

## Application of Criminal Substitution Fines in the Form of Confiscation of the Convicted's Assets in Taxation Crimes



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**ABSTRACT:** The Law on General Provisions and Procedures for Taxation (UU KUP) does not regulate the confiscation of convicted assets in lieu of fines as well as criminal confinement in lieu of fines. This led to a different opinion among the judges in handing down the verdict, thus causing legal uncertainty. The method used in this writing uses a type of normative legal research, with a statute approach and case approach, using primary legal materials, by collecting data on a library research basis, then analyzed using qualitative methods. Judges in imposing criminal substitute fines in the field of taxation there are two different opinions in the court's decision, namely: First, the verdict that directly substantiates the seizure of criminal property if the convicted does not pay the fine; Second, directly substitute the confinement in lieu of fines if the convict does not pay the fine, without confiscating the property of the convicted. Criminal confinement in lieu of fines refers to Article 30 and Article 31 of the Penal Code (KUHP).

**KEYWORDS:** Criminal Substitution Fines, Confiscation of the Convict's Assets, Taxation Crime

### I. INTRODUCTION

Taxes are a source of state revenue used for the benefit of the government and society. Tax is one of the sources of state revenue that has an important role in supporting development financing and describing economic independence.<sup>1</sup> The main basis of taxation is stipulated in the Constitution of the Republic of Indonesia year 1945 (Constitution 1945) Article 23A "Taxes and other levies that are coercive for the purposes of the state are regulated by law". The definition of tax according to the Law of the Republic of Indonesia No. 16 of 2009 concerning the Establishment of Government Regulation In lieu of Law No. 5 of 2008 concerning the Fourth Amendment to Law No. 6 of 1983 concerning General Provisions and Procedures for Taxation into Law (KUP Law) provides a tax understanding in Article 1 Number 1 "Tax is a mandatory contribution to the state owed by a private person or entity that is coercive under the Law, by not getting directly rewarded and used for the purposes of the state for the greatest prosperity of the people". From the word "forceful" means that every citizen who is categorized as a taxpayer is required to pay taxes.

In order to enforce the law to strengthen state revenues from the taxation sector is one of the objectives of the drafting of Law of the Republic of Indonesia No. 6 of 1983 as amended by Law of the Republic of Indonesia No. 9 of 1994, Law of the Republic of Indonesia No. 16 of 2000, Law of the Republic of Indonesia Number 28 of 2007, and finally law of the Republic of Indonesia Number 16 of 2009 concerning General Provisions and Procedures for Taxation (KUP Law). In the law, criminal acts in the field of taxation are stipulated in Article 38, Article 39, Article 39A, Article 41, Article 41A, Article 41B, and Article 41C. In addition to prison and confinement, the articles also apply cumulative fines with prison or criminal confinement, although criminal sanctions are a last resort or *Ultimum Remedium*, as explained article 13A of the KUP Law which states: "The imposition of criminal sanctions is a last resort to improve taxpayer compliance. However, for taxpayers who violate the first provision as referred to in this Article is not subject to criminal sanctions, but subject to administrative sanctions. Therefore, Taxpayers who because of their absence do not submit a Letter of Notification or submit a Letter of Notification, but the contents are incorrect or incomplete, or attach information whose contents are incorrect so as to cause losses to state revenues are not subject to criminal sanctions if the waiver is first done by the Taxpayer. In this case, the Taxpayer shall 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 unpaid tax".

<sup>1</sup> Timbul H. Simanjuntak dan Imam Mukhlis, *Dimensi Ekonomi Perpajakan Dalam Pembangunan Ekonomi*, Raih Asa Sukses, Depok. Hlm. 9.

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This was also conveyed by Marwan Effendy "Article 44B Undang General Provisions and Procedures of Taxation shows that the real application of criminal violations of the law is not *Primum Remedium*, but more oriented to *Ultimum Remedium*.<sup>2</sup> Sanctions in the form of criminal in the field of taxation that adheres to the principle of *Ultimum Remedium*, aimed at raising awareness of taxpayers paying taxes to increase state revenues, this is also conveyed by Tri Wibowo: "From the results of the study, that criminal sanctions in the field of taxation, which summarized from his opinion tax officials. Actually philosophically not on the sanctions, but on the compliance of paying taxes so that there is an increase in state revenues. State revenues increase when there is awareness from the public about taxes and the way to raise awareness is by means of counseling and good service. So that if the public is aware and aware of the new tax sanctions in Article 38, Article 39, Article 39A is applied".<sup>3</sup>

Related to the existence of several articles of criminal acts in the field of taxation, in this study, the author focuses on criminal acts in the field of taxation stipulated in Article 39A letter a of the KUP Law, with the description of the article as follows: "Any person who deliberately publishes and/or uses tax invoices, proof of tax collection, proof of withholding tax and/or proof of tax deposit that is not based on actual transactions, shall be penalized with a minimum imprisonment of 2 (two) years and a maximum of 6 (six) years and a fine of at least 2 (two) times the amount of tax in the tax invoice, proof of tax collection, proof of withholding tax, and/or proof of tax deposit and at most 6 (six) times the amount of tax in the tax invoice, proof of tax collection, and/or proof of tax deposit".

