sugiharti, Principles and Basics of Taxation, 2004, Refika Aditama, Bandung, p. 8. This was popular after the Magna Carta in 1215 in England where people had refused to pay tax levies (tributes) to the King, and became increasingly popular in the 1750s during the revolution in the United States.

⁵ Y. Sri Pudyatmo, Law Enforcement and Protection in the Tax Sector, Salemba Empat, Jakarta, 2007, p. 12.

However, for legal reasons, investigations in the taxation sector can be terminated, as regulated in article 109 paragraph (2) of Law number 8 of 1981 concerning the Criminal Procedure Code (KUHAP) which reads:

"In the event that the investigator stops the investigation because there is not enough evidence or the incident does not constitute a criminal act or the investigation is terminated for the sake of law, the investigator shall notify the public prosecutor, the suspect or his family."

This is also in line with the provisions of Article 44A of Law number 28 of 2017 concerning General Provisions and Tax Procedures, hereinafter referred to as the KUP Law which reads:

"The investigator as referred to in Article 44 paragraph (1) shall stop the investigation as referred to in Article 44 paragraph (2) letter j in the event that there is insufficient evidence, or the incident does not constitute a tax crime, or the investigation is terminated because the event has expired, or the suspect dies."

In other words, the termination of the investigation can be terminated with the following provisions: ^[6].

- a. There is not enough evidence
- b. That is, if the evidence obtained by the investigator is not sufficient to prove the suspect's guilt.
- c. The incident investigated by investigators turned out to be not a crime
- d. Investigation stopped for the sake of law

This reason can be used if there are reasons for the abolition of the right to sue and the loss of the right to carry out a crime, namely, among others, because of *nebis in idem*, the suspect dies, or because the criminal case has expired.

In addition to the provisions as mentioned above, the investigation of tax crimes can also be terminated on the grounds "for the interest of state revenue". This is regulated in Article 44B of the KUP Law which reads:

1. "For the interest of state revenues, at the request of the Minister of Finance, the Attorney General may stop the investigation of criminal acts in the taxation sector within a maximum period of 6 (six) months from the date of the request letter.
2. (2) Termination of the investigation of criminal acts in the field of taxation as referred to in paragraph (1) is only carried out after the Taxpayer has paid off the tax debt that is not or underpaid or which should not be returned and is added with an administrative sanction in the form of a fine of 4 (four) times the amount of tax that is not or underpaid, or which should not be returned."

The reason for stopping the investigation in Article 44B of the KUP Law is different from Article 109 paragraph (2) of the KUHAP and Article 44A of the KUP Law. So that in its application, if there are two provisions of the law that regulate the same thing (reason for termination of the investigation), then the principle of "*lex specialist derogat legi generali*" applies, namely the principle of interpretation law that states that the law that is special (*lex specialis*) overrides the rule of law that is general (*lex generalis*) ^[7].

This shows that the role of state revenue is very important so that in its application the termination of investigations on the

grounds of "in the interest of state revenues" overrides the rules for stopping investigations that are generally applicable as stipulated in the Criminal Procedure Code.

Based on the description above, the authors are interested in conducting research with the title "Juridical Analysis of Termination of Tax Crime Investigations for the Interest of State Revenue in accordance with Article 44B of Law Number 28 of 2007 concerning General Provisions and Tax Procedures".

2. Formulation of the problem

Based on the description of the background above, the authors formulate several problems as follows:

1. How can a criminal offense be requested for termination of its investigation in accordance with Article 44B of Law Number 28 of 2007 concerning General Provisions and Tax Procedures (KUP)?
2. What is the mechanism for stopping the investigation of tax crimes based on the provisions of Article 44B of Law Number 28 of 2007 concerning General Provisions and Tax Procedures (KUP)?
3. What is the legal status of tax crimes whose investigations have been terminated based on Law Number 28 of 2007 concerning General Provisions and Tax Procedures (KUP)?

