Corporate Responsibility Issues as a Criminal Act of Taxation in Indonesia

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Abstract. The Law on General Provisions and Tax Procedures (Undang-Undang tentang Ketentuan Umum Dan Tata Cara Perpajakan or "KUP Law") does not explicitly regulate corporations as legal subjects or the types of offenses, sanctions, and criminal liability. As a result, a polemic of interpretation arises in the practice of its application so it is interesting to study theoretically. To examine these problems, they used normative legal research methods with approaches in the form of statute approach, conceptual approach, and case approach. The results of the study show that although it is not explicitly regulated in the KUP Law, through systematic legal interpretation, corporations are actually legal subjects and violators of tax offenses so that they can be held accountable and sentenced to crime. In practice, there is an attempt to find the law by the judge in decision number 334/Pid.Sus/2020/PN Jkrt.Brt, which confirms that corporations are the subject of tax crimes. In addition, there is a decision number 2239 K/PID.SUS/2012 which applies the theory of vicarious liability in the imposition of corporate criminal responsibility simultaneously with its management. Since the KUP Law does not regulate the model of corporate criminal responsibility together with its management, the legal findings in the decision have caused controversy. Efforts are needed to revise the KUP Law by incorporating a comprehensive arrangement on the corporate criminal liability system into it to overcome polemics of interpretation and controversy in the field of law enforcement.

Keywords: corporate responsibility · perpetrator · criminal · taxation

1 Introduction

Tax is one of the most important sources of state revenue in order to realize the goal of implementing the Indonesian state, namely promoting general welfare. Tax revenue is used as one of the components in the State Revenue and Expenditure Budget (APBN), which is relied on to support the country's economy. Smooth tax revenue from taxpayers will have an impact on state development, such as in the procurement of facilities and infrastructure as well as social welfare programs held by the government. The consistency of tax revenue is determined by citizens' trust in the government as tax collectors and

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managers.To realize trust, provisions and procedures for taxation are regulated in the form of a law.

Law Number 6 of 1983, as amended several times, most recently by Law Number 16 of 2009 concerning Stipulation of Government Regulations in Lieu of Law Number 5 of 2008 concerning the Fourth Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures (*Undang-Undang Nomor 6 Tahun 1983 tentang Ketentuan Umum Dan Tata Cara Perpajakan* or "**KUP Law**") Jo. Law Number 11 of 2020 Concerning Job Creation Jo. Law Number 7 of 2021 Concerning Harmonization of Tax Regulations (UU HPP) regulates individuals and entities as taxpayers. As defined by Article 1 Point 3 of the KUP Law, an entity is "a group of people and/or capital which is a unit either conducting business or not conducting business, which includes a limited liability company, limited liability company, other company, state-owned company, or privately owned company. regions by name and in whatever form, firms, kongsi, cooperatives, pension funds, partnerships, associations, foundations, mass organizations, socio-political organizations, or other organizations, institutions, and other forms of bodies including collective investment contracts and permanent establishments".

Based on the above definition, the entity referred to by the KUP Law according to criminal law terms is generally introduced as a corporation. Actually, the meaning of the word "corporation" is "to give a body". The body, in the context of the meaning of the word corporation, is created by law, so its death is determined and decided by law.

Functionally, the corporation, as this body, has rights and obligations and can carry out legal actions such as contracts or agreements through its management organs. In the development of modern criminal law, corporations are categorized (into) as "everyone" r side by side" with individuals in the sense of natural persons. A corporation, in this case, is an organized collection of people and/or assets, which includes both legal and non-legal entities. Corporations with legal entities include Limited Liability Companies, Foundations, and Cooperatives, while corporations that are not legal entities include Limited Liability Companies (Commanditaire Vennotschaap or abbreviated as CV), Firms, and Dagang Usaha (UD).

