



The Process of Tax Criminal Actions in the Semarang State Court

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Abstract. The process of prosecuting tax crimes is regulated by Law No. 6 of 1983 concerning General Provisions and Tax Procedures as amended by Law no. 16 of 2009 (KUP Law) in conjunction with Law Number 11 of 2020 concerning Job Creation. Criminal threats in the field of taxation are basically a final measure (ultimum remedium) in an effort to improve taxpayer compliance in relation to tax revenue targets. Tax law has coercive power in the form of imprisonment and fines so that people obey it. This study aims to analyze the process of prosecuting tax crimes at the Semarang District Court, analyze the implementation of asset tracing belonging to the defendants of tax crimes and the implementation of tax crimes prosecutions at the Semarang District Court, analyze the role or authority of the Public Prosecutor in prosecuting criminal acts. Taxes and analyze obstacles and solutions in prosecuting tax crimes at the Semarang District Court. The research method used is the sociological juridical method. The research specifications that the author uses are descriptive analysis, data types: primary data and secondary data, data collection methods with field study methods and literature studies. The data analysis method used was qualitative analysis. The problem of this research is analyzed by using the theory of combined punishment, the theory of the operation of the legal system or the effectiveness of the law and the theory of negative evidence. From the results of the study, it can be concluded: 1. The process of prosecuting tax crimes at the Semarang District Court there are 2 processes, namely Pre-Prosecution and Prosecution, 2. Asset tracking is very difficult because the defendants have fallen into poverty and no longer have property, the implementation of prosecution in the Court Semarang State in the period 2019 to 2020 there are 4 cases of tax crimes, 3. The public prosecutor has the role of pre-prosecution and prosecution of tax crimes and as executor or implementer of judge's decisions with permanent legal force, 4. Defendants or convicted of tax crimes do not carry out their obligations make a payment of a criminal fine after being found guilty and has permanent legal force.

Keywords: Public Prosecutor · prosecution · execution

1 Introduction

Tax collection reduces individual income/wealth, but on the contrary is the income of the community which is then returned to the community, through routine expenditures and development expenditures, which ultimately returns to the whole society which benefits both the people, both those who pay taxes and those who do not.¹

Taxes are dues for the participation of all members of society to the state based on their respective capacities (capacity), which can be forced to finance government and development activities and payment of taxes does not receive rewards/contributions that can be directly related to the taxes paid.² That the philosophical reason why taxes are needed is for the welfare and prosperity of the people. The legal basis for taxes is regulated in Article 23A of the 1945 Constitution which reads “Taxes and other levies that are coercive for state needs are regulated by Law.”³

The consequence of this article is that the state has an obligation to make legal rules in the form of tax regulations. Legal rules in the field of taxation made by the state based on procedures established by the 1945 Constitution, which eventually gave birth to the national tax law.⁴

Tax law actually enters the realm of administrative law, but so that the tax law has coercive power and is obeyed by the legal subjects it regulates, the statutory regulations are subject to criminal sanctions (penal sanction) in the form of fines or imprisonment. Seen from the regulation of various norms governing criminal acts in tax laws and regulations with the aim that tax laws have coercive power so that people obey them.⁵

Problems of non-compliance by taxpayers can lead to tax disputes and or tax penalties. Tax disputes are disputes between tax payments (central/regional tax payers, customs payers and excise payers) and officials who determine taxes because of a decision letter from the tax official. Therefore the settlement of tax disputes is included in the state administration environment. As for tax crime, it is the act of every person who in carrying out the tax law causes losses to the state (tax/customs/regional tax) which is threatened with criminal penalties.⁶ The state has the authority to determine, make regulations, prosecute and punish someone who violates the regulations that have been made.⁷ Law enforcement as the basis for upholding the rule of law, not only requires a commitment to obedience by all components of the nation to the law, but also requires law enforcement officials to uphold and guarantee legal certainty.⁸

¹ Erly Suandy, 2011, *Hukum Pajak*, Salemba Empat, Jakarta, Page.7.

² Diaz Priantara, 2010, *Pemeriksaan dan Penyidikan Pajak*, Djambatan, Jakarta, Page.1.

³ Pasal 23A Undang-Undang Dasar 1945.

⁴ Adrian Sutedi, 2012, *Hukum Pajak dan Restribusi Daerah*, Ghalia Indonesia, Bogor, Page.13.

