International Journal of Social Science And Human Research

ISSN(print): 2644-0679, ISSN(online): 2644-0695

Volume 05 Issue 11 November 2022

DOI: 10.47191/ijsshr/v5-i11-23, Impact factor- 5.871

Page No: 4994-5001

Imprisonment for Civil Debt (Gizjeling) in Indonesian Praxis Tax Law Enforcement

F.C. Susila Adiyanta

Faculty of Law, Diponegoro University – Semarang, Indonesia

ABSTRACT: Gizjeling, imprisonment for civil debt, is one of tax collection instruments. The gizjeling institution in Indonesia was once frozen by the Supreme Court which was followed by Directorate General of Taxes (DGT). In other situation, for the interest of the state in the bad debts collection by the banking debtors during the economic crisis of 2000, the Supreme Court issued new regulation of gizjeling implementation. At the same time, DGT uses gizjeling for tax collection facilities against incompliant taxpayer. This research problem focused on the juridical construction of gizjeling as instruments of tax debt collection, and validity of juridical considerations of the use of aforementioned instrument in the praxis of tax law enforcement in Indonesia. Administrative law point of view brought conclusion that juridical construction of gijzeling is a government punitive form and is the last used means. In tax law enforcement praxis, the basis of the validity of juridical considerations of gijzeling is to provide deterrent effect and psychological compulsion to the taxpayer to pay off the tax arrears. It's strongly recommended that tax law enforcement should prioritize persuasive approach rather than gizjeling as physical coercion. Furthermore the government should encourage public participation with a communicative action model.

KEYWORDS: gizjeling, Indonesia, tax collection instruments

INTRODUCTION

Taxes are an important source of revenue for the implementation of the state of Indonesia. In the context of a modern state including Indonesia, tax is a constitutional obligation of civil society in realizing public welfare (*bonum publicum*) as the ultimate goal of the state. In Indonesian taxation praxis, every year tax contribution in State Budget is one of the primary state revenue in supporting national development in addition of oil and gas sector. In the practice of tax law enforcement in Indonesia, many factors hamper and become obstacles in tax collection. Some of the obstacles faced by the government in levying taxes are: low tax awareness (tax consciousness), compliance (tax discipline), taxpayer participation in financing national development, tax avoidance, and tax evasion, as well as the reluctance of taxpayers in paying taxes.

Ancok (1995) has reviewing in his paper about three behaviors of people paying taxes, namely: 1) Compliance Attitude, ie people pay taxes for fear of being punished when hiding taxes or not paying taxes; 2) Identification Attitude, ie the person paying the tax because driven by the pleasure and respect for the service of government officials, especially the tax officer; 3) Internalization, where people are willing to pay taxes because of the awareness that taxes are beneficial to themselves and society.

Tax evasion occurs when a taxpayer takes advantage of all legal measures to minimize tax and credit obligations allowed, tax planning with fraud, cheats, false or deceitful statements, including joint efforts to disrupt and deter tax law enforcement – e.g. wrong transactions, fake bookkeeping, and false statements made during the tax audit, and reduced earnings reporting (Pfeifer and Yoon, 2016). Hemberg, et.all (2016) states that in some cases, tax evasion are done by taxpayers in cooperation with business partners, both domestically and abroad. In the meantime Aruna et.al (2011) reviewed taxpayer reluctance in paying taxes. To overcome these issues, the tax authorities may use force-making tools, namely *gijzeling* or imprisonment of civil debt.

In the history of Indonesia's positive law, *gijzeling* was frozen by the Supreme Court with SEMA (Surat Edaran Mahkamah Agung=Circular letter of Supreme Court) Nr. 2 of 1964. In practice, there was also a Supreme Court Decree Nr. 4 of 1975 which in its consideration states that the judge in determining the decision of hostage should always seek the humanity consideration and the justice (see: Supreme Court of the Republic of Indonesia Decree Nr. 951 K/Sip/1974). The freezing of gijzeling by the Supreme Court indirectly influences it usage for collection of tax arrears by the tax authorities.