The use of the term corporation as a substitute for entity in this article is solely to facilitate the realization of a unified understanding in the construction of the criminal law system in Indonesia. Given that in the general understanding (society), the word "body" is synonymous with human organs as in the Big Indonesian Dictionary (KBBI). In the structure of the government bureaucracy in the organs of ministries and agencies, there is the use of the term "body", such as the State Civil Service Agency (BKN), the National Narcotics Agency (BNN), and others. In the legal regime of state administration, the term "agency" is also used, which refers to the implementing element of government functions. In order not to be "confused" with the term entity in the general concept and state administrative law, the replacement of the term entity with a corporation is to emphasize the purpose and dimensions of the study in this article, focusing on the context of the criminal law system.

Various laws and regulations are currently in force (ius constitutum) both at the level of special laws such as Law Number 31 of 1999; Law Number 20 of 2001 concerning the eradication of Criminal Acts of Corruption (UU Tipikor) and Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering (UU PPTPPU) as well

as in the form of regulations governing the criminal system for entities or corporations, such as Court Regulations Supreme Court Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations and Attorney General's Regulation Number: PER-028/A/JA/10/2014 concerning Guidelines for Handling Criminal Cases with Legal Subjects Corporations use the term corporation. Likewise, in draft laws that are being processed for their formation or implementation in the future (ius constituendum), such as the Draft Criminal Code (RKUHP), the term corporation is used.

Corporations, like individuals, have legal rights and responsibilities when it comes to taxation.If a person can do something that breaks the law and is considered a crime, then the corporation, as a taxpayer, also has the right to do the same thing has the potential to commit a similar crime. Moreover, considering that the amount of tax that should be received by the state from a corporation is greater than that of an individual, the loss of state income from the corporate tax will also be large. The consequences of corporate crime in the taxation sector can hinder efforts to promote public welfare in the context of national development. Therefore, such corporate crimes need to be criminalized so that criminal accountability can be prosecuted.

2 Legal Materials and Methods

This research uses normative legal research methods with approaches in the form of statute approach, case approach, and conceptual approach. Secondary data obtained through document studies was used in this study. Secondary data consists of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials are in the form of statutory regulations and court decisions. While secondary legal materials are books, journals, and papers, Meanwhile, the tertiary legal material is in the form of a language dictionary.

The data obtained was then carried out with a qualitative juridical analysis. With regard to laws and regulations, they will be analyzed and evaluated from the aspects of clarity of formulation, vertical and horizontal disharmony, as well as problems of legal interpretation in practice. Furthermore, it is correlated with the analysis of court decisions containing the discovery of (new) legal rules and evaluating them from the perspective of relevant theories and legal principles. The problem of the gap between the regulation and practice of the judiciary that occurs will be criticized and a solution formulated to overcome it prescriptively.

3 Result and Discussion

3.1 Corporations as Subjects of Criminal Acts in the Taxation Sector

Theoretically, corporations have long been considered deserving of being legal subjects who can commit criminal acts and are criminally responsible. But normatively, the Criminal Code (KUHP) does not regulate or recognize corporations as criminal law subjects and is only addressed to individual people. As determined by Article 59, which contains the principle of "societas delinquere non potest", i.e., a legal entity cannot commit a crime. When a corporation commits a criminal act, in the context of this principle, it is

considered to have been committed by its management. Likewise, the general criminal procedure law contained in Law Number 8 of 1981 concerning the Criminal Procedure Code does not regulate procedures or procedures for handling corporations as legal subjects for criminal acts.

The determination of corporations as the subjects of criminal acts is regulated by special legislation, which amounts to around 71 (seventy-one) laws. Among these special laws, there are differences in the determination of corporations as legal subjects, namely regulating them in General Provisions which are categorized as (into) "everyone," such as the Anti-Corruption Law and the PP ML Law, and some are not specified in the General Provisions but in the regulations. Criminal provisions in the body are regulated regarding criminal acts committed by corporations and the forms of accountability and criminal sanctions, such as Law Number 36 of 2009 concerning health and Law Number 44 of 2009 concerning hospitals.