3. Research purposes

This research generally aims to find out the provisions for stopping the investigation of criminal acts in the field of taxation for the benefit of state revenues, including:

1. To find out and analyze how criminal acts can be requested for termination of their investigations in accordance with Article 44B of Law Number 28 of 2007 concerning General Provisions and Tax Procedures (KUP).
2. To find out and analyze the mechanism for stopping the investigation of tax crimes based on the provisions of Article 44B of Law Number 28 of 2007 concerning General Provisions and Tax Procedures (KUP).
3. To find out the legal status of tax crimes whose investigations have been terminated based on Law Number 28 of 2007 concerning General Provisions and Tax Procedures.

4. Literature review

In the research entitled *Juridical Analysis of Termination of Tax Crime Investigations for the Interest of State Revenue in accordance with Article 44B of Law Number 28 of 2007 concerning General Provisions and Tax Procedures*, the author will explain several meanings of:

1. Definition of Juridical Analysis

According to the Big Indonesian Dictionary (KBBI), analysis has the following meanings:

"the breakdown of a subject into its various parts and the study of the parts themselves and the relationship between the parts to obtain a proper understanding and understanding of the meaning of the whole ^[8].

Meanwhile, according to the Big Indonesian Dictionary (KBBI) juridical meaning has the following meanings:

⁶<https://www.Hukumonline.com/klinik/detail/review/cl624/sp3>, taken on May 1, 2019.

⁷Lamintang, PAF, 2013, *Fundamentals of Indonesian Criminal Law*, PT. Citra Aditya Bakti, Bandung, page 511.

⁸ Big Indonesian Dictionary, Balai Pustaka, 2017

“according to the law; legally”^[9].

So that in this study what is meant by the author as juridical analysis is an activity to find and break down the components of a problem to be studied more deeply and then relate it to the law, legal rules and applicable legal norms as a solution to the problem. The activity of juridical analysis is to collect relevant laws and other bases to then draw conclusions as solutions or answers to problems^[10].

2. Definition of Investigation

Article 1 number 2 of the Criminal Procedure Code (KUHAP), states that:

”An investigation is a series of actions by an investigator in terms of and according to the method regulated in this law to seek and collect evidence with which evidence makes light of the criminal act that occurred and in order to find the suspect.”

While the investigation in the field of taxation is in accordance with Article 1 number 31 The KUP Law is: “a series of actions taken by investigators to seek and collect evidence, with which evidence makes clear the crime in the field of taxation that occurred, and finds the suspect.”^[11]

3. Definition of Crime

Usually a crime is synonymous with an offense, which comes from the Latin word *delictum*. In the Big Indonesian Dictionary, the meaning of offense is defined as follows: “Actions that can be punished because it is a violation of the law; criminal act”^[12]

The term crime comes from a term known in Dutch criminal law, namely *strafbaar feit* which consists of three words, namely *straf* which is translated into criminal and legal, *baar* which is translated as can or may, and *feit* which is translated with acts, events, violations, and deeds. The Criminal Code does not provide an explanation of what is meant by *strafbaar feit* itself. The term *Stafbaar Feit* or sometimes referred to as a *delict* is translated into Indonesian with various terms^[13].

As for some definitions of criminal acts in the sense (*strafbaarfeit*) according to expert opinion are as follows: Moeljato defines a criminal act as an act that is prohibited by a rule of law, which prohibition is accompanied by sanctions in the form of certain crimes for anyone who violates the prohibition, the prohibition is aimed at actions (a condition or event caused by the behavior of people), while criminal threats are aimed at the person who caused it^[14].

“Simons defines a criminal act as an act which is punishable by law, contrary to the law, carried out by a guilty person and that person is considered responsible for his actions (*strafbaar feit omschrijven alseene strafbaar gestelde, onrechtmatige, met schuld in verband staande handeling van een toerekeningsvat baar person*)”^[15].

So that it can be concluded that a criminal act is an act that is prohibited by law and is threatened with a crime, where the definition of an act here is in addition to an active act, namely doing something that is actually prohibited by law, and elements that fulfill the element of offense are identical to the criminal act itself, while the combination of elements against

the law gives birth to criminal liability.

The basic requirements of an offense are:^[16]

- a. Fulfillment of all elements of the offense contained in the formulation of the offense;
- b. The perpetrator can be held accountable for his actions;
- c. The act of the perpetrator must be done intentionally or unintentionally; and
- d. The perpetrator can be punished.

