



Application of Gijzeling (Hostage) in Efforts to Increase Taxpayer Compliance Based on Legislation

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Abstract. Particularly in Indonesia, tax revenue serves as the state's primary source of income, therefore the government expects the public to comply with their obligations as taxpayers so that national development runs evenly and without obstacles. But in reality there are still many people who are negligent of their obligations, so strict sanctions are needed for these violations. In taxation, there is known as Gijzeling where this sanction is imposed on taxpayers who are proven not to fulfill their obligations. This study raises two issues: how to regulate Gijzeling sanctions in positive law and how to apply Gijzeling witnesses in an effort to increase taxpayer awareness. This research uses normative law method. The results of this study are that gijzeling sanctions are governed by Amendments Law Number 19 of 2000 to Law Number 1997 concerning Collection of Taxes by Forced Letter and also on the basis of Regarding the Implementation of Forced Warrant Billing and Immediate and Simultaneous Billing Procedures, the Minister of Finance issued Regulation Number 24/Pmk.03/2008. The application of gijzeling increases the compliance of taxpayers because they immediately pay their tax debts, besides that it is expected to provide a deterrent effect for negligent taxpayers and other tax bearers so they don't take part in this act.

Keywords: Gijzeling Tax, Tax payer, Deterrent Effect

1 Introduction

According to the 1945 Constitution of the Republic of Indonesia (1945 Constitution), the objectives of the Indonesian state are to safeguard the entire Indonesian country and all of Indonesia's assets, as well as to advance public welfare, educate the populace, and take part in enforcing international law. According to what is written in the 1945 Constitution, which is founded on Pancasila, the foundational principle of the Indonesian state, and the 1945 Constitution, the Indonesian country has a clear objective, namely to achieve justice for all Indonesians. These finances often originate from taxes on natural resources and human resources, but as natural resources can deplete over time, tax revenue is the main source of funding for these projects.

The majority of the State's revenue comes from taxes, especially Indonesia because taxes play a role of 75% thus the government expects compliance from each taxpayer (taxpayer) on the implementation of their taxation so that this can assist the govern-

ment in carrying out national development which of course requires no small amount of money, therefore the government is also expected to be able to provide guidance related to the functions and roles of taxes which are then used for allocations for national development that are evenly distributed throughout the territory of the country so as to realize one of the goals of the Republic of Indonesia. (Arnetta Anggrainie Santoso and Tundjung Herning Sitabuana, 2021: 681).

Law No. 16 of 2009 Concerning General Provisions and Procedures for taxes does not explicitly define taxes, although it does state in Article 1 Number 2 that "taxpayers are individuals or businesses, including taxpayers, tax collectors and tax collectors who are subject to the tax laws and regulations and who have tax-related duties and privileges. In addition, domestic revenue in Book II of Financial Notes and the 2016 State Revenue and Expenditure Budget includes of tax receipts such as (Bustamar Aya, 2018: 30)

1. Income from Income Tax (PPH)
2. Value-added tax and sales tax collected on expensive items (PPN and PPh BM)
3. Revenue from Land and Building Tax (PBB)
4. Revenue from Excise
5. Income from Other Taxes
6. Revenue from Import Duty, and
7. Revenue from Export Duty

Thus the meaning of "taxation" in tax legislation means the provisions that apply to several types of taxes such as general provisions and tax procedures. (Ibid:30)

Furthermore, regarding the characteristics of the tax collection system, it recognizes three principles, namely as follows:

1. As opposed to this, tax collection is a manifestation of the duties and involvement of taxpayers in carrying out the direct and shared tax obligations necessary for state funding and national development.
2. While the Taxpayer Community as a whole is responsible for the obligation to pay taxes as a reflection of the obligations in the field of taxation. Based on the provisions established in the tax laws and regulations, the government, in this case the tax authorities (Fiskus), is required to give direction, research, and monitoring of the implementation of taxpayers' tax duties.
3. In order for the implementation of tax administration to be done in a way that members of the Taxpayer community can understand, members of the Taxpayer community are trusted with the ability to carry out national mutual cooperation through a system of calculating, paying, and self-reporting the tax owed (Self Assessment System).