⁵ Timbo Mangaranap Sirait, 2019, *Hukum Pidana Pajak Indonesia (Materiil dan Formil)*, Depublish, Yogyakarta, Page 15.

⁶ Bustamar Ayza, 2018, *Hukum Pajak Indonesia, Prenamedia Group (Divisi Kencana)*, Jakarta, Page. 210.

⁷ Salman Luthan, 2014, *Kebijakan Kriminalisasi di Bidang Keuangan*, FH UII Press, Yogyakarta, Page.37

⁸ Marwan Effendy, *Pemberantasan Korupsi dan Good Governance*, Cetakan Pertama, Timpani Publishing, Jakarta, 2010, Page. 39.

2 Research Methods

The approach method used in this research is the juridical empirical approach, which is research that examines or traces people's attitudes and attitudes towards the applicable law.⁹ Sources of data used are primary and secondary data. Primary data refers to data or facts and legal cases obtained directly through research in the field, including information from respondents related to the object of research and practices that can be seen and related to the object of research.¹⁰

3 Results and Discussion

In the first stage of handing over, the investigator literally and physically delivers the case files to the public prosecutor and the public prosecutor actually and physically receives them from the hands of the investigator. However, even though there has been a real and physical surrender to the public prosecutor, the law does not yet consider the investigation has been completed. In other words, the actual and physical submission of the case files is not yet a certainty for the completion of the investigative examination, because it is very likely that the submitted investigation results will be returned by the public prosecutor to the investigator, with instructions for the investigator to carry out additional investigative examinations.

Therefore, as long as it is still possible to return the case file to the investigator, the results of the investigative examination are still considered incomplete and the investigative examination has not reached the point of completion. That is why the submission of the first phase of case files is called pre-prosecution. So the submission of the first phase of the case file can no longer be interpreted as the realization of the level of prosecution.¹¹

According to the Big Indonesian Dictionary, Role is "a set of behavior that is expected to be owned by a person who is located in society."

Role according to Soerjono Soekanto is a dynamic aspect of position (status).

In Law no. 8 of 1981 concerning Criminal Procedure Law, Article 1 paragraph 6a states that: "A prosecutor is an official authorized by this law to act as a public prosecutor and carry out court decisions that have permanent legal force".

Furthermore, in Article 1 paragraph 6b it also explains the meaning of the Public Prosecutor, namely "Public Prosecutor is a Prosecutor who is authorized by this law to prosecute and carry out the judge's decision."

Prosecutors are officials authorized by this law to act as public prosecutors and to carry out court decisions that have permanent legal force (UU No. 16 of 2004 concerning the Attorney General of the Republic of Indonesia). Furthermore, in Law Number 16

⁹ Nur Indah Setyoningrum and Anis Mashdurohatun, Restorative Justice in Children's Criminal Jurisdiction System through Diversion, *Law Development Journal*, Volume 2 Issue 4, December 2020, Page 573–581

¹⁰ Agus Irawan Yustisianto, Sri Endah Wahyuningsih, Anis Mashdurohatun, Reconstruction of Legal Protection Regulations against Victims of Crime of Household Violence Based on Justice Value, *Scholars International Journal of Law, Crime and Justice*, Vol 5 No. 12, Page 513–519

¹¹ M. Yahya Harahap, 2002, *Pembahasan Permasalahan Dan Penerapan KUHAP Penyidikan dan Penuntutan*, Edisi Kedua, Sinar Grafika, Jakarta, Page. 358

of 2004 it is also explained that the Prosecutor's office is a government agency that exercises powers in the field of prosecution. Provisions regarding the position of the Prosecutor's Office are regulated in Article 2 of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, in full as follows:

- 1) The Attorney General's Office of the Republic of Indonesia, hereinafter referred to as the Prosecutor's Office, is a government agency that exercises state power in the field of prosecution and other authorities based on a law.¹²
- 2) State power as referred to in paragraph (1) is exercised independently.
- 3) The Attorney General's Office as referred to in paragraph (1) is one and inseparable.

Based on the provisions of this Law, the position of the Public Prosecutor under the auspices of the prosecutor's institution in criminal justice is very central, because it is a bridge that connects the investigation stage with the examination stage in court hearings. Based on the legal doctrine, a principle applies that the public prosecutor has a monopoly on prosecution, meaning that everyone can be tried if there is a demand from the public prosecutor, namely the prosecutor's office, because only the public prosecutor has the authority to bring a suspected criminal offender to trial.