While the accompanying conditions are conditions that must be met after a person's action fulfills all the elements contained in the formulation of the offense.

Criminal acts related to the elements of a crime can be distinguished from:^[17]

a. Subjective Element

The subjective element is an element of error (*dolus/opzet/intention*) or intentional originating from within the perpetrator. The principle of criminal law states:

“*an act does not make a person guilty unless the mind is guilty or actus non facit reum nisi mens sit rea* (there is no punishment if there are no mistakes)”.

In general, experts describe the intent of the element of intent in 3 (three) forms, namely:

1. Error as intent (*oogmerk*);
2. Errors with definite conviction (*opzet als zekerheidsbewustzijn*);
3. Mistakes with realization of possibility (*dolus eventualis*).

b. Objective Element

The objective element is an element from outside the perpetrator, which consists of:

1. Human actions, in the form of:
 - a. *Act*, namely active actions or positive actions;
 - b. *Omission*, namely passive actions or negative actions, namely actions that are silenced or allowed.
2. The result of human actions, namely the consequences that are harmful or damaging, even eliminating the interests that are defended by law, such as life, body, independence, property rights, honor, and so on.
3. Circumstances, both the state at the time the act was carried out and the state after the act was carried out.
4. Punishable nature and unlawful nature, where the punishable nature relates to the reasons that free the perpetrator from punishment, while the unlawful nature is when the act is contrary to the law, namely with regard to prohibitions or orders.

While a tax crime is an act that violates tax laws and regulations that causes state financial losses where the perpetrator is threatened with criminal penalties. A tax crime can also be interpreted as an act that provides incorrect information regarding reports related to tax collection by submitting a notification letter, but whose contents are incorrect or incomplete or attaching incorrect information so that it can cause losses to the state and other crimes regulated

⁹ Ibid

¹⁰ Bahder Johan Nasution, *Legal Research Methods*, Mandar Maju, Bandung, 2008. Pg. 83-88

¹¹ Article 1 number 31, UU KUP

¹² Big Indonesian Dictionary, Balai Pustaka, 2017.

¹³ Lamintang, PAF, 2013, *Fundamentals of Indonesian Criminal Law*, PT. Citra Aditya Bakti, Bandung, page 181.

¹⁴ Hiariej, Eddy OS, *Principles of Criminal Law Revised Edition*, Cahaya Atma Pustaka, Yogyakarta 2015, p 121.

¹⁵ Ibid.

¹⁶ Lamintang, PAF, 2013, *Fundamentals of Indonesian Criminal Law*, PT. Citra Aditya Bakti, Bandung, page 187.

¹⁷ Marpaung, Leden, *Theoretical Principles of Criminal Law Practice*, Sinar Graphic, Jakarta, 2005 p 9.

in the laws governing taxation ^[18]

4. Understanding Tax

There are many understandings given by legal experts about what taxes actually are. PJA Andriani wrote that:

"Belasting noen ik de heffing, waardoor de overheid zich door middel van juridische dwang middelen verscheft om de publieke uitgaven te berisidjden, zuls zonder enige prastatie daartegen overte stellen" Free translation: Tax is a levy by the government under juridical coercion, to obtain a means of covering for general expenses without any special reciprocal services for it ^[19].

Meanwhile, Rochmat Soemitro gives an understanding

"Taxes are people's contributions to the state treasury based on the law (which can be enforced) by not receiving reciprocal services (contra-achievements) that can be directly shown and which are used to pay general expenses." Rochmat Soemitro further explained that the word "could be forced" means that if the tax debt is not paid, the debt can be collected using force, such as forced letters and confiscation, as well as hostage taking; the payment of taxes, can not be shown the existence of certain reciprocal services such as levies. However, this understanding was later corrected in his book entitled Taxes and Development (1974) ^[20],

Meanwhile Soeparman Soemahamidjaja defines that

"Taxes are mandatory contributions, in the form of money or goods, which are levied by the authorities based on legal norms, in order to cover the costs of producing collective goods and services in achieving general welfare. It is necessary to avoid the use of the term coercion so that it suffices to say that tax is a mandatory contribution and there is no need to provide additional which can be imposed, while it is necessary to collect tax on counter-achievements. In this case, government expenditures for the administration of security, welfare, justice, development, and other matters constitute a counter-achievement for taxpayers as members of the community ^[21].