The difference in regulation, whether it is determined in general provisions or not, does not affect the position of the corporation as the subject of a criminal act. Ideally, the General Provisions stipulate the notion of a corporation as part of the legal subject of "everyone." However, if it is not regulated in the General Provisions but in the body of the law, especially in the Criminal Provisions, offenses have been regulated, sentencing and corporate criminal liability are also legal. Usually, in the form of regulation, it directly refers to the articles of prohibition or criminal provisions of a certain nature by confirming that there are several times the weighted fines against corporations that do so. From this context, the corporation is still categorized as the subject of a criminal act even though it is not included in the General Provisions of the law.

Normatively, the KUP Law does not specify explicitly and clearly in the General Provisions that what is meant by "everyone" includes a body (corporation). The General Provisions in the KUP Law only regulate the definition of "body" and are not linked to the nomenclature of "everyone" who is the subject of a criminal act in Chapter VIII of the Criminal Provisions. On the other hand, when mentioning the definition of "taxpayer" in Article 1 point 2, the KUP Law distinguishes between "individual" and "entity" through the phrase "or". There is an interpretation that "everyone" referred to and used as the subject of a criminal act in Chapter VIII of the KUP Law is only "individuals" and not "corporations" (corporations). It is said that it is not permissible for a corporation to be made a subject and be held accountable in a tax crime case.

In its development, the interpretation that states that corporations (entities) are not the subject of tax crimes is straightened out by the Supreme Court through Supreme Court Circular Number 4 of 2021 concerning the Application of Several Provisions in Handling Criminal Acts in the Taxation Sector, which emphasizes "everyone in the Law concerning Tax Provisions". Individuals and corporations are defined as "general and taxation procedures". Consequences of SEMA No. 4 of 2021: Corporations can be held accountable and sentenced to criminal penalties for crimes in the field of taxation they have committed.

Although SEMA is not at the regulatory level that is binding "out" the Supreme Court (law enforcement apparatus in criminal cases in the taxation sector), as a guide it is followed by judges at the Supreme Court and the judicial bodies below it. However,

there is no obstacle for law enforcement officials who want to carry out legal interpretations referring to SEMA No. 4 of 2021 by processing the investigation and prosecution of corporate criminal cases in the taxation sector because, after all, the end of the examination and trial is in the court. Of course, in the context of filing such a case, the district court judges will accept the delegation of the case and try it based on SEMA No. 4 of 2021 mentioned above.

3.2 Types of Crimes that Corporations Can Do in Tax Cases

When making criminal law policies, the question of what to do when a company does something illegal always comes up.It has been recognized that corporations can carry out these (legal) actions through their management organs. As with organ theory, the corporate management organ is like a natural human body that has a brain as a controller, which is represented by high-level management (high management) as in a company is on the Board of Directors, while the feet and hands, as the movers, are employees or implementing agents. They, the management organs, are said to have committed a corporate act, i.e., if they did it for and on behalf of and for the interest or scope of business (authority) of the corporation in accordance with the provisions contained in the Articles of Association of the corporation. Furthermore, if a corporate act is a crime that harms other people or corporations, society, or the state so that it is criminalized through legislation, it can be qualified as a corporate crime.

Normatively, the legislation that recognizes or stipulates a corporation as a subject of criminal law has diversity in determining the formulation or criteria when a criminal act is committed by a corporation. Some of the laws there are Those that regulate it in a special article, namely as in the Anti-Corruption Law, which states that when a criminal act (in the law) is committed by and on behalf of a corporation, either through work relationships or other relationships within the scope or environment of the corporation, Another example in the PPTPPU Law which stipulates in more detail that money laundering is committed by a corporation is when it is:

1. performed or ordered by Corporate Controlling Personnel;
2. carried out in the context of the corporation's purposes and objectives;
3. carried out in accordance with the perpetrator's duties and functions or the giver of orders, and
4. carried out with the intention of providing benefits to the corporation.