It is very clear that the Prosecutor is a legal profession whose function is to prosecute and carry out court decisions (execution) that have permanent legal force (*inkracht van gewijsde*). In this case, this function is realized within the scope of the General Court. The authority of the profession in carrying out its functions is in the capacity of representing the state (the only public institution), in accordance with the law within the framework of the operationalization of criminal procedural law as one of the main stakeholders in the concept of an integrated justice system.

The Process of Prosecuting Tax Crimes at the Semarang District Court, viz:

1. The Process of Prosecuting Tax Crimes begins with the Directorate General (Dirjen) of Taxes, the Regional Office of the Directorate General of Taxes, Central Java I in Semarang, conducts a Preliminary Evidence Audit, namely an examination conducted to obtain initial evidence regarding the alleged occurrence of a criminal offense in the field of taxation against the Taxpayer. Tax. Furthermore, the Taxpayer is summoned to clarify the Preliminary Evidence Examination, if the Taxpayer voluntarily reveals the untruth of his actions accompanied by payment of underpayment of the actual amount of tax owed along with administrative sanctions in the form of a fine of 150% (one hundred and fifty percent) of the amount of underpaid tax. Paid, then an investigation will not be carried out by the Directorate General of Taxes (Article 8 paragraph 3 Law. 6/1983 Jo UU.16/2009 Concerning General Provisions and Tax Procedures) that the 150% administrative sanction provision has been changed to only 100% based on Article 8 paragraph 3a Law No. 11 of 2020 Concerning Job Creation;
2. If the Director General of Taxes conducts Preliminary Evidence Examination of the Taxpayer and there is no attempt to correct the report and settlement of the Taxpayer, then the Preliminary Evidence will be submitted to certain Civil Servant Investigators (PPNS) of the Director General of Taxes to carry out a Criminal Investigation in the field of taxation;

¹² Marwan Effendy, 2007, *Kejaksaan Republik Indonesia, Posisi dan Fungsinya dari Perspektif Hukum*, Ghalia Indonesia, Jakarta, Page.127

3. Investigation of criminal acts in the field of taxation is a series of actions carried out by investigators to seek and collect evidence with which evidence makes clear the criminal acts in the field of taxation that have occurred and find the suspects;
4. Investigators are certain civil servant officials within the Directorate General of Taxation who are given special authority as investigators to conduct investigations of criminal acts in the field of taxation in accordance with the provisions of laws and regulations;
5. Investigation of criminal acts in the field of taxation can only be carried out by certain Civil Servants within the Directorate General of Taxes who are given special authority as investigators of criminal acts in the field of taxation;

The authority of the Tax Investigator is:¹³

- a. Receiving, searching, collecting and examining information or reports relating to criminal acts in the field of taxation so that the information or reports become more complete and clear;
 - b. Examining, searching, and gathering information about individuals or entities regarding the truth of actions committed in connection with criminal acts in the field of taxation;
 - c. Request information and evidence from individuals or entities in connection with criminal acts in the field of taxation;
 - d. Examining books, records and other documents relating to criminal acts in the field of taxation;
 - e. Carry out searches to obtain evidence of bookkeeping, records and other documents, as well as confiscate said evidence;
 - f. Request the assistance of experts in the framework of carrying out the duties of investigating criminal acts in the field of taxation;
 - g. Order to stop and/or prohibit someone from leaving the room or place while the inspection is in progress and check the identity of the person, object, and/or document being carried;
 - h. Take a picture of someone who is related to criminal acts in the field of taxation;
 - i. Summon people to hear their statements and be examined as suspects or witnesses;
 - j. Stop the investigation; and/or
 - k. Take other actions necessary for the smooth investigation of criminal acts in the field of taxation according to the provisions of laws and regulations;
6. Investigators at the Directorate of Taxes Regional Office of the Directorate General of Taxes of Central Java I in Semarang, notify the start of the investigation and submit the results of their investigations to the Public Prosecutor through Investigators from the Indonesian National Police as the supervisory coordinator (Korwas) in accordance with the Criminal Procedure Code (KUHAP);
 7. The Notice of Commencement of Investigation (SPDP) was received by the Central Java High Prosecutor's Office and then issued a Warrant for the Appointment of the Public Prosecutor to Follow the Development of the Investigation of Criminal Cases (P.16) by the Head of the Central Java High Prosecutor's Office with the task of the Public Prosecutor to monitor the progress of the investigation;

¹³ Pasal 44 ayat (2) KUHAP.