The opinion of these tax law experts shows that taxpayers as taxpayers to the state do not get direct compensation because the money paid is as state revenue for the welfare of the Indonesian people, so the orientation of the tax law in Indonesia is on the maximum income for revenue. Country ^[22].

So that in Article 1 paragraph 1 of the KUP Law it is formulated that:

"Taxes are mandatory contributions to the state that are owed by individuals or entities that are coercive in nature based on the law, with no direct compensation and are used for the needs of the state for the greatest prosperity of the people."

While tax law is the overall regulation regarding the government's authority to take someone's wealth and hand it back to the people through the state treasury. Thus, tax law is part of public law that regulates legal relations between the state and the people or legal entities that are obliged to pay taxes ^[23]. One of the principles in tax law is the principle of justification for tax collection by the state (rechtsfilosofis),

namely the basis for justifying the imposition of taxes by the state, why the state imposes taxes on the people or on what basis the state has the authority to collect taxes from the people.

5. Definition of Termination of Investigation for the Interest of State Revenue

The termination of the investigation of tax crimes for the benefit of state revenues is regulated in Article 44B of the KUP Law which states that:

- 1) "For the interest of state revenue, at the request of the Minister of Finance, the Attorney General may stop the investigation of criminal acts in the taxation sector at the latest within 6 (six) months from the date of the request letter.
- 2) Termination of the investigation of criminal acts in the taxation sector as referred to in paragraph (1) shall only be carried out after the Taxpayer has paid off the tax debt that is not or underpaid or which should not be returned and is added with an administrative sanction in the form of a fine of 4 (four) times the amount of tax that is not or underpaid, or which should not be returned".
- 3)

5. Research methods

The method used in this research consists of:

1. Types and Nature of Research

The type of research carried out is normative legal research using a statutory approach in conducting studies on the termination of tax crime investigations for the benefit of state revenues.

The nature of this research is descriptive research aimed at describing accurately, accurately and systematically the legal phenomena related to the termination of the investigation of tax crimes for the benefit of state revenues.

2. Data source

Sources of data in this study as normative legal research that focuses on library research and based on secondary data, the sources of legal materials used can be divided into several groups, namely:

- a. Primary legal materials, among others:
 1. The 1945 Constitution and its Amendments;
 2. The Criminal Code;
 3. The Criminal Procedure Code;
 4. Law Number 28 of 2007 concerning General Provisions and Tax Procedures;
 5. Regulation of the Minister of Finance Number 239/PMK.03/2014 concerning Procedures for Examination of Preliminary Evidence of Criminal Acts in the Taxation Sector;
 6. Regulation of the Minister of Finance Number 55/PMK.03/2016 concerning Procedures for Requests for Termination of Criminal Investigations in the Taxation Sector for the Interest of State Revenue
- b. Secondary legal materials, which are used to help understand various legal concepts in primary legal

¹⁸ R. Santoso Brotodihardjo, Introduction to Tax Law, Eresco, Bandung, 1991, page 1

¹⁹H. Laode Jusen, Tax Law and Priviledge Rights, CV Utomo, Bandung, 2009, p. 22

²⁰ Rochmat Soemitro, Tax and Development, PT Eresco, Bandung, 1974, p.8

²¹Sri Pudyatmoko, Introduction to the Latest Edition of Tax Law, Andi Publishers, Yogyakarta, 2009, p. 2

²²Simon Nahak, Tax Criminal Law, Penal Policy Concept of Tax Crime in Perspective of Legal Reform, Equivalent Press, Malang, 2014, p. 7

²³Santoso Brotodihardjo, Introduction to Tax Law, PT Eresco, Bandung, 1991, p. 2

materials, analysis of primary legal materials are assisted by secondary legal materials obtained from various sources, including journals, books, news, and media reviews, and other sources that relevant.