In the application of criminal confinement in lieu of fines in the field of taxation, the judge's decision bases its consideration on Article 30 of the Criminal Code, except for crimes in the field of taxation stipulated in Article 38 of the KUP Law. Regarding the length of imprisonment for six months to eight months, up to one year makes the convict preferring to serve a criminal confinement than have to pay a fine. This is a problem, because the penalty imposed is underpayment tax that must be collected. Thus the purpose of taxes to increase state revenues from the taxation sector becomes ineffective.

To optimize the payment of fines imposed to convicted in the field of taxation, efforts to confiscate criminal property in lieu of fines are intended so that the convicted have the responsibility of paying fines in addition to criminal bodies. Fines imposed in criminal acts in the field of taxation are underpaid taxes, which are billed through the Underpayment Tax Assessment Letter issued by the Director General of Taxation. So if the convict does not pay the fine, his property is confiscated and then auctioned as state revenue. This is in line with the tax objective itself which is to increase state revenues from the tax sector. Therefore, there needs to be arrangements against the seizure of criminal property to pay fines and criminal confinement in lieu of fines that are not currently regulated in the KUP Law.

## II. PROBLEM FORMULATION

1. How is the application of punishment in lieu of fines in the form of confiscation of the convict's assets and imprisonment in lieu of fines in tax crimes?
2. How should the application of a penalty in lieu of fines in the form of confiscation of the convict's assets in a tax crime that has not been regulated in the Law on General Provisions for Tax Procedures?

## III. RESEARCH METHOD

In an effort to solve the legal issues that have been described above, a research method is needed to support reserach. The following research methods are used:

This research uses a type of normative legal research which of often called doctrinal legal research. In this type of research, law is often conceptualized as what is written in statutory regulations (law in book) or law is conceptualized as a rule or norm which is a benchmark for human behavior that is deemed appropriate.<sup>4</sup>

The approach to the problem in this study uses a statute approach and a case approach. The statutory approach is an approach using legislation and regulation.<sup>5</sup> The case approach is carried out by examining cases related to the issues being faced, and which have become decisions that have permanent law.<sup>6</sup> While the case approach is used in addition to discussing problems with vague or interpretation-based norms, it can also be used for discussion of empty norms.<sup>7</sup> In using the case approach. What researchers need to understand is the legal reasons used by the judge to arrive at his decision.<sup>8</sup>

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<sup>2</sup> Marwan Effendy, *Kapita Selektta Hukum Pidana*, Referensi, Jakarta, Hlm. 26.

<sup>3</sup> Tri Wibowo, Efektifitas Sanksi Pidana Pajak dalam Undang-undang Nomor 28 Tahun 2007 Tentang Ketentuan Umum dan Tata Cara Perpajakan, *Jurnal Dinamika Hukum*, Vol. 5, No. 3, September 2009, Hlm. 210.

<sup>4</sup> Amiruddin dan Zainal Asikin, *Pengantar Metode Penelitian Hukum*, Rajawali Pers, Depok, Hlm. 118.

<sup>5</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, Prenadamedia Group, Jakarta, Hlm. 137.

<sup>6</sup> Amiruddin dan Zainal Asikin, *Op. cit.*, Hlm. 156.

<sup>7</sup> *Ibid.*

<sup>8</sup> Peter Mahmud Marzuki, *Op. cit.*, Hlm. 158.

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Sources of data used in this research are primary legal materials, secondary legal materials, and tertiary legal materials, namely:

- 1) Primary Legal Materials
  - a) The 1945 Constitution of the Republic of Indonesia;
  - b) Criminal Code;
  - c) Law of the Republic of Indonesia Number 8 of 1981 concerning Criminal Procedure Law;
  - d) Law of the Republic of Indonesia Number 25 of 2007 concerning Investment;
  - e) Law of the Republic of Indonesia Number 16 of 2009 concerning Stipulation in Lieu of Law Number 5 of 2008 concerning the Fourth Amendment to Law Number 6 of 1983 concerning General Provisions on Tax Procedures to Become Law;
  - f) Decision of the South Jakarta District Court Number 1174/Pid.Sus/2019/PN.Jkt.Sel dated Januari 13, 2020; Decision of the DKI Jakarta High Court Number 47/Pid.Sus/2020/PT.DKI dated March 19, 2020, and; the Decision Supreme Court Number 2888 K/Pid.Sus/2020 dated August 19, 2020;
  - g) Decision of the North Jakarta District Court Number 1313/Pid.Sus/2019/PN.Jkt.Utr dated Januari 21, 2020; Decision of the DKI Jakarta High Court Number 86/Pid.Sus/2020/PT.DKI dated March 20, 2020, and; the Decision Supreme Court Number 4553 K/Pid.Sus/2020 dated December 15, 2020;
  - h) Decision of the North Jakarta District Court Number 420/Pid.Sus/2020/PN.Jkt.Utr dated August 25, 2020;
  - i) Regulation of the Minister of Finance of the Republic of Indonesia Number: 183/PMK.03/2015 dated September 30, 2015 concerning Amendments to the Regulation of the Minister of Finance Number: 145/PMK.03/2012 concerning Procedures for Issuance of Tax Assessment Letters and Tax Collection Letters;
  - j) Guidelines for the Attorney General's Office of Indonesia Number 2 of 2019 concerning Guidelines for Criminal Prosecution in Taxation Cases.