Some other (laws) regulate it in a special article but do not provide details on when the criteria for a criminal act are committed by a corporation. What is regulated in this particular article only stipulates that if one or several articles that regulate criminal provisions in the law are carried out by a corporation, the criminal sanctions are determined separately (specifically) and different from individuals. One example of such a regulatory model is Article 201 paragraph (1) of the Health Law, which states: "In terms of criminal acts as referred to in Article 190 paragraph (1), Article 191, Article 192, Article 196, Article 197, Article 198, Article 199, and Article 200, committed by a corporation, in addition to imprisonment and a fine against its management, the punishment that can be imposed on a corporation is in the form of a fine with a weighting of 3 (three) times

the fine as referred to in Article 190 paragraph (1), Article 190 paragraph (1), Article 190 paragraph (1), Article 190 paragraph (1), Article 190 paragraph (1), Article 190 paragraph (1), Article 190 paragraph (1), Article 190 paragraph (1), Article 192, Article 196, Article 196, Article.

Some other (laws) do not provide special provisions in a good article by detailing the criteria when a criminal act is committed by a corporation and also do not refer to certain articles to determine what criminal acts can be committed by a corporation. One example is the KUP Law, where the body of the law does not specify at all explicitly when a criminal act or violation in the articles regulated in the Criminal Provisions is committed by an entity (corporation) as part of a taxpayer. If referring to the General Provisions of the KUP Law, the entity (corporation) is included in the definition of a taxpayer. And specifically, the General Provisions also mention the definition of a body (corporation). However, when regulating the Criminal Provisions in the body of the KUP Law, the entity as a taxpayer is not explicitly stated at all so that it is interpreted that the entity (corporation) has entered (implicitly) in the sense of "everyone as directed by SEMA No. 4 of 2021. In the context of such an implicit interpretation, the articles governing the Criminal Provisions using the subject "everyone" are also intended for the body (corporation) as well as the perpetrator of the crime.

Referring to Chapter VIII of the Criminal Provisions in the KUP Law, there are at least 4 (four) types of criminal acts in the taxation sector that can be attributed to corporations as a consequence of the interpretation of "everyone" s described above; first, a violation of Article 38 of the KUP Law where, because of his negligence, he does not submit a tax return or whose contents are incorrect or incomplete or attaching information whose contents are not correct so that it can cause losses to state income and the act is an act after the first act as referred to in Article 13A; As for what is meant by the correlation with Article 13A of the KUP Law, namely that there is no criminal sanction if the negligence is first committed by the taxpayer, and 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) from the amount of underpaid tax determined through the issuance of an underpaid tax assessment letter.

The violation of Article 38 of the KUP Law, which is linked to Article 13A of the KUP Law, is related to criminal policies in the taxation sector based on ultimum remedium, where the imposition of criminal sanctions is a last resort to improve taxpayer compliance. For those who violate it for the first time because of their negligence, the imposition of administrative sanctions will be prioritized. In this case, the category is still in the form of or classified as an administrative violation whose sanctions are in the form of administrative sanctions. Criminal sanctions or criminal law enforcement processes are only imposed if there is a second negligence, the construction of administrative law violations turns into criminal law violations. From this context, there is a uniqueness to criminal law enforcement, which is intertwined with administrative law enforcement, which is doctrinally known as administrative penal law policy.

If it is related to a corporation as the perpetrator of a violation of Article 38 of the KUP Law, which is based on the negligence mentioned above, of course it can be questioned, namely when the corporation did it negligently. Referring to the explanation of Article 38 of the KUP Law, the negligence in question means being unintentional,

negligent, not careful, or not paying attention to his obligations so that such actions can cause losses to state revenues. In principle, corporate negligence stems from the negligence of its management, which results in (potential) losses in state revenue. If examined, the elements of a criminal act from Article 38 of the KUP Law are in the form of consequences, namely as long as they cause or can harm state income, the fault is no longer considered as long as it is done negligently, as it is not the first time as stipulated by Article 13 of the KUP Law.