- C. Tertiary legal materials need to be used for various things in terms of explaining the meanings of words from secondary legal materials and primary legal materials, especially legal dictionaries.

3. Data collection technique

The data collection technique in this research is using library research and document studies from various sources that are deemed relevant. The data obtained in the form of secondary data is tabulated and then systematized by selecting legal instruments that are relevant to the object of research. All of this data is then used to obtain a theoretical basis in the form of positive legal materials, opinions or writings of experts or other parties in the form of information both in formal form and through official texts.

4. Data analysis

The data mentioned above in the form of legal materials were analyzed using qualitative descriptive analysis methods. Judging from the purpose of the analysis, there are two things to be achieved in qualitative data analysis, namely:

- 1) analyze the ongoing process of a legal phenomenon and obtain a complete picture of the process; and
- 2) analyze the meaning behind the information, data, and process of a phenomenon.

Primary legal materials that are inventoried are firstly systematized according to the substances regulated by considering their relevance to the formulation of the problem and research objectives. Then legal predictability is carried out, seeking legal justice, legal certainty, legal benefits and legal protection and others. The data obtained from the research results are grouped according to the problem which is then carried out qualitatively. Qualitative analysis means that the analysis does not depend on the amount of data based on numbers, but the analyzed data is then described in the form of sentences. Qualitative descriptive analysis is a data analysis method that groups and selects the data obtained according to their quality and truth, then connected with theories, principles.

6. Tax Crimes in Indonesia

The definition of a crime in the taxation sector is stated in article 1 number (5) of the Regulation of the Minister of Finance number 239/PMK.03/2014 concerning Procedures for Examination of Preliminary Evidence of Crime in the Taxation Sector which reads:

“A crime in the taxation sector is an act that is subject to criminal sanctions by the tax law which includes Article 38, Article 39, Article 39A, Article 41, Article 41A, Article 41B, Article 41C, and Article 43 of the KUP Law, Article 24 and Article 25 of the Land and Building Tax Law, Article 13 and Article 14 of the Stamp Duty Law, and Article 41A of the PPSP Law.”

In the system of the Criminal Code (KUHP), criminal acts are divided into crimes (*misdrijven*) and violations

(*overtredingen*). The division into these two types is not clearly defined in an article of the Criminal Code but has been deemed so, among others in Articles 4, 5, 39, 45, and 53 of the First Book on General Provisions. The Second Book deals with crime and the Third Book deals with transgressions^[24]. Moeljatno, quoting MvT Smidt, wrote that the division of the two types of crime was based on principal differences. Crimes are *rechtdelicten*, namely acts which, although not specified in the law as criminal acts, have been perceived as *onrecht*, which are contrary to the legal system. Violations on the other hand are *wetsdelicten*, namely acts whose nature is against the law can only be known after the existence of a *wet* that determines so^[25].

Because the criminal threat for a crime is more serious than a violation, it can be said that:^[26]

1. Imprisonment is a threat to crime only;
2. In the case of a crime, it must be proven by the prosecutor, while the violation does not require proof, because crime is distinguished between *dolus* and *culpa*.
3. Attempts to commit a violation cannot be punished (Article 54 of the Criminal Code). Also assistance for non-criminal violations (Article 60 of the Criminal Code)
4. The grace period for both the right to determine and the right to carry out a criminal offense is shorter than the crime. One year and two years respectively
5. In the case of *concursum*, the method of punishment is different for violations and crimes.
6. The accumulation of light penalties is easier than heavy ones (Articles 65, 66 and 70 of the Criminal Code)

In the KUP Law itself, criminal acts in the field of taxation are divided into 2 (two) parts, namely: violations and crimes. Violation is a tax crime that occurs unintentionally due to negligence or oversight, such as negligence in not submitting the Annual Tax Return (SPT), or having submitted but the contents are incorrect or incomplete. The sanctions imposed are imprisonment for a minimum of 3 (three) months or a maximum of 1 (one) year, a fine of at least 1 (one) time the amount of tax owed or underpaid.