During the economic crisis of 2000, the Supreme Court issued PERMA (Peraturan Mahkamah Agung=Supreme Court Regulation) Nr. 1 of 2000 on Imprisonment for Civil Debt for the interest of the state in the collection of bad debts by the banking debtor. At the same time, the Directorate General of Taxes uses *gizjeling* for tax arrears collection facilities from uncomply taxpayers. Similarly, ahead of the implementation of the 2016 government policy of tax forgiveness, the frequency of *gizjeling* use by tax authorities for tax billing increases.

Publishing PERMA No. 1 of 2000 became the subject of public discussion related to the shift of consideration of the Supreme Court of the Republic of Indonesia on whether the imprisonment for civil debt on nasty or defiant debtors is in contradiction with humanity. The answer to this question has a close correlation with the the Supreme Court change of view which argues that imprisonment for civil debt is required for law enforcement and justice and to build the economy of the Indonesian nation. The Supreme Court also stated that the misbehavior of personals and/or legal entities which have state receivable and causing adverse impacts on the economy of the state and society is a violation of human rights whose value is greater than the application of imprisonment for civil debt (Priyambodo, 2000). This article examines the juridical construction of *gijzeling* as a forced tool for tax collection from the perspective of administrative law and the validity of considerations of *gijzeling* use in the praxis of tax law enforcement in Indonesia.

METHODOLOGY

This research uses a normative approach or legal dogmatics, which is better known as a doctrinal approach. Implementing aforementioned method, these activities was taken place: inventorying, describing, interpreting, systematizing, and evaluating the overall positive law (authoritative text) that applies in a particular society or country. All of those activities are directed to finding juridical solutions upon micro and macro legal problems that may occur in the civil society.

RESULT

Juridical Construction of *Gijzeling* from Administrative Law Perspective

Circular Letter: Government Discretion of Power

The existence of the Circular Letter of Director General of Taxes as a form of policy regulation can not be separated from the free authority *(vrijebevoegdheid)* of the government which is often referred to as *freies ermessen* or discretioniare power. The government's free authority on its principle allows the administration of the state to prioritize the effectiveness of a goal *(doelmatigheid)* rather than sticking to the rule of law (Saputra, 1988), or legitimate authority to intervene in social activities to carry out the duties of organizing the public interest.

Unlike the judiciary function that is responsible for resolving disputes between residents/citizens, government action prioritizes the achievement of its goals or objectives *(doelmatigheid)* rather than in accordance with applicable law *(rechtmatigheid)* (Mustafa, 1998). However, in achieving its objectives, government action must be within the limits permitted by applicable law and shall be guided by good governance principles.

In the context of the law of state administration, the legal product of the Circular Letter of the Supreme Court (SEMA) and Circular Letter (SE) of the Director General of Taxes on the use of *gizjeling* is a form of public legal act. As a legal product made by a state administrative body (*administrative bestuur*), the regulatory policy (*beleidsregel)* is a one-sided public legal government act (*eenzijdige publiek rechtlijke handeling*) and has characteristics in the form of external written regulations (*naar buiten gebrag schriftelijke beleid*) whose basic consideration of manufacture adjusts the requirements of the state administrative agency (*administrative bestuur*) (Wijk, 1984).

As a regulatory policy, SEMA and the Circular Letter of the Directorate General of Taxes actually have only binding power into *(inherent)*, and any product of administrative law which only has inward binding power is not a legal norm. Circular letter is merely a guideline for judges, but it is not binding, so SEMA can not exclude legislation. Similarly, regulations or circular letters issued by the directorate general of a ministry a technical regulation and policy of the implementation of the field in accordance with the tasks outlined by the minister.