Second, the type of violation intentionally commits a criminal act as regulated by Article 39 paragraph (1) of the KUP Law which reads as follows:

Any person who intentionally tries

1. He fails to register for a Taxpayer Identification Number or fails to report his business in order to be confirmed as a Taxable Entrepreneur.
2. misappropriation or unauthorized use of the Taxpayer Identification Number or Taxable Entrepreneur Confirmation;
3. d. submit an incorrect or incomplete notification letter and/or information;
4. refuse to carry out the examination as referred to in Article 29;
5. Books, records, or other documents that are false or falsified as if they were true, or do not represent the actual situation;
6. In Indonesia, not keeping books or records, not showing or lending books, records, or other documents;
7. Paragraph 11 of Article 28; or
8. withholding or collecting taxes that have been withheld.

shall face imprisonment for a minimum of 6 (six) months and a maximum of 6 (six) years, as well as a fine of at least 2 (two) times the amount of tax payable that is not or is underpaid, and a maximum of 4 (four) times the amount of tax payable that is not or is underpaid.

Apart from Article 39 paragraph (1) of the KUP Law above, it is included in the regulation of criminal acts in the field of taxation that can be carried out by corporations intentionally, namely violating Article 39A of the KUP Law, which reads as follows

Any person who willfully and intentionally:

1. tax invoices, proof of tax collection, proof of tax withholding, and/or proof of tax payment that are not based on actual transactions are issued and/or used; or
2. issued a tax invoice but has not been confirmed as a taxable entrepreneur.

shall be punished by imprisonment for a minimum of two (two) years and a maximum of six (six) years, as well as a fine of at least two (two) times the amount of tax in the tax invoice, proof of tax collection, evidence of withholding tax, and/or proof of tax payment; and a maximum of six (six) times the amount of tax in the tax invoice, proof of tax collection, evidence of withholding tax, and/or proof of tax payment.

Referring to the intentional element in the second type of tax crime mentioned above, of course there will be questions about when the corporation commits the crime on purpose. Doctrinally, there are several criteria regarding intentional criminal acts by corporations, including when the act is carried out by a management organ or agent

who has a working relationship with the corporation, acts on behalf of the corporation and is intended for the benefit (profit) of the corporation. In addition, the actions taken are still within the scope of a business or corporate environment as specified in the Articles of Association. If these criteria are met, then the criminal offense in the taxation sector committed by the management or its agent is intended for the benefit (profit) of the corporation. The treatment can be attributed to the corporation. Criminal acts committed by the corporation, including those involving taxation, can be charged to the corporation.

Third, the types of criminal acts in the taxation sector that can be carried out by corporations are in the form of obstruction of justice or obstructing the law enforcement process as regulated in Article 41B of the KUP Law, which reads: "Everyone who deliberately obstructs or complicates the investigation of criminal acts in the taxation sector shall be punished with imprisonment for a maximum of 3 (three) years and a fine of a maximum of Rp. 75,000,000.00 (seventy-five hundred million rupiah)". According to the elucidation of Article 41B KUP Law, a person who For example, preventing an investigator from conducting a search and/or concealing evidence, as referred to in this Article, is punishable by law.Like individual taxpayers, corporate (corporate) Taxpayers also have the potential to violate Article 41B of the KUP Law by obstructing or complicating the investigation of criminal acts in the taxation sector, both themselves (corporate or corporate) and the management who is the suspect.