Regarding the tax collection system, the Self Assessment System became known after the tax reform. Prior to this reform, the Official Assessment System was the name of the tax collection system in which tax collection did not receive any return on performance, did not receive reciprocal services or without the receipt of a specific benefit of equal value. And after undergoing reform the tax collection system was changed to a Self Assessment System where the implementation of tax obligations was fully delegated to taxpayers accompanied by supervision, guidance, research and services carried out by tax agencies.

With the transfer of the taxation system, nine meanings are contained from the legal-formal tax (Ibid: 28), namely: First, contribution, is a fee or donation that describes the relationship of the people who pay taxes to the state. The state calls it a "levy" while for taxpayers it is referred to as a "contribution" because the state needs funds to maintain and perform the obligations and responsibilities of the state. In the self-assessment system based on voluntary compliance, the element of coercion means that the voluntary philosophy is limited to one time in the form of calculating it while paying it off is an obligation. the holder of tax jurisdiction, the Fourth is owed by an individual or entity. The meaning of being owed is not because of a loan as in civil law but the money arises based on the law, Fifth is coercive, Sixth is based on the law, Seventh does not receive direct compensation, Eighth For State Purposes means tax revenue is only for spending and spending purposes the state so that it can carry out the functions of government and development, in order to achieve the ninth goal of the Greatest Prosperity of the People, taxes must be used as a source of funding from, by, and for the people in line with state values.

Of course, all efforts to realize the ideals of the State cannot run smoothly, as is the case with actions in general which can become a dispute in civil or criminal acts, activities in terms of taxation can also end in a dispute. Tax disputes are disputes that arise in the area of taxation between taxpayers or tax bearers and authorized officials as a result of decisions that can be filed an appeal or lawsuit to the Tax Court based on taxation laws and regulations, including lawsuits on the implementation of billing based on the Law on Tax Collection by Forced Letter. This definition can be found in Law Number 13 of 2002 concerning the Tax Court, specifically in article 1 number 5.

The two main factors that led to the creation of these tax issues are First, failing to take legal action as required by tax law's rules, and Second, initiating legal action but not in line with those laws. Taxpayers, tax cutters or collectors, tax carriers, and tax officials are other parties involved in the creation of tax disputes. Due to their ignorance of the law when implementing or enforcing tax legislation, these parties are the origin of tax disputes. (Muhammad Djafar Saidi, 2013:30).

To prevent these tax disputes from happening, especially those committed by taxpayers, the government implements various ways to increase public awareness to obey or carry out their obligations as good Indonesian citizens, namely paying taxes. One of the efforts of the state, which in this case is a claim on behalf of the Directorate General of Taxes "forced efforts" against taxpayers to pay taxes or pay off the taxes owed is to carry out Gijzeling or what is known as hostage-taking. Hostage-taking is not carried out without reason, but in this context, justice and equity can be carried out to increase compliance with paying taxes voluntarily. (Haula Rosdianan and Edi Slamet Irianto, 2012: 47)

This gijzeling is the last step taken by the government if other efforts such as forced letters, confiscations, auctions, and prevention also do not produce results, namely the taxpayer remains uncooperative after other forced efforts are made (Sani Imam Santoso, 2014; 138). This gijzeling is regulated in Law Number 19 of 2000 of the Republic of Indonesia Concerning Amendments to Law Number 19 of 1997 Concerning Collection of Taxes by Forced Letter which in Article 1 number 21 is ex-

plained by the term hostage taking and is described as a temporary placement that places a Tax Bearer in a specific location while restricting his freedom.

The application of *gijzeling* or hostage taking of taxpayers who have fulfilled the conditions for being taken as hostages is expected to cause psychological pressure on taxpayers who are negligent in their obligations to pay taxes, causing the hostage taking to occur. This hostage-taking effort is not only to provide punishment for taxpayers but also to increase the compliance of other taxpayers to pay taxes. This *gijzeling* effort raises pros and cons, the pro parties consider the application of *gijzeling* necessary to provide sanctions against uncooperative taxpayers so that they immediately pay off their tax debts while the contra parties think that the application of *gijzeling* is excessive which violates the freedom of one's rights.