Gizjeling: The Real Coercion Tool (Bestuurdwang)

The act of force in the tax law is to seek the fulfillment of an obligation whilst there have been signs and symptoms that the tax obligations will not be fulfilled by the obligor. An administrative action of an administrative body/office will be performed, if there are any indications that the subject is not complying with its obligations. Interference and tax administration action shall be carried out by first giving notice, reprimand, if the administrative action of the administrative body/post does not receive a response or give effect to a subject to perform its obligations, harsher measures shall commence (Boll, 2016). In the collection of tax debt other than done by direct coercion that begins through the establishment of a forced letter, is known as coercion that is not directly in the act of hostage taking or *gijzeling*. The *gijzeling* is essentially a confiscation of action not on the goods or property of taxpayers, but the seizure of the freedom, independence of taxpayers or tax bearers who are put in jail (state detention). With the act of taking hostage against the taxpayer or tax bearer, then he will consider and willing to pay his tax debt (Damayanti, 2012).

The act of detain in custody or seizure of a taxpayer shall be done, in the absence of any property which may be confiscated or if the property of the taxpayer or tax bearer is hidden. Coercive act undertaken by the government to the citizen or legal subject of an individual person or taxpayer is essentially aimed at preventing non-compliance and the possibility of tax avoidance actions that will cause more state losses. (Hartl et.al., 2015) The act of hostage taking is a tool that can give psychological pressure not only to the taxpayer or tax bearer as debtor but also to his (her) family, so that they will try to free the debtor or taxpayer from the act of hostage taking by helping to pay off his tax debt (Soemitro, 2014) .

Law Nr. 19 of 1959 on the State Tax Collection with Distress Warrant does not mention clearly the definition of hostage taking. This is different from Law Nr. 19 of 1997 which amended by Law Nr. 19 of 2000 on Collection of Taxes with Distress Warrant stating that the hostage is a temporary restraint of the time of the taxpayer's freedom by placing it in a certain place.

Gijzeling, in the form of hostage-taking, known as a forced tool to collect (civil) debts, was a form of dualism and discrimination against legal products during the colonial period. It takes effect only to indigenous people. At the same time, apart from *gijzeling*, another instrument called *lijfdwang* also comes into force to foreigners as regulated in Articles 580 to 611 of the *Reglement op de Rechtsvordering* (RV) and in *Faillisement Verordening* (FV) Article 32 paragraph 3, and Article 84 to 87. Administrative sanctions in the form of fines, interest, and penalties are a combination of sanctions imposed on people who carry out taxation in countries that adhere to the European legal system (Civil Law System) such as France, Germany, the Netherlands, Luxembourg, and Indonesia as well (Alexandru Ioan Cuza, 2014).

There are several key differences between *gijzeling* and *lijfdwang*. *Gijzeling* is a sanction that is applied to indigenous debtors who do not pay off or pay debts in a debt agreement between individual persons. On other side *lijfdwang* is applied to foreign debtors who are naughty or breached (*onwilige partij*) from a civil agreement made between private persons with the government which is representing the public interest. In addition, *gijzeling* is carried out in the framework of execution of civil case rulings which have permanent legal force (*in kracht van gewijsde*), whilst *lijfdwang* can be carried out prior to any court judgement (*uitvoorbar bij vorraad*) referred to RV Article 716 (Lumbantoruan, 1996).

Gizjeling: The Final Means (Ultimum Remedium) of Debt Collection

The act of hostage-taking in the collection of tax debt is the ultimate endeavor *(ultimum remedium)*, if all tax collection procedures have been executed. Hence *gijzeling* or *lifdwang* is the only way, if all existing procedures have been implemented but can not bring results. Damayanti (2012) mentions that there is existence of a positive and significant correlation between the perceptions of behavior control with mandatory compliance. Analysis of taxpayer compliance indicates that the higher the perception of external pressure will increase tax compliance. The government *(fiscus)* may use hostage-taking as an alternative and the last means of forcibly for collection of tax debt, although in its application it must still meet the conditions prescribed by the law and the implementation of its regulations. Basically sanction of physical force in the utilitarian view is solely aimed at creating a deterrent effect on the offender or subject that violates the law (Gilboa, 2015).