Fourth, the types of criminal acts committed by corporations in the position of participating in the occurrence of criminal acts in the taxation sector as regulated in Article 43 of the KUP Law, which reads as follows:

1. The provisions referred to in Articles 39 and 39A apply to representatives, proxies, taxpayers' employees, or other parties who are ordered to commit, participate in committing, recommend, or assist in committing criminal acts in the field of taxation.
2. The provisions of Articles 41A and 41B also apply to those who order, recommend, or assist in the commission of criminal acts in the taxation sector.

Like individuals, corporations can also participate in or assist in the occurrence of criminal acts in the taxation sector by ordering them to do, participate in doing, recommending, or help to commit. Corporations can play a role in such participation or assistance in two possibilities, namely with management, agents, or third parties who commit criminal acts in the field of taxation. Likewise, if it is related to a corporation that has branches, such as a parent company, it gives advice to its subsidiary to commit a crime in the taxation sector. In this context, in addition to the subsidiary company being prosecuted as the (main) perpetrator, the parent corporation can also be prosecuted for participating in the occurrence of the tax crime.

The four types of crime in the field of taxation that can be carried out by the corporation mentioned above in law enforcement practice must be strengthened by the use of the doctrines of corporate criminal responsibility in order to clarify the context of the error in the form of intentional or negligent neglect, which is an element of the offense. Without bringing up the doctrine of corporate criminal responsibility, it seems like law enforcement and judges will have a hard time catching corporations that break the Criminal Provisions in the KUP Law or do illegal things in the taxation sector. As

everyone knows, the doctrine has been recognized or included as a source of law that law enforcers and judges can use.

3.3 Corporate Accountability as Perpetrators of Criminal Acts in the Taxation Sector

In general, the legislation that stipulates corporations as the subject of criminal acts does not have specific provisions regarding the doctrine of corporate criminal liability which it adheres to. For example, in the Anti-Corruption Law and the Anti Money Laundering Law, there is no explanation of the article or paragraph in the body which explicitly states that certain types of criminal acts committed by corporations adhere to the doctrine of criminal responsibility. So far, there are only legal interpretations from judges and experts that explain one or more doctrines of corporate criminal liability in certain situations. These interpretations can be used by referring to the law's offense regulation.

In addition to the general arrangements above, there is also a law that confirms the use of a corporate criminal liability doctrine in the explanation of an article or paragraph in the body of the law. As in the explanation of Article 88 of Law Number 32 of 2009 concerning Environmental Protection and Management (UU PPLH), which states that: "*What is meant by" absolute responsibility "" or strict liability "is that the element of error does not need to be proven by the plaintiff as the or as is for payment. compensation". In the explanation of this provision, it is made clear that strict liability means that the doctrine must be formally adopted or used by law enforcers, judges, or related parties for it to become the basis for filing corporate liability in environmental cases.*

The KUP Law belongs to the general category above, which does not explicitly specify the doctrine of corporate responsibility that can be used as a basis for prosecuting corporations as perpetrators of criminal acts in the field of taxation. In this regard, it is law enforcers and judges who need to interpret and determine which corporate criminal liability doctrine is relevant to be used as the basis for prosecuting and imposing liability for corporate crimes in the taxation sector. In practice, there is an Asian Agri (AA) case in which the Cassation panel of judges, in their legal consideration of decision No. 2239 K/PID.SUS/2012 dated December 18, 2012, states the use of vicarious liability in imposing corporate criminal liability. Among the legal considerations of the panel of judges of cassation are as follows:

that the defendant's actions were

Based on the business interests of the 14 companies he worked for to avoid paying Income Tax and Corporate Tax, which they should have, it would be fair to say that he was guilty.

The legal considerations in the decision of the AA case above contain legal findings because they seek to establish a new legal rule, namely implementing corporate criminal liability based on vicarious liability. Basically, the vicarious liability doctrine comes from the respondent superior doctrine, which holds that corporations can only act through their human agents, so if a criminal act occurs in the implementation of the agency function, the corporation is responsible. The prerequisite for such corporate criminal liability, namely the criminal offense of the agent, must be in accordance with the scope of work assigned to him by the corporation so that the individual faults of the agent are included

in the context of the liability of the corporation. In addition, to put criminal liability on the corporation functionally, it must be proved that the agent's actions were designed, at least in part, to benefit the corporation.