2 Method

The technique employed is the normative method, which entails doing legal research through the review of library resources. study on legal principles, legal systematics, study on vertical and horizontal synchronization stages, and comparisons of law and legal history are all examples of normative legal research or literature. (Soekanto & Mamudji, 2009).

3 Result and Discussion

3.1 Gijzeling Sanctions in an Effort to Increase Taxpayer Compliance

Gijzeling or hostage-taking is considered as the final step which is carried out by confiscating the body of the person who owes taxes. This action is also a confiscation, but not directly on wealth, but indirectly, namely the self of the person who owes taxes. When talking about the history of *gijzeling*, it was actually previously frozen because it was seen as contrary to human rights as stipulated by the Supreme Court Circular Number 2 of 1964 which instructed the Chief Justices and Judges not to use any more regulations regarding *gijzeling* both in the HIR and RBG because they were deemed no longer appropriate to the circumstances and legal requirements in the framework of upholding the law of justice and the economic development of the Indonesian nation. Furthermore, the SEMA was revoked and confirmed by the Supreme Court Circular Number 4 of 1975 dated December 1, 1975. SEMA Number 4 of 1975 which stated that hostage-taking (*gijzeling*) as stipulated in Article 209 to Article 224 HIR and Articles 242 to Article 258 RBG is an act of "deprivation of one's freedom of movement" in the context of executing a decision on a civil case that has definite power, the case decision begins with the confiscation of goods - the property of the losing party, but that person has absolutely no goods or his possessions are not sufficient to pay off his debts.

As time went on after the suspension, the existence of *Gijzeling* was again recognized because it was seen as one of the effective efforts in law enforcement in the field of taxation against taxpayers who did not have good intentions. Therefore the

Supreme Court issued PERMA Number 1 of 2000 concerning Institutions of Forced Bodies with the following reasons:

- a. The freezing of the application of the gijzeling institution as stipulated in the Supreme Court Circular Letters Number 2 of 1964 and Number 4 of 1975 which instructs the Heads of Courts and Judges not to use the regulations regarding gijzeling as regulated in Articles 209 to 224 of the updated Indonesian regulation. (HIR) As well as Articles 242 to 258 of the Procedural Law Regulations for Regions Outside Java and Madura (RBg.), are deemed no longer in accordance with the circumstances and legal needs in the context of upholding the law of justice and economic development of the Indonesian nation, so it is necessary to repeal and reorganize these provisions;
- b. The term "gijzeling" with the word "hostage" or "hostage". This is considered inappropriate because it does not include the understanding of a debtor who is able but does not want to fulfill his obligations in paying debts, so that the translation needs to be perfected into corporal coercion, as contained in the definition of "Imprisonment for Civil Debts" which applies universally;
- c. The act of the debtor, guarantor or debt guarantor who does not fulfill his obligation to pay back his debts, even though he is capable of carrying it out, is a violation of human rights whose value is greater than the violation of human rights over the enforcement of agency coercion against the person concerned.

In addition, Gijzeling is seen as a tool to encourage public awareness and understanding, which in this case is the taxpayer to equate the perception that taxes are the main source of state financing and also national development and are one of the obligations of the state. Therefore, if tax collection is carried out through a forced letter, the community must play an active role in completing their own tax obligations before having to take hostages against non-goods people (Y. Sri Pudyamoko, 2007: p. 112). In addition to the existence of sanctions against the public regarding the obligation to pay taxes, the government, in this case the Directorate General of Taxes, must be fair and have a strong basis for taking action using Gijzeling. This is in accordance with the tax collection theory put forward by Adam Smith, namely Equality, Certainty Principles, Convenience Principles, Economic Principles. (Waluyo, 2007:13).