A crime in the taxation sector is an act committed by any person intentionally in the taxation sector, it can be in the form of committing an act or not committing an act that meets the provisions of the tax laws and regulations. In essence, the provisions of tax laws and regulations are categorized as tax law rules which become the corridor for doing or not doing. Thus, committing an act or not committing an act in the field of taxation is classified as a crime in the field of taxation when it fulfills the formulation of the rules of tax law^[27].

A. Investigation Implementation

Mechanism of investigation and termination of investigation of tax violations The Director General of Taxes based on information, data, reports, and complaints is authorized to conduct preliminary evidence examinations prior to investigation of criminal acts in the field of taxation. Waluyo stated that "If from the initial evidence there are indications towards a criminal act, the next step is to carry out an investigation by the investigator"^[28].

In conducting an investigation, investigators must not

²⁴Simon Nahak, Op. cit. p.65

²⁵Moeljatno, Principles of Criminal Law Revised Edition, Rineka Cipta, Jakarta, 2008, p. 78

²⁶*Ibid.* p. 81

²⁷Muhammad Jafar Saidi, Eka Merdeka Wati Djafar, Crimes in the Taxation Sector, Rajawali Press, Jakarta, 2012, p. 2

²⁸Mardiasmo, 2018. Taxation, Andi Publisher, Yogyakarta.

arbitrarily carry out their duties, as stated by Mardiasmo, there are several powers of investigators as regulated in Article 44A of the KUP, namely ^[29];

1. Receive, seek, collect, and examine information or reports regarding actions in the taxation sector so that the information or reports become more complete and clear;
2. To examine, seek, and collect information regarding individuals or entities regarding the truth of the acts committed in connection with criminal acts in the taxation sector;
3. Request information and evidence from individuals or entities in connection with criminal acts in the taxation sector;
4. Examine books, records and other documents relating to criminal acts in the field of taxation;
5. Conduct searches to obtain evidence for books, records, other documents, and confiscate the evidence;
6. Request assistance from experts in the context of carrying out the task of investigating criminal acts in the taxation sector;
7. Ordering to stop and/or prohibiting someone from leaving the room or place while the inspection is in progress and checking the identity of the person, object, and/or document brought;
8. Photographing a person related to a crime in the field of taxation;
9. Summons people to have their statements heard and examined as suspects or witnesses;
10. Stop the investigation; and/or
11. Take other necessary actions for the smooth investigation of criminal acts in the taxation sector according to the provisions of the legislation.

12. Termination of tax crime investigation

The termination of the investigation is not actually an initiative of the investigator, but an order from the tax law so that the investigation is not continued because of the juridical reasons that regulate it. If the juridical reasons for stopping the investigation are not obeyed, it means that the investigator has actually committed an unlawful act. It is different when there is no juridical justification, meaning that investigators may not stop investigations of perpetrators of tax law offenses. Investigations must be carried out to reveal clearly and unequivocally the occurrence of criminal acts in the taxation sector. Therefore, the disclosure of a tax law offense can only be known when the investigation is carried out continuously.

Investigation of criminal acts in the field of taxation is carried out by PPNS DGT. One of the powers granted by law to PPNS DGT is to stop investigations based on juridical reasons contained in Article 44A of the KUP Law. Even if it is justified to terminate the investigation, it does not mean that an arbitrary act has been committed by the DGT PPNS.

B. Termination of Investigation of Tax Crimes for the Interest of State Revenue

The criminal law provisions formulated in the KUP Law are *ultimum remedium*. This is explicitly stated in the Elucidation of Article 13A of the KUP Law which stipulates: "The imposition of criminal sanctions is a last resort to improve taxpayer compliance. However, for Taxpayers who

violate the provisions as referred to in Article 38 for the first time, they are not subject to criminal sanctions, but are subject to administrative sanctions.