8. Tax investigators carry out investigations of tax crimes, in the event that the investigator has finished carrying out the investigation, the investigator is obliged to immediately submit the case files to the Public Prosecutor;
9. The public prosecutor receives the case dossier from the tax investigator, in the event that the public prosecutor is of the opinion that the results of the investigation are still incomplete, the public prosecutor immediately returns the case dossier to the investigator accompanied by instructions to complete it (pre-prosecution);
10. The Public Prosecutor after receiving the results of the investigation from the investigator immediately studies and examines them and within 7 days is obliged to notify the investigator whether the results of the investigation are complete or not;
11. In the event that the Public Prosecutor returns the results of an investigation to be completed, the investigator must immediately carry out additional investigations in accordance with the instructions of the Public Prosecutor;
12. In the event that the results of the investigation are incomplete, the Public Prosecutor returns the case dossier to the investigator accompanied by instructions on what must be done to complete it (P-18 and P-19) and within 14 days from the date of receipt of the dossier, the investigator must have submitted the case dossier back it to the Public Prosecutor;
13. Then the incomplete case file is returned to the PPNS Investigator of the Director General of Taxes at the Regional Office of the Directorate General of Taxes of Central Java I in Semarang to be completed;
14. That tax case files often go back and forth between investigators of the Civil Service Officer (PPNS) Tax Regional Office of the Directorate General of Taxes of Central Java I in Semarang and the Public Prosecutor of the High Court of Central Java because the Investigators of Civil Service Officers (PPNS) Taxes cannot complete or comply with the instructions given by the Public Prosecutor. This back and forth of tax case files is a dilemma in handling tax crimes. On the one hand, Tax Civil Servant Investigators (PPNS) feel that the Public Prosecutor provides instructions that are difficult to fulfill, while on the other hand, the Public Prosecutor feels that Tax Civil Servant Investigators (PPNS) are not optimal in completing the instructions given so that this often happens. Back and forth tax cases whose resolution is unclear;
15. After the case file is completed by the PPNS Investigator, the Director General of Taxes, then the case file is returned to the Public Prosecutor through the Central Java Police as the supervisory coordinator (Korwas);
16. After the Public Prosecutor receives or receives back the complete investigation results from the investigator, the Public Prosecutor will issue (P-21), he will immediately determine whether the case file meets the requirements to be transferred to court or not;
17. In the interests of state revenue, at the request of the Minister of Finance, the Attorney General can stop the investigation of criminal acts in the field of taxation within a maximum period of 6 months from the date of the request letter (Article 44B paragraph (1) KUP);
18. 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 was not paid or underpaid or which should not have been returned and added with administrative sanctions in the form of a fine of 4 (four) times the amount of

tax that was not paid or underpaid, or which should not have been returned (Article 44B paragraph (2) KUP), that the provisions of Article 44B paragraph (2) KUP have been amended by Article 44B paragraph (2) Job Creation Law No.11 of 2020 which reads: Termination of 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 was not paid or underpaid or which should not have been returned and added with administrative sanctions in the form of a fine of 3 (three) times the amount of tax that was not or underpaid, or which should not be returned; Further provisions regarding requests for termination of criminal investigations in the field of taxation as referred to above are regulated by or based on a Regulation of the Minister of Finance;

19. Then the Head of the Semarang District Prosecutor's Office issued P-16A, namely the Appointment Letter of the Public Prosecutor for the Settlement of Criminal Cases, then the tax investigator carried out Phase II Submission, namely the submission of suspects and evidence to the Public Prosecutor who had been appointed by the Head of the Semarang District Prosecutor's Office located in the Semarang District Attorney's Office. Semarang State Prosecutor's Office Special Crimes;
20. The public prosecutor draws up an indictment based on the investigative dossier. The formulation of an indictment that deviates from the minutes of the investigative examination is a false and incorrect indictment. If the defendant finds the formulation of an indictment that deviates from the results of the investigative examination, the defendant can submit an objection/exception to the indictment in question;
21. The Public Prosecutor then delegates the tax case to the Semarang District Court which is authorized to examine and decide cases by a panel of judges (Prosecution);
22. The public prosecutor requested that the court set a trial date to hear the case and issue summons to appear before the defendant and the witnesses;
23. Derivatives of the case delegation letter along with the indictment are submitted to the suspect or his attorney or legal adviser and investigator at the same time as the submission of the case delegation letter to the Semarang District Court;
24. The trial day is determined by the judge concerned, then the public prosecutor sends a summons to the defendant to attend the trial legally, including the date, day and time the trial begins;
25. The chief judge of the panel presided over the examination of the trial and carried out orally using the Indonesian language then opened the session and declared the court session open to the public, ordered the defendant to be called in, and ordered to sit in the space provided, then the judge asked the identity of the defendant;
26. If the identity is confirmed by the defendant, then the public prosecutor is invited to read out the indictment and after it is clear that the indictment has been read out by the public prosecutor, the defendant or his legal adviser can submit objections or exceptions to the indictment read out by the public prosecutor;
27. If the defendant or his legal adviser does not file an objection or exception, then the examination is continued by hearing the testimony of the witness from the Director General of Taxes who finds indications of irregularities committed by the taxpayer in the form of Preliminary Evidence of a Tax Crime;