In accordance with the purpose of tax collection that is to put as much money into the state treasury, the fiscal authority conducts the tax collection as much as possible by accessing the existing administrative medium. Honest taxpayers should not be subject to undue pressure or harassment but are treated as valuable clients, offering positive help and encouragement to do so (Visockaitė, 2013). Thus, if the threat of administrative sanctions has achieved the expected results, namely the repayment of tax debt and the state is not harmed, other forced tools such as hostage taking need not be applied (Prodjodikoro, 1986). In its position as the last forced means of tax debtcollection, the use of gizjeling is done after going through a persuasive tax collection procedure. The situation during the period 1995/1996 to 1999/2000 Indonesia suffered severe economic crisis and uncertain situation, due to the large number of capital flight, investment, and wealth abroad. Under these circumstances, the DGT does not record the issuance of the Ordering License (SPMP). Similarly, during same the period, the DGT has never made hostage takers to taxpayers. The results of the survey at Regional Offices of DGT at Jakarta Raya I, Jakarta Raya II, Central Java I, Central Java II and Yogyakarta, East Java I, and East Java II within that period also showed that detainee have never been used for collection of tax debt.

Based on the juridical construction of *gizjeling* agency for the purposes of tax debt collection as mentioned above, it is essentially that forcible detainee is a punitive and repressive tax collection instrument and is used as a last effort for tax collection (*ultimum remedium*), if there is no other instrument can be used by tax authorities for law enforcement. Fundamentally the tax morale is an essential component of tax compliance, but on the other hand law enforcement by using sanctions in the form of physical coercion is a key driver of tax compliance (Luttmer and Singhal, 2014). Fiskus as the state administrative agency in exercising its authority has the duty to take the necessary measures to adjust the real situation to what has been established by law, if the citizen neglects his duty. Vallentini (2011) in her article states that what is considered as coercive sanction to a person (legal subject) is a form of causality responsibility with the community and surrounding communities. Sanctions that impose physical restrictions on others are logical consequences and forms of control over their actions.

Juridical Validity Considerations upon the Gijzeling Agency as Forced Equipment for Tax Collection

The provisions on detainee are governed by two regulations, the Updated Indonesian Regime (*HIR=Het Herziene Indonesische Reglement*), Stb. 1926 Nr. 559 jo Stb. 1941 Nr. 44 Articles 209 to 223 and the Regulations The Law of Proceedings for the Outside of Java and Madura (*RBg=Reglement tot Regeling van Het Rechtwewezen in de Buiten Gewesten Java end Madura*) Stb. 1929 Nr. 227 Articles 242 to 257, as well as in the Bankruptcy Law (*FV=Faillisement Verordening*), Stb. 1905 Nr. 217 jo Stb 1906 Nr. 34B) Article 32 paragraph (3) and Article 84 to 87. This bankruptcy regulation still applies, until it is amended by Government Regulation in lieu of Law (PERPU=Peraturan Pemerintah Pengganti Undang-Undang), PERPU Nr. 1 of 1998 which came into force on August 20, 1998. This provision is then stipulated as law with Law Nr. 4 of 1998 on Bankruptcy and Postponement of Debt Payment Obligations. In this Law the forced action agency may be filed by the creditor after the debtor is declared bankrupt and proven to

be in compliant with the Court Judgement. As described previously, in addition to *gijzeling*, there was also *lijfdwang* which applies to foreigners (European and Foreign Eastern societies as well as indigenous Indonesians who were subject to European law), as regulated in the *Reglement op de Rechtsvordering* (Rv) Article 580 to 611.

The hostage agency is also used as a means of collection of tax debt, which is regulated in *Regeling v.d. Invordering van Belastingen in Indonesie d.m.v. Dwangschriften* (Stb.1879 Nr. 267). After Indonesia's independence, the hostage agency in the tax law is regulated under Emergency Decree Nr. 27 of 1957 concerning State Tax Collection by Distress Warrant. With some ammendements, hereinafter the Emergency Decree was stipulated as Law Nr. 19 of 1959 concerning State Tax Collection with Distress Warrant. The hostage agency as a forced tool in the collection of tax debt is regulated in Article 15 to 23 of aforementioned Law.

A hostage-taking in civil procedure law is a forced tool for debt collection to debtors. The use of hostage agency during the Dutch East Indies colonial rule mostly overruled the aspect of justice and humanity by depriving the liberty of someone who is poor and has no wealth anymore. The hostage agency is used to force someone to pay off his debts even though they are poor and have no more possessions (Rosjidi, 1989).