- 2) Secondary Legal Materials

- a) The results of legal research relating to this research;
- b) The works of the legal community related to this research;
- c) Legal and non-legal textbooks related to this research;
- d) Scientific journals related to this research;

- 3) Tertiary Legal Materials

Sources of tertiary legal materials are legal materials that provide meaningful instructions or explanations for primary legal materials and secondary legal materials in the form of dictionaries.<sup>9</sup>

The method of collecting data as research material is carried out by means of library research, using data and data sources that can be trusted to be true. Literature study of primary and secondary legal material, by searching for and collecting statutory regulations and legal opinions from books, research results, legal documents, internet media, scientific journals, newspapers, resource persons, legal dictionaries, Big Indonesian Dictionary, relating to the application of a penalty in lieu of fines in the form of confiscation of the convict's assets in a tax crime.

The data obtained in this study were analyzed using qualitative methods, namely the method of data analysis by grouping and selecting data obtained from field research according to its quality and truth, then compiled systematically, which is then examined by deductive thinking methods linked to the theories of literature study (secondary data), then conclusions are drawn which are useful to answer the formulation of the problem in this study. The results of the analysis are presented descriptively, namely how to describe the actual situation in the field so that a descriptive-qualitative description of the research results will be obtained which will later obtain the meaning and conclusions to answer the problem.

## IV. THEORETICAL FRAMEWORK

In any legal or social theoretical research, it is a guideline for exploring the objects under study. Some of the theories that underlie and guide this research.

*Law Enforcement Theory*, law enforcement is an effort to tackle crime through rational means. So that there is compatibility between what is desired from the law (*das sollen*) with the reality of events that occur in society (*das sein*). Barda Nawawi Arief said that law enforcement is nothing but an effort to realize or apply legal provisions into real events.<sup>10</sup> So that in this study, the law and reality are applied differently.

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<sup>9</sup> Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, Bayumedia Publishing, Malang, Hlm. 392.

<sup>10</sup> Barda Nawawi Arief, *Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana*, PT. Citra Aditya Bakti, Bandung, Hlm. 22.

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In this research, it is seen that there is no match between what the law wants and what is happening. The Law on General Provisions on Tax Procedures does not yet regulate the confiscation on the convict's assets as a substitute for a fine, but the judge in his decision has not slightly applied the confiscation of the convict's assets as a substitute for a fine.

### V. DISCUSSION

#### 1. The Application of a Penalty in Lieu of Fines in the Form of Confiscation of the Convict's Assets in Tax Crimes.

One of the main crimes stipulated in Article 10 of the Penal Code (Criminal Code) is a criminal fine. Philosophically criminal fines are one of the oldest and older types of criminal sanctions from prison and as old as the death penalty. Criminal fines exist in all Indonesian society, since the majapahit era contained in customary criminal sanctions, although the form of criminalization is still primitive.<sup>11</sup> The implementation of criminal fines is stipulated in Article 30 and Article 31 of the Criminal Code. Article 30 states "If the criminal fine is not paid, he is replaced with criminal confinement". While Article 31 regulates the payment of fines, the convict can be released from criminal confinement in lieu of fines if he has paid the fine. In the application of criminal provisions fines in the Criminal Code applies to all laws that are threatened criminally, including criminal acts in the field of taxation, based on Article 103 of the Criminal Code "The provisions in Chapter I to Chapter VIII of this book also behaving for acts that by other statutory provisions are threatened with criminal, unless otherwise determined by law".