28. Furthermore, an examination of other witnesses is carried out, before giving testimony the witness must take an oath or make a promise, after that show evidence in front of the trial;
29. The public prosecutor and legal advisers through the intermediary of the head judge of the panel are given the opportunity to ask questions to witnesses and the accused after the judge has finished asking questions;
30. The public prosecutor in submitting questions to witnesses, experts and the accused is in the context of finding at least 2 valid pieces of evidence so that the judge gains confidence that the crime charged has actually occurred and it is the defendant who is guilty of committing it;
31. After the examination of witnesses, experts, letters, instructions and the accused was completed, the public prosecutor filed criminal charges
32. The criminal charge contains a description of the facts and other evidence before the court on the charges filed, linking the evidence that has been proven so that it describes the crime committed by the defendant. Prove that the elements of the crime committed by the defendant have been fulfilled by the evidence presented at trial, so that the defendant can be found guilty. Criminal charges filed by the Public Prosecutor must be in accordance with the sense of justice in society that originates from Belief in One Almighty God.
33. Furthermore, the defendant and legal adviser have the right to submit a plea or defense of the prosecutor's demands.
34. The prosecutor submitted a response to the plea or defense of the legal advisers and the accused (replik)
35. The legal advisors and the defendant submitted their responses to the replica from the public prosecutor (duplicate).
36. Furthermore, the court's decision, namely the judge's statement uttered in an open court session, which can be in the form of punishment or acquittal or release from all lawsuits in matters and according to the manner regulated in this law (Article 1 paragraph 11 UU.8 of 1981)
37. If the case has permanent legal force, the Prosecutor will carry out the execution (implement the judge's decision).

4 Conclusion

The conclusions that can be drawn are based on the discussion of the previous chapter, namely: The Problems That Existed in PTSL Services During the Covid-19 Pandemic at the Pekalongan City Land Office, including: The factor of social distancing so that it is not permissible to carry out measurements as before the pandemic, thus the progress of its implementation is hampered, while there are still PTSL completion targets that must be met, The budget factor for the ministry of ATR/BPN is saved for the needs of handling the pandemic, so that the target is reduced/the unit cost is lowered/even there is work in the implementation of PTSL that cannot be paid for. The time period for the announcement of physical data and juridical data differs between Government Regulations and Ministerial Regulations concerning PTSL, Law enforcement facilities factor, there is an invalid resident e-KTP that has been brought to the sub-district office but it is still not recorded in the KKP application so the efforts made are to coordinate

with the Population and Civil Registry Office of Pekalongan City, the factor of low public interest gathering to participate in the implementation of PTSL activities from the beginning to the issuance of certificates in 2020 it was recorded that there were 504 certificates printed, 504 certificate signatures, and G. Scan BT PTSL 2020.

Implementation of PTSL Services During the Covid-19 Pandemic at the Pekalongan City Land Office, the results were Certificate printing: 504 fields, Certificate Signatures: 504 fields, and G. Scan BT PTSL 2020: 504 fields. The implementation of the Complete Systematic Land Registration (PTSL) carried out at the Pekalongan City BPN Office is a land registration activity for the first time that is carried out simultaneously which includes all land registration objects that have not been registered in one village/kelurahan area or other names that are at the same level, and also includes mapping of all registered land registration objects in order to collect and provide complete information about the land parcels. Therefore, the implementation of this policy has been able to translate regulations into action even though the operational and implementation process experienced many problems related to the Covid-19 Pandemic. However, the BPN of Pekalongan City, even during the Covid-19 Pandemic, was still able to carry out PTSL properly.

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