Based on sense of justice and humanity consideration, the Supreme Court issued SEMA Nr. 2 of 1964 stating an instruction that the hostage agency is not used anymore. This opinion is further confirmed in SEMA Nr. 04 of 1975.

With the stipulation of SEMA Nr. 2 of 1964 and SEMA Nr. 4 of 1975 which prohibits the use of hostage agency (gijzeling) as regulated in H.I.R. and Rbg as well as the absence of regulation of hostage agency implementation in tax law, The Director General of Tax issued SE (Surat Edaran=Circular Letter) Nr. 06/Pj.4/1979, stating that the implementation of hostage for the collection of tax debt is frozen in honor of the spirit of SEMA Nr. 2 of 1964 and SEMA Nr. 4 of 1975.

With regard to statements about the freezing of hostage-taking agency through SEMA Nr. 2 of 1964 and SEMA Nr. 4 of 1975 and the existence of Circular Leter from Director General of Taxes Nr. SE.06/PJ.04/1979, Directorate of Ministry of Home Affairs through letter Nr.303/KPD-IV/1983 addressed to the Chairman of the Supreme Court, questioned the position and legal basis upon implementation of the hostage agency as a means of collecting tax debt for the receipt of local taxes. Supreme Court replied by letter Nr. 0109/MA/Pemb/1984 explaining that the hostage prohibited under SEMA Nr. 02 of 1964 and SEMA Nr. 04 of 1975 especially in the case of civil execution of debtors who have no asset anymore.

The affirmation of the position of the hostage institution as a forced tool for collection of tax debt is also submitted by the Directorate General of Taxes through Circular Letter no. SE.12/PJ.62/1984 dated 4 July 1984, which states among other things:

1. Law no. 19 of 1959 concerning the State Tax Collection with Distress Warrant, which in one of its articles determines the existence of hostage agency, remains the provisions of legislation applicable as the basis of the implementation of tax collection.
2. The hostage agency that has been practically not turned on, is in fact respecting the soul of the SEMA Nr. 04 of 1975 dated 1 December 1975 jo SEMA Nr. 02 of 1964 on December 22, 1964 which essentially contains an element of prohibition on the use of hostage agency against hostage-taking for the benefit of individuals (*een civielrechtelijk persoon*).
3. The hostage agency for the purposes of the state (publiekrechtelijk) such as the execution of tax collection, the Supreme Court in accordance with its letter Nr. MA/Pemb/0109/1984 afore mentioned above does not prohibit nor hamper the agency, as long as the orderly procedure be considered carefully and must be in accordance with the provisions of the law.
4. In view of the hostage-taking problem is very complicated since it concerns personal and human rights independence and requires special requirements, both in obtaining permission from the head of the region and financing in custody of the hostage, it should be reminded that the implementation of tax collection should avoid the use of *gijzeling* agency, and other things without prejudice to the meaning and purpose of decisive action of active billing action by the Head of the relevant Tax Inspection.

If there are things that have not been adequately regulated by Law no. 14 of 1985 concerning the Supreme Court, the Supreme Court has the authority to regulate it in PERMA or SEMA for the smooth running of the judiciary. PERMA and SEMA are forms of executive authority granted by law to the Supreme Court, specifically to make rules (rule making power) that are administrative in nature and apply internally (Panggabean, 2001).

The issuance of SEMA Nr. 02 of 1964 and SEMA Nr. 04 of 1975 by the Chief Justice of the Supreme Court at the time was based on the background of the use of hostage agency for the benefit of individuals which were deemed not to fulfill the aspect of justice and violate human rights. On the other hand, Circular Leter from Director General of Taxes Nr.06/Pj.04/1979 which freezes the hostage agency can be understood as a form of regulation policy which is the free authority of the Director General of Taxes in anticipate increment of hostage agency practice at that time. The action of the Director General of Taxes which freezes the hostage institution through SE Nr. 06/Pj.04/1979 is a form of state administration official who exercises his/her free authority on the basis that the regulation of the policy (beleidsregel) will be useful and efficient for the purpose of administering the duties of state administration (Lukman, 1996).