The KUP Law does not specifically regulate the confiscation of convicted assets in lieu of fines. To increase state revenues from the tax sector the application of criminal substitute fines needs to be applied, as stated by E.Y. Kanter and S.R. Sianturi: "For some criminal law legislation, the provisions in Article 30 paragraph (2) of the Criminal Code are not applied. This is mainly determined to the settlement of criminal acts where the heavy point of settlement is expected to smooth the filling of state coffers (taxes, customs, excise), enlarge state revenues (Vide Article 14 of the T.P.E. Law) and state refunds (corruption). In the special legislation is also known as the sentencing of 2 kinds of basic criminal, namely prison / confinement plus criminal fines. The criminal fine must be paid by the convict. Otherwise, it can be forced by means of *gejzeling* or through the seizure of his property as the opposite price".<sup>12</sup> Referring to Article 44 paragraph (2) Letter e of the KUP Law, states: "The authority of the investigator as intended in paragraph (1) is: conducting a search to obtain evidence of bookkeeping, recording, and other documents, as well as confiscating the evidence". In the explanation of the article states that: "In this paragraph is regulated the authority of certain Civil Servant Officials in the Directorate General of Taxation as investigators of criminal acts in the field of taxation, including foreclosure. Such foreclosures can be carried out, either on moving or immovable goods, including bank accounts, receivables and securities belonging to taxpayers, tax insurers, and/or other parties who are designated as suspects".

As the implementation of the provisions of Article 44 paragraph (2) letter e of the KUP Law, the Attorney General of the Republic of Indonesia as a government institution that exercises state power in the field of prosecution and other authorities based on the law issued Guidelines No. 2 of 2019 concerning Guidelines for Criminal Prosecution of Criminal Acts in the Field of Taxation, one of the points states "In order to optimize the payment of criminal fines, civil servant investigators (PPNS) at the Directorate General of Taxation (DJP) conduct foreclosures as referred to in the explanation of Article 44 paragraph (2) letter e of the KuP law". Against criminal fines imposed on the convicted, declared as underpaid tax, which refers to Article 13 paragraph (5) of the KUP Law: "Although the period of 5 (five) years as referred to in paragraph (1) has passed, the Underpayment Tax Assessment Letter can still be issued plus administrative sanctions in the form of interest of 48% (forty-eight percent) of the amount of tax that is not or underpaid, if the Taxpayer after that period is penalized for committing a criminal offence in the field of taxation or other crimes that can cause losses to state revenues based on a court ruling that has a permanent legal force".

Article 13 paragraph (6) of the KUP Law "The procedure for issuing Underpayment Tax Assessment Letter as referred to in paragraph (5) shall be regulated by or based on the Regulation of the Minister of Finance". As the implementation of Article 13 paragraph (5), and (6) of the KUP Law, the Minister of Finance issued a Regulation of the Minister of Finance of the Republic of Indonesia Number: 183/PMK.03/2015 dated September 30, 2015 concerning Amendments to the Regulation of the Minister of Finance Number: 145/PMK.03/2012 on Procedures for Issuance of Tax Provisions and Tax Bills. In Article 2 it is explained, as follows: "(1) Within 5 (five) years after the time of tax payable or the expiration of the Tax Period, Tax Year Section, or Tax Year, the Director General of Taxation may issue: a. Underpayment Tax Assessment Letter; or b. Additional Underpaid Tax Assessment Letter. (2) The Director General of Taxation may issue an Underpayment Tax Assessment Letter or Additional Underpayment Tax Assessment Letter as referred to in Paragraph (1) even though a period of 5 (five) years has passed, in the event that the Director General of Taxation receives a Court Decision that has obtained a permanent legal force against taxpayers who are convicted of committing crimes in the field of taxation or other crimes that may cause losses to state revenues. (3) If the Director General of Taxation issues an Underpayment Tax Assessment Letter or Additional Underpayment Tax Assessment Letter

<sup>11</sup> A. Budivaja dan Y. Bandrio, "Eksistensi Pidana Denda di Dalam Penerapannya", *Jurnal Hukum*, Vol. XIX, No. 19, 2010, Hlm. 78.

<sup>12</sup> E.Y. Kanter dan S.R. Sianturi, *Asas-asas Hukum Pidana di Indonesia dan Penerapannya*, Stora Grafika, Jakarta, Hlm. 480.



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for the Tax Period, Tax Year Section, or Tax Year 2007 and earlier, the provisions of: a. period as referred to in paragraph (1) to 10 (ten) years at the end of the 2014 Tax Year; and b. period as referred to in paragraph (2) to 10 (ten) years. (4) Underpayment Tax Assessment Letter is issued in the event that there is no or less tax paid based on: a. Results of examination of: Number 3: court rulings that have had a permanent legal force against taxpayers who are convicted of crimes in the field of taxation or other crimes that can cause losses to state revenues”.