Therefore, a Taxpayer who due to negligence does not submit a Tax Return or submit a Tax Return, but the contents are incorrect or incomplete, or attach information whose contents are incorrect so as to cause loss to State revenue, are not subject to criminal sanctions if the negligence is first committed. Taxpayer. In this case, the Taxpayer is obliged to pay off the underpayment of the amount of tax owed along with administrative sanctions in the form of an increase of 200% (two hundred percent) of the amount of tax underpaid. The formulation of criminal sanctions against perpetrators of criminal acts in the field of taxation still provides opportunities for perpetrators who have committed a violation for the first time. In essence, what is prioritized is that the perpetrator returns the loss/revenue of state revenue, not imprisonment or confinement ^[30].

The formulation of criminal sanctions in the taxation sector as regulated in Article 38, Article 39, Article 39A, Article 40, Article 41, Article 41A, Article 41B, Article 41C, Article 43 and Article 43A of the KUP Law applies criminal sanctions in the form of imprisonment, confinement, and fines which are formulated cumulatively (combined) with the understanding of prioritizing the application of imprisonment sanctions first and then followed by the application of criminal sanctions of confinement, and/or cumulative fines ^[31].

Criminal sanctions that are formulated cumulatively in the KUP Law cause aspects of the interests of state revenues to not be prioritized. Such sanctions are only to enforce the authority of the government. If a crime occurs in the field of taxation, the criminal sanction of imprisonment is preferred by law enforcers. Meanwhile, the aspect of returning state losses by perpetrators of criminal acts in the taxation sector is unclear ^[32].

A. Legal Basis for Termination of Investigation in the Taxation Sector for the Interest of State Revenue

The termination of the investigation of criminal acts in the taxation sector as referred to in Article 44B of the KUP Law is the termination of the investigation of criminal acts in the taxation sector based on the element of interest in state revenues. However, it is not clear what the meaning of state revenue is in the KUP Law itself. State revenue according to Law No. 17 of 2003 concerning State Finance is money that goes into the state treasury. This means that the investigation of criminal acts in the field of taxation can be stopped in the event that money enters the state treasury which is paid by the perpetrators of criminal acts in the field of taxation along with the sanctions.

The termination of the investigation of criminal acts in the taxation sector for the benefit of state revenues can only be carried out as long as the criminal case has not been transferred to the court or is still in the process of being investigated by PPNS DJP or the pre-prosecution stage at the prosecutor's office. Therefore, criminal acts in the field of taxation that have been delegated to the court cannot be stopped on the grounds of the interest of state revenues based on Article 44B of the KUP Law.

²⁹ Ibid.

³⁰ Simon Nahak, op., cit., p. 203

³¹ Ibid.

³² Ibid.,

7. Conclusion

1. Criminal acts that can be requested for termination of their investigations for the benefit of state revenues in accordance with the provisions of Article 44B of Law Number 28 of 2007 concerning General Provisions and Tax Procedures are criminal acts committed by taxpayers that result in taxes that are not or underpaid or which should not be paid. returned including criminal acts related to the application for overpayment of taxes (restitution), in other words the crime can harm state finances committed by the taxpayer either by providing incorrect data and information or by manipulating the tax calculation data that should be paid by the taxpayer. the tax to the state or other means by violating the law.
2. The mechanism for stopping the investigation of tax crimes based on Article 44B of Law no. 28 of 2007 concerning general provisions and procedures for taxation is through an application for termination of filing by the taxpayer to the Minister of Finance by providing a copy to the Director General of Taxes. The taxpayer's application is accompanied by a written statement containing an acknowledgment of guilt from the taxpayer and paying off tax debts that are not or underpaid or which should not be returned and added with administrative sanctions in the form of a fine of 4 (four) times the amount of tax that is not or underpaid, or which should not be returned. Furthermore, the Minister of Finance asks the Director General of Taxes to examine and respond to the taxpayer's application. The application received by the Minister of Finance will be forwarded to the Attorney General for termination of the investigation. The Attorney General's approval must have been given no later than 6 (six) months from the date of the request letter from the Minister of Finance and as long as the case has not been transferred to the court.
3. With regard to the application for termination of the investigation that is approved by the Attorney General as long as it has not been submitted to the court, the legal process is terminated and the tax crime is considered completed because its legal purpose has been achieved by obtaining state revenue. This shows that the principle of ultimum remedium in the process of punishment in the taxation sector is the last resort after administrative and other efforts have been made.

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