As previously explained, the KUP Law does not explicitly mention the doctrine of corporate criminal responsibility in the context of criminalizing corporations that are perpetrators of tax crimes. Through the use of the vicarious liability doctrine, the panel of judges distributes the burden of criminal liability from Suwir Laut (an individual actor) who is an agent in AAG's tax management to the AAG corporation. It is considered that the mens rea of the individual SL in the tax crime is applied "simultaneously" to the AAG corporation as well, because, after all, the position of the AAG corporation as the beneficial owner of the results of the SL crime is therefore relevant to be held accountable as well.

In the context of legal considerations, the use of vicarious liability in the decision can be categorized as a progressive legal discovery. However, in the case of imposing a crime against AAG, who incidentally was not made a defendant but was also sentenced to a criminal sentence in a tax crime case in which SL was the defendant, there was a polemic and controversy. This is because it is contrary to the principle of due process of law that if the corporation, namely AAG, wants to be held accountable and sentenced to a sentence, it must be preceded by the determination of AAG as a suspect and a defendant so that they get the opportunity or space to defend themselves. In fact, the panel of judges in their legal consideration of their decision has also acknowledged that the corporation (idea) without being made a defendant but having a sentence decided will be understood as an "inappropriate" thing, but because of the urge to accommodate and realize a sense of justice, it was broken through.

The issue of imposing corporate criminal liability simultaneously with management personnel or their agents in the above-mentioned tax crime cases correlates with the incomplete regulation of the corporate criminal liability model in the KUP Law. As in the doctrine, there are 3 (three) models of corporate criminal responsibility including

1. corporation as the perpetrator of the crime, the responsible management;
2. corporations as criminal perpetrators, corporations that are accountable; and
3. corporations as perpetrators of criminal acts, responsible management and corporations.

Normatively, the KUP Law does not specify the model of corporate criminal liability, whether the management or the corporation is alternatively responsible, or if the management and the corporation are jointly responsible. In contrast to other laws, such as the Corruption Law, which stipulates that if a criminal act of corruption is committed by or on behalf of a corporation, prosecution and criminal prosecution can be carried out against the corporation and/or its management. However, the Corruption Law does not explain in detail the criteria for the application of corporate criminal liability if the corporation is alternatively only or with the management in combination. In practice, the judges of the Anti-Corruption Court have different views (multiple interpretations) in understanding and implementing the combined model of corporate criminal responsibility and its management. Based on the comparison of practice in the corruption case, it will be less surprising if the corporate sentencing decisions in tax crime cases.

They also experience problems and polemics because the provisions in the law itself are incomplete. In addition to the AAG case, which caused a polemic from the aspect of implementing its corporate criminal liability model, there was a case of PT. Gemilang Sukses Garmindo (PT. GSG) which has been sentenced by the West Jakarta District Court decision no. 334/Pid.Sus/2020/PN Jkrt.Brt dated July 8, 2020, which has permanent legal force (in kracht). Interestingly, in the case of PT, from the beginning, GSG was made a suspect and a defendant and was prosecuted separately or not combined with his management until he was sentenced to sentence. In their legal considerations, the panel of judges first explained that corporations are the subjects of criminal acts in the field of taxation, which are included in the meaning of "everyone." Although the KUP Law does not explicitly state that "everyone" is an individual and an entity (corporation then an attempt was made to interpret the law by the pa el of judges to justify the prosecution of PT. The GSG is relevant and legal.