Observing the explanation of Article 44 paragraph (2) letter e of the KUP Law that gives the authority of certain Civil Servant Investigators in the Directorate General of Taxation to conduct foreclosures on moving or immovable goods, including bank accounts, receivables and securities belonging to taxpayers, tax insurers, and/or other parties that have been determined by the suspect, can be used as the legal basis for the decision to confiscate the property of the convicted to pay the fine. Furthermore, the arrangement of confiscation in Article 39 of the Criminal Procedure Law (KUHAP): “(1) Those subject to foreclosure are: a. objects or bills of suspects or defendants who are all or partly suspected to be obtained from criminal acts or as a result of criminal acts; b. objects that have been used directly to commit criminal acts or to prepare them; c. objects used to prevent the investigation of criminal acts; d. objects specifically made or intended to commit criminal acts; e. other objects that have a direct connection to the crimes committed. (2) Objects that are in confiscation due to civil or due to bankruptcy may also be confiscated for the purposes of investigation, prosecution, and criminal prosecution, as long as they meet the provisions of paragraph (1)”.

Confiscation of convicted assets in lieu of fines in the field of taxation there are two different opinions in the court's decision, namely: *First*, a verdict that directly substantiation of the confiscation of the criminal's property if the convicted does not pay a fine; *Second*, directly substitute the confinement in lieu of fines if the convict does not pay the fine, without confiscating the property of the convicted. This dualism of opinion creates legal uncertainty, as the meaning of legal certainty itself is that the law must be established in writing. The principle of legal certainty essentially expects and requires that the law be made definitively in the written form.<sup>13</sup> The principle of legal certainty, introduced by Gustav Radbruch in his book entitled "*einführung in die rechtswissenschaften*". Radbruch writes that in the law there are three basic values, namely: (1) Justice (*Gerechtigkeit*); (2) Benefit (*Zweckmassigkeit*); and (3) Legal Certainty (*Rechtssicherheit*).<sup>14</sup> The principle relates to the judge's decision, especially the legal certainty that in each decision the judge must find the right law. The judge's decision that reflects the legal certainty of course in the process of resolving the case in the trial has a role to find the right law. The judge in dropping the verdict does not only refer to the law alone, because the possibility of the law does not govern clearly, so that the judge is required to be able to explore legal values such as customary law and unwritten law that live in the community.<sup>15</sup> The judge's decision is part of the law enforcement process that has one of the purposes of legal correctness or the realization of legal certainty. The legal certainty set forth in the judge's decision is a law enforcement product based on the *juridically* relevant facts of the proceedings.<sup>16</sup>

The application of criminal substitute fines in the form of confiscation of criminal property and criminal confinement in lieu of fines in the field of taxation can be seen in several cases below:

1. Criminal case in the field of tax evasion on behalf of defendant Zulfikar Shafdar Zamzami
  - 1.1 Supreme Court Decision No. 2888 K/Pid.Sus/2020 Dated August 19, 2020, with warning verdict:

"Rejecting the application for cassation from the Applicant for Cassation I / Public Prosecutor at the South Jakarta State Prosecutor's Office and The Applicant for Cassation II / Defendant Zulfikar Shafdar Zamzami";<sup>17</sup>
  - 1.2 Decision of the High Court of DKI Jakarta Number 47/Pid.Sus/2020/PT. DKI Dated March 19, 2020, with the warning of the verdict:
    - Receive appeal requests from the Public Prosecutor and The Defendant's Legal Counsel;
    - Amending the Decision of the South Jakarta District Court dated January 13, 2020 Number 1174/Pid.Sus/2019/PN. Jkt.Sel requested the appeal, specifically regarding the criminal substitute fines and the length of time the fine is paid by the Defendant, so the warning is as follows:
      1. Stated Defendant Zulfikar Shafdar Zamzami proven legally and convincingly guilty of criminal offences "Helping to commit criminal acts in the field of taxation by issuing tax invoices that are not based on actual transactions";
      2. Punish defendant Zulfikar Shafdar Zamzami therefore with a prison sentence of 2 (two) years and 6 (six) months and a fine of 2 (two) times the loss on state revenue in the form of the amount of tax in the tax invoice amounting to Rp.1 6,579,541,817,- (sixteen miliar five hundredseventy nine million five hundred and forty-one thousand eight hundred seventeen rupiahs), for a total of Rp. 33.159.083.634,- (thirty-three miliar one hundredfifty-nine million eighty-three thousand six hundred and thirty-four rupiah), if the defendant does not

<sup>13</sup> Mario Julyano dan Aditya Yuli Sulistyawan, "Pemahaman Terhadap Asas Kepastian Hukum Melalui Kontruksi Penalaran Positivisme Hukum", *Jurnal Cripido*, Vol. I, No. 1, July 2019, Hlm. 13.

<sup>14</sup> Satjipto Rahardjo, *Ilmu Hukum*, Citra Aditya Bakti, Bandung, Hlm. 45.

<sup>15</sup> Busyro Muqaddas, "*Mengkritik Asas-asas Hukum Acara Perdata*", *Jurnal Hukum Ius Quia Iustum*, 2002, Hlm. 21.