Gijzeling is not the only way to create a deterrent effect on violators of tax obligations. In the Gijzeling tax law, this is an active repressive billing action that is carried out if persuasive tax collection is not successful, such as making appeals by telephone, dialogue about taxes, and so on (Khoirul Hidayah, Mudawamah, 2015: 54)

Based on Law Number 19 of 2000 concerning Amendments to Law Number 1997 concerning Collection of Taxes by Forced Letter and also on the basis of Number 24/Pmk.03/2008 of the Minister of Finance relating to Procedures for Implementing Billing by Forced Letter and Implementation of Immediate Collection and At the same time, the following actions may be taken against taxpayers who breach their obligations:

3.2 Reprimand Letter

This letter of reprimand can be sent after seven days from the due date of payment of the Tax Collection Letter (STP), Underpaid Tax Assessment Letter (SKPKB), As well as Additional Underpaid Tax Assessment Letters (SKPKBT), and Correction Decision Letters, Objection Decision Letters, Appeal Decisions, and Judicial Review Decisions.

Immediate and Simultaneous Billing Orders

Issuance of this letter is made before the payment due date without being preceded by a letter of warning and is issued twenty one days after the Immediate and Simultaneous Billing Order is issued if it is issued before the issuance of the forced letter. The conditions for issuing an Immediate and Simultaneous Collection Letter are if:

1. The tax payer either intends to permanently depart Indonesia or will do so;
2. The tax bearer transfers the goods owned or controlled in order to stop or reduce company activities, or work carried out in Indonesia;
3. There are indications that the taxpayer may close down his business, merge it with another, transfer the business he owns or controls, or take other actions to modify its legal structure;
4. Business entities will be dissolved by the State; or
5. There is a confiscation of the goods of the tax bearer by a third party or there are signs of bankruptcy, the tax bailiff collects immediately and at the same time without waiting for the due date for payment and is issued before the issuance of the Enforcement Letter.

Forced Letter

If the accrued tax is not paid after 21 (twenty one) days have passed since the Warning Letter was issued, or if the tax bearer has been charged right away. This compelled letter has the same legal standing and executory authority as a judgment that is rendered permanently.

Foreclosure

If the Tax Bearer still does not pay the tax due after receiving a Letter of Enforcement, a Warrant for carrying out the confiscation will be issued. The period of confiscation is governed by Law No. 19 of 2000 in Article 11 to be precise which states that the execution of a forced warrant cannot be continued with confiscation before the expiration of 2 x 24 hours after the forced warrant is notified as referred to in article

Auction Announcement.

If the taxpayer doesn't pay the required tax debt and collection fees, the announcement of this auction is executed after fourteen days have passed since the date of the confiscation execution.

Auction

. The auction route is taken if after the confiscation of the tax debt and also the tax collection fee remains unpaid. In this regard, the official is authorized to carry out the sale by auction of confiscated goods through the Auction Office and carried out fourteen days after the announcement of the auction.

Prevention

A maximum of six months may be spent on this course, and it may be extended for a further maximum of six months. Article 29 of Law Number 19 of 2000, which specifies the precautionary requirements, provides that only taxpayers who have a total tax debt of at least one hundred million rupiah and doubts about his good faith in repaying the tax debt may be targeted for prevention.

Gijzeling (Hostage)

Taxpayers whose good faith in paying off their tax obligation is questioned and who owe a tax debt of Rp. 100,000,000.00 (one hundred million rupiah) or more are the targets of hostage taking. 14 (fourteen) days after the Enforcement Warrant is issued, hostage-taking occurs.

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If the Directorate General of Taxes, who in this case serves as executor, does not yet have a location to hold hostages, the purpose of taking Gijzeling or capturing hostages is to temporarily re-strain the freedom of taxpayers or tax bearers by placing them in a state detention home. Because the treatment is the same as that given to those who commit crimes, it must be done carefully and for valid justifications.