As for proving the elements of the crime, the panel of judges in the decision of the West Jakarta District Court No. 334/Pid.Sus/2020/PN Jkrt.Brt dated July 8, 2020, is of the opinion that The criminal acts committed by the perpetrators are related to Article 39A letter a of the KUP Law, namely using tax invoices, proof of tax collection, proof of tax deductions, and/or proof of tax payment which is not based on actual transactions. This article does not require any loss to state revenue, so even if there is no loss to state revenue, this act can still be punished because it has fulfilled the elements of the nature of an unlawful act as contained in the offense. The article and the criminal event have occurred, namely the government lost income from VAT in the amount of the value stated in the Tax Invoice, which is not based on the actual transaction, so that the value of the loss in state revenue is in accordance with the amount of VAT stated in the Tax Invoice, which is not based on the actual transaction. the. Where to get the amount of VAT listed in the Tax Invoice that is not based on the actual transaction, the evidence that can be used are: the invalid tax invoice that has been reported and calculated in the VAT Period SPT by the user; and/or the periodic VAT SPT that has been reported by the taxpayer or the periodic VAT SPT that has been administered in the PKPM application or the Directorate General of Tax Information System (SIDJP).

The panel of judges in the decision of the West Jakarta District Court No.334/Pid.Sus/2020/PN Jkrt.Brt dated July 8, 2020, decided by declaring that the corporate defendant PT. SGS has been legally and convincingly proven guilty of committing a tax crime using tax invoices, proof of tax collection, proof of tax withholding, and/or proof of tax payment that is not based on actual transactions, as regulated and threatened in Article 39 A letter a of the KUP Law. Therefore, the panel of judges imposed a fine against the corporate defendant PT. GSG of 3 × Rp.9.981.505.876,- = 29.944.517.628,- (twenty-nine billion nine hundred forty-four million five hundred seventeen thousand six hundred and twenty-eight rupiahs). If the defendant PT. GSG does not pay a fine within 1 (one) month after the Court's decision has permanent legal force, then its property can be confiscated by the prosecutor and then auctioned off to pay the fine.

With the decision of the Supreme Court No. 2239 K/PID.SUS/2012 dated December 18, 2012 in the AAG case and the decision of the West Jakarta District Court No. 334/Pid.Sus/2020/PN Jkrt.Brt dated July 8, 2020 in the case of PT. SGS, both of which have permanent legal force (in kracht), they can then be used as a reference for law

enforcement officials and judges who handle corporate cases involving criminal acts in the taxation sector. Apart from the controversy over the decision in the AAG case related to the breach of the due process of law, in the case of the application of vicarious liability in distributing agent responsibilities with corporations, it should be studied and considered as knowledge material for prosecuting or adjudicating corporate cases involving criminal acts in the field of taxation. Likewise, the arguments in the PT. SGS related to the interpretation of corporations (entities) into (including) the meaning of "everyone", so that being qualified as the subject of a criminal offence in the taxation sector should also be used as a reference.

4 Conclusion and Suggestion

There is a problem in the regulation of the KUP Law, which is not clear in recognizing the subject of corporate law, causing multiple interpretations. Including in terms of what types of tax crimes in the KUP Law that can be carried out by corporations also creates problems of legal interpretation. Likewise, the model of corporate criminal responsibility, either alone or with its management, is also not regulated by the KUP Law. It is not surprising that in the prosecution and as a result, it creates controversy, as in Decision No. 2239 K/PID.SUS/2012, where AAG, who was not named as a defendant, was also convicted and simultaneously held accountable with his management, thus violating the due process of law principle.

In order to avoid any deviation from the due process of law principle in the prosecution and imposition of corporate criminal responsibility in the future, it is necessary to revise the KUP Law. Among the regulatory directions in the revision of the KUP Law are establishing corporations as legal subjects in the General Provisions, determining the criteria and types of corporate criminal acts in the taxation sector, and regulating the model of corporate criminal liability both individually and with management. In connection with the revision process of the KUP Law, which cannot be carried out in a short time, SEMA No. 4 of 2021 can be used as a guide for judges in handling corporate cases that are perpetrators of tax crimes in Indonesia.

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