<sup>16</sup> Margono, *Asas Keadilan, Kemanfaatan dan Kepastian Hukum Dalam Putusan Hakim*, Sinar Grafika, Jakarta, Hlm. 51.

<sup>17</sup> Supreme Court Decision No. 2888 K/Pid.Sus/2020 August 19, 2020.

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pay the fine no later than 1 (one) month after this verdict has a permanent legal force then his property is confiscated by the Prosecutor then auctioned the proceeds to pay the fine if the property is insufficient then replaced with a criminal confinement for 8 (eight) months.<sup>18</sup>

1.3 Decision of the South Jakarta District Court Number 1174/Pid.Sus/2019/PN. Jkt.Sel Dated January 13, 2020, with warning verdict:

- Declared Defendant Zulfikar Shafdar Zamzami proven legally and convincingly guilty of criminal offences "Assisting in criminal acts in the field of taxation by issuing tax invoices that are not based on actual transactions";
- Punish defendant Zulfikar Shafdar Zamzami therefore with imprisonment for: 2 (two) years and 6 (six) months and a fine of 2 (two) times the loss on state revenue in the form of the amount of tax in the tax invoice amounting to Rp. 16,579,541,817,- (sixteen billion five hundred seventy nine million five hundred forty-one thousand eight hundred seventeen rupiahs), for a total of Rp. 33,159,083,634,- (thirty-three miliar one hundred fifty-nine million eighty-three thousand six hundred and thirty-four rupiahs), provided that if the fine is not paid then replaced with a criminal confinement for 5 (five) months.<sup>19</sup>

2. Criminal cases in the field of tax evasion on behalf of defendant M. Murtadlo Muthahari Alias Riri Alias Aldo

2.1 Supreme Court Decision No. 4553 K/Pid.Sus/2020 dated December 15, 2020, with the following warning:

- Reject the application for cassation from the Applicant of Cassation / Public Prosecutor at the North Jakarta State Prosecutor's Office;
- Improving the decision of the High Court of DKI Jakarta Number 86/Pid.Sus/2020/PT. DKI Dated March 20, 2020 which changed the decision of the North Jakarta District Court Number 1313/Pid.Sus/2019/PN. Jkt.Utr Dated January 21, 2020 concerning the redaction of the replacement fine becomes "if within a period of 1 (one) month after the court ruling that has obtained a permanent legal force, the defendant does not pay the fine, then his property is confiscated by the Prosecutor and auctioned to pay the fine, if the property is insufficient then replaced with a criminal confinement for 6 (six) months".<sup>20</sup>

2.2 Decision of the High Court of DKI Jakarta Number 86/Pid.Sus/2020/PT. DKI Dated March 20, 2020, with the warning of the verdict:

- Receive an Appeal request from the Public Prosecutor;
- Amending the Decision of the North Jakarta District Court dated January 21, 2020 Number 1313/Pid.Sus/2019/PN.Jkt.Utr requested the appeal, by changing the sentence imposed so that the full warningas follows:

1. Declaring Defendant M. Murtadlo Muthahari Alias Riri Alias Aldo was proven legally and convincingly guilty of tax crimes as well as helping to issue and/or use tax invoices that are not based on actual transactions as stipulated in Article 39 A letter a Jo Article 43 paragraph (1) law No. 6 of 1983 concerning General Provisions and Procedures of Taxation Jo Law No. 28 of 2007 concerning the Third Amendment to Law No. 6 of 1983, as amended last by Law No. 16 of 2009 Jo Article 64 paragraph (1) of the Criminal Code as indicted by the public prosecutor;
2. Criminal charges against defendant M. Murtadlo Muthahari Alias Riri Alias Aldo in the form of imprisonment for 4 (four) years;
3. Criminal fines 2 x amounting to Rp. 15.127.541.587,- (fifteen miliar one hundred twenty-seven million five hundred forty-one thousand five hundred and eighty-seven rupiah) = Rp. 30.255.083.174,- (three puluh billion two hundred fifty five million eighty-three thousand one hundred and seventy-four rupiah), provided that if the fine is not paid, it is replaced with a prison sentence of 6 (six) months.<sup>21</sup>

2.3 North Jakarta District Court Decision Number 1313/Pid.Sus/2019/PN.Jkt.Utr Dated January 21, 2020, with a warning verdict:

1. Declaring Defendant M. Murtadlo Muthahari Alias Riri Alias Aldo proven legally and convincingly guilty of tax crimes participated in helping to issue and/or use tax invoices that are not based on actual transactions as stipulated in Article 39 A letter a Jo Article 43 paragraph (1) of Law No. 6 of 1983 concerning General Provisions and Procedures for Taxation Jo Law No. 28 of 2007 concerning the Third Amendment to Law No. 6 of 1983, as amended last by Law No. 16 of 2009 Jo Article 64 paragraph (1) of the Criminal Code as indicted by the public prosecutor;

<sup>18</sup> Decision of the High Court of DKI Jakarta No. 47/Pid.Sus/2020/PT. DKI March 19, 2020.