3.3 Application of Gijzeling in Accordance with the Provisions of Legislation.

Law Number 19 of 1997, as amended by Law Number 19 of 2000, concerning the collection of taxes through forced letters, specifically article 33, serves as the legal foundation for this hostage-taking action. It states that: "Hostage can be carried out on a tax debt of at least Rp. 100,000,000 (one hundred million rupiah), and it is doubtful that his good faith in paying off his tax debt was carried out based on a Hostage Warrant containing the identity, reason, time period It is possible to extend the hostage situation for an additional six months.

Additionally, this Law governs the end of the taxpayer holding period, according to which tax arrears may be discharged under the following circumstances: According to a court ruling, the tax due has been paid, and the Hostage Warrant's deadline has passed.

The following rights are available to taxpayers who are subject to sanctions for hostage-taking or gijzeling:

1. Performing worship at the hostage-taking center in accordance with their respective religions and beliefs;
2. Obtain proper health services in accordance with applicable regulations;
3. Receive proper food including receiving gifts from family;
4. Submit a complaint about the treatment of officers;
5. Obtaining reading materials and other information at the expense of the Tax Bearer being held hostage;
6. Receive visits from family, lawyers, friends, private doctors at their own expense or clergy;
7. Submitting a lawsuit against the execution of hostages to the District Court;

Then, the obligations that must be carried out by the hostage-takers in this case are the Director General of Taxes and the ranks invited to coordinate are as follows:

1. The Head of the State Detention House is obliged to immediately notify in writing to the officials holding hostages and their families if the Tax Bearer who is being held hostage dies;
2. Hand over the hostage's belongings to his family if the hostage dies;
3. Notify in writing within a maximum period of 24 hours to the Head of the State Detention Center if the hostage will be released;
4. Rehabilitate the good name if the lawsuit is granted by a court that has permanent legal force.

The process of executing *Gijzeling* was not an easy matter because there were several problems in the implementation of this hostage sanction, namely in the implementation the problems actually arose internally, namely there were doubts from one of the Office Heads who was not ready to implement *gijzeling*. Apart from that, problems also arise in the absence of a Budget Implementation Entry List (DIPA). This causes the funds for police escort/security costs to be quite high. (Respati Dian Cahya, Endang Kiswara, Fuad, 2021:142)

Another obstacle because the intelligence section had just been formed, so it did not yet have a budget for the procurement of goods for work support equipment. In addition, the Fiskus considers that there is a "backing" of the taxpayer who will be *gijzeling*. Furthermore, related to the execution process of the taxpayer who will be *gijzeling*, it needs to be rescheduled because the operating target has escaped observation or there has been a rejection from the taxpayer who will be *gijzeling*. The next obstacle is the frequent threats made by taxpayers to officers who carry out *gijzeling*. (ibid.)

The act of *gijzeling* by the government, in this case carried out by the Director General of Taxes, is not an act taken to demonstrate the power of a state over its people, nor is it a tool used to "oppress" the people under the guise of coercive efforts for the sake of national development. *Gijzeling* is intended not solely to be an arbitrary action taken by the government against tax debtors, but rather an attempt by law enforcement to carry out a task from the State based on clear rules so that it has legal force against the state and for every taxpayer to continue to exercise their authority as well as the rights and obligations granted by law to each of these parties. (Putu Mahanta Pradana Putra and Dewa Gede Rudy, 2018:9)

4 Conclusion

To increase public compliance in paying taxes, the government has one tool that can be used, namely by applying gijzeling or hostage efforts against tax bearers. Even though the application of gijzeling has always raised pros and cons and has even been revoked, the government later considered that this effort was necessary as a settlement step and as an effort to frighten other tax bearers so that no one would run away from their obligations. This is evidenced from several cases that occurred after being held hostage to the tax bearer and then he wanted to pay his tax debt, this shows that the application of gijzeling increases the compliance of the tax bearer because he immediately pays his tax debt. Gijzeling or hostage-taking must prioritize the principle of caution and carefully consider which tax payers deserve to be taken hostage in a manner that is against the law and regulations because if one carries out this effort, human rights, which are fundamental rights that belong to everyone, will be disturbed.

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