<sup>19</sup> Decision of the South Jakarta District Court No. 1174/Pid.Sus/2019/Pn. Jkt.Sel January 13, 2020.

<sup>20</sup> Supreme Court Decision No. 4553 K/Pid.Sus/2020 December 15, 2020.

<sup>21</sup> Decision of the High Court of DKI Jakarta No. 86/Pid.Sus/2020/PT. March 20, 2020.

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2. Criminal charges against defendant M. Murtadlo Muthahari Alias Riri Alias Aldo in the form of imprisonment for 3 (three) years;
  3. Criminally fined 2 x Rp. 15,127,541,587,- (fifteen billion one hundred twenty-seven million five hundred and forty-one thousand five hundred and eighty-seven rupiahs) = Rp. 30,255,083,174,- (thirty billion two hundred fifty-five million eighty-three thousand one hundred and seventy-four rupiahs), if the fine is not paid then the defendant is sentenced to a penalty of 6 (six) months.<sup>22</sup>
3. Criminal cases in the field of tax evasion on behalf of the defendant Umar  
North Jakarta District Court Decision Number 420/Pid.Sus/2020/PN. Jkt.Utr Dated 2 August 2020, with warning verdict:
1. Stated Defendant Umar mentioned above, proven legally and convincingly guilty of committing a criminal offence "Taxation" as in the single indictment;
  2. Criminally punish the accused therefore with a prison sentence of 3 (three) years and 6 (six) months and pay a fine of 2 x Rp. 9.714.005.251,- (nine billion seven hundred fourteen million five thousand two hundred and fifty one rupiah) = Rp. 19.428.010.502,- (nineteen billion four hundred and twenty-eight million ten thousand five hundred two rupiahs) provided that if the fine within 1 (one) month after the court ruling that has had the force of law remains unpaid, then the property belonging to the accused is confiscated by the Prosecutor and auctioned to pay the fine, in case the defendant does not have sufficient property to pay the fine, then the defendant must serve a penalty of imprisonment for 4 (four) months.<sup>23</sup>

From some of the verdicts, there are some differences in the verdict that applies criminal penalties in the form of confiscation of criminal property in the field of taxation, thus causing legal uncertainty.

Legal certainty is one of the purposes of the establishment of the Law of the Republic of Indonesia No. 6 of 1983 as amended several times by the Law of the Republic of Indonesia No. 16 of 2009 concerning General Provisions and Procedures of Taxation, as the general explanation of the law that "This law was drafted with the aim, among others, to provide more justice, improve services to taxpayers, increase certainty and law enforcement, and increase the openness of tax administration and voluntary compliance of taxpayers who ultimately increase state revenues from the taxation sector".

Efforts to confiscate criminal property in lieu of fines are intended so that the convict has the responsibility of paying fines in addition to criminal bodies. Fines imposed in criminal acts in the field of taxation are underpaid taxes, which are billed through the Underpayment Tax Assessment Letter issued by the Director General of Taxation. So if the convict does not pay the fine, his property is confiscated and then auctioned as state revenue. This is in line with the tax objective itself which is to increase state revenues from the tax sector.

### 2. Imposition of Imprisonment as a Substitute for Fines in Tax Crimes.

Criminal confinement in lieu of fines is commonly applied to criminalization in Indonesia. Criminal acts in the field of taxation in the KUP Law do not regulate the criminal confinement in lieu of fines, but still refer to Article 30 and Article 31 of the Criminal Code. In the context of the Criminal Code, the penalty is at least three rupiah seventy-five cents. If the criminal fine is not paid, then it can be replaced with criminal confinement. It is in accordance with adagium *qui non potest solvere in aere, luat in corpore*. That is, whoever does not want to pay, then he must pay it off with the pain of the body.<sup>24</sup> The duration of the criminal confinement in lieu of fines under Article 30 paragraph (3) of the Criminal Code "shall be at least one day and a maximum of six months", paragraph (5) states, "if there is a criminal burden of fines caused by co-or repetition, or because of the provisions of article 52, then the criminal confinement of substitutes is a maximum of eight months". In paragraph (6) states "the criminal confinement of substitutes must not be more than eight months".

The expansion of the amount of fines in Article 30 paragraph (1) of the Criminal Code with a fine of at least three rupiah seventy-five cents has been several times added and amended lastly by the Government Regulation Replacement Law No. 18 of 1960 concerning Amendments to the Amount of Fines In the Penal Code and In Other Criminal Provisions Issued Before August 17, 1945 has been doubled to fifteen times.

KUP Law, the article governing the criminal confinement substitutes fines only in Article 38, more reads: "Everyone who because of his absence: a. not submit a Notification Letter; or b. deliver a Notice, but the content is incorrect or incomplete, or attach a description whose contents are incorrect. so that it can cause losses on state revenues and such acts are acts after the first act as referred to in Article 13A, fined at least 1 (one) time the amount of unpaid taxes that are not or underpaid and at most 2 (two) times the amount of unpaid taxes that are not or underpaid, or sentenced to confinement for a minimum of 3 (three) months or a maximum of 1 (one) year". Article 38 of the KUP Law, if seen as having no threat of imprisonment as is usually another criminal offence, but directly threatened with criminal fines or criminal confinement substitute fines that have been determined at

<sup>22</sup> Court's Decision State of North Jakarta No. 1313/Pid.Sus/2019/Pn. Jkt.Utr January 21, 2020.

<sup>23</sup> North Jakarta District Court Decision No. 420/Pid.Sus/2020/Pn. Jkt.Utr August 25, 2020.

<sup>24</sup> Eddy O.S. Hiariej, *Prinsip-prinsip Hukum Pidana*, Cahaya Atma Pustaka, Yogyakarta, Hlm. 401.

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least 3 (three) months or a maximum of 1 (one) year. However, the article remains a criminal act in the field of taxation. Explanation of Article 38 of the KUP Law, states: "Violation of tax obligations committed by taxpayers, as long as it concerns the administrative action of taxation, is subject to administrative sanctions by issuing a tax assessment letter or Tax Bill, while those related to criminal acts in the field of taxation are subject to criminal sanctions. The act or action as referred to in this article is not an administrative violation but rather a criminal act in the field of taxation. With the existence of criminal sanctions, it is expected to grow to the awareness of taxpayers to comply with tax obligations as specified in the tax legislation".

The threat of criminal confinement that is determined at least 3 (three) months or a maximum of 1 (one) year is an deviation against Article 30 paragraph (3) and paragraph (5) of the Criminal Code which states the criminal confinement of at least one day and a maximum of six months. If there is a criminal penalty then the substitute imprisonment is a maximum of eight months. Based on this, the most appropriate application is the provision of criminal confinement in lieu of fines in Article 38 of the KUP Law, in accordance with the principle of *lex specialis derogate legi generalist* that the special rule of law will override the general rule of law. While the articles of criminal acts in the field of taxation, namely Article 39, Article 39A, Article 41, Article 41A, Article 41B, and Article 41C of the KUP Law, criminal confinement substitute fines still refer to Article 30 and Article 31 of the Criminal Code.

### CONCLUSIONS

In addition to imprisonment or imprisonment, criminal offenses in the field of taxation also impose fines. The Law on General Provisions and Tax Procedures does not regulate the confiscation of assets as a substitute for a fine. However, the Judge in imposing a penalty in lieu of a fine, there are two different opinions in the decision, namely: *First*, a decision that directly subsidizes the confiscation of the convict's property if the convict does not pay the fine; *Second*, immediately subsidize imprisonment in lieu of fines if the convict does not pay the fine, without confiscating the convict's property.

The provisions for imprisonment in lieu of fines are not regulated in the Law on General Provisions and Tax Procedures so that imprisonment in lieu of fines refers to Article 30 and Article 31 of the Criminal Code, In the application of imprisonment in lieu of fines in tax crimes, the convict preferring to serve a sentence of imprisonment rather than having to pay a fine. This is a problem, because the penalty imposed is an underpayment of taxes that must be collected. So that the purpose of taxes to increase state revenue from the taxation sector becomes ineffective.

Criminal fines in taxation crimes constitute underpayment of taxes that must be collected, with the aim of increasing state revenue from the taxation sector. In this regard, it is appropriate that the Law on General Provisions and Tax Procedures be revised by adding confiscation of assets as a substitute for fines and imprisonment in lieu of fines which are regulated by themselves in the law on general provisions and taxation procedures, so that there are no two opinions that different in court decisions related to confiscation of assets as a substitute for fines, which so far have created legal uncertainty.

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- 2) Indonesia, Criminal Code, Jakarta.
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- 5) Indonesia, Law of the Republic of Indonesia Number 16 of 2009 concerning Stipulation in Lieu of Law Number 5 of 2008 concerning the Fourth Amendment to Law Number 6 of 1983 concerning General Provisions on Tax Procedures to Become Law, Jakarta.
- 6) Regulation of the Minister of Finance of the Republic of Indonesia Number: 183/PMK.03/2015 dated September 30, 2015 concerning Amendments to the Regulation of the Minister of Finance Number: 145/PMK.03/2012 concerning Procedures for Issuance of Tax Assessment Letters and Tax Collection Letters.
- 7) Guidelines for the Attorney General's Office of Indonesia Number 2 of 2019 concerning Guidelines for Criminal Prosecution in Taxation Cases.

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