SEMA Nr. 2 of 1964, SEMA No. 4 of 1975, Circular Letter from Director General of Taxes Nr. 06/Pj.4/1979, Letter of Head of the Supreme Court Nr.0109/MA/1984, and the Circular Letter of the Director General of Taxes Nr.12/PJ.62/1984 are

regulatory products of hostage agency that are produced to meet legal needs with sufficient legal considerations at the time. In the meantime during its development, a new paradigm that has emerged is the use of hostage institutions or imprisonment for civil debt has needed for law enforcement and forced equipment to bailsman, debt guarantors of a company or group of companies or debtors who have bad faith and do not fulfill their obligations in paying and paying off its debts and have a detrimental impact on the country's economy and society (Priyambodo, 2000).

Based on the legal principle *lex superior derogat legi inferiori*, means higher regulation on hierarchy of laws can abolish the existing rules at the lower level, Law Nr. 19 of 1959 have higher position (*lex superior*) when compared with SEMA Nr. 2 of 1964, SEMA Nr. 4 of 1975, and Circular Leter of Director General of Taxes Nr. 06/Pj.4/1979 (*lex inferior*) as well. Thus SEMA and Circular Leter of the Director General of Taxes can not eliminate the existence of Law no. 19 of 1959 which became the legal basis of the hostage institution in the tax law at the time. But at the further time Law Nr. 19 of 1959 on the Collection of State Taxes with Distress Warrant (State Gazette of 1959 Nr. 63 and Supplement to the State Gazette Nr. 1850) can not fully support the implementation of applicable tax laws. Such that the government then enacted Law Nr. 19 of 1997 on the Collection of Taxes with Distress Warrant.

Similarly, given the current economic development of Indonesia and supported by the spirit of reform, the government then makes changes to Law. Nr. 19 of 1997 by stipulating Law Nr. 19 of 2000 on Amendment to Law Nr. 19 of 1997 concerning Tax Collection with Distress Warrant. The amendment was, among others, based on the principal thoughts on the provisions of legislation such as Law Nr. 22 of 1999 on Regional Government, Law Nr. 25 of 1999 on the Financial Balance Between the Central and Local Governments, the aspects of equity, legal protection to the taxpayer and third parties, in the form of the right to file a lawsuit, and to enforce law enforcement consistently with based on predetermined billing schedule.

Likewise, based on the legal principle *lex specialis derogat lex generalis* which states that the more specific rules overcome the more general rules, and the principle of *lex posterior derogat lex priori* means the new rules paralyze the old rules, the position of hostage institutions as a means of forcibly collecting tax debt also has a strong juridical basis, because of the existence of Law Nr. 19 of 1997 jo Law Nr. 19 of 2000 on Tax Collection with Distress Warrant may override other general and pre-existing legislation on hostage institutions.

Factors Affecting Implementation of the Hostage Institution for Tax Debt Collection

The use of a hostage taking action in the tax law is the last means of forcibly collecting tax debt, so that if an active collection procedure undertaken by the Directorate General of Taxes of the Republic of Indonesia has been able to encourage taxpayers / tax bearers to fulfill their tax obligations, no need a forced tool for collection of tax debt anymore.

Taxpayers' compliance factors in fulfilling their tax obligations also affect the possibility of the use of hostage institutions by the DGT. This can happen because basically the main purpose of tax collection is the settlement of the tax debt and the fulfillment of sources of state revenue, so that if with existing administrative procedures, taxpayers / tax bearers have been able to meet the obligations of taxation, hostage is the last alternative to save the source of state revenue. In general, taxpayer compliance in Indonesia in implementing new tax obligations at the level of compliance attitude, that is because of the fear of legal penalties (Ancok, 1995). Based on these facts, the hostage institution is still highly relevant to be used as a means of enforcing tax law, although it remains as the last forced means for collection of tax debt.

Law enforcement and tax collection by a hostage forced tool by the government as a fiscal authority are based on the authority granted by law. Nevertheless, the tax authorities should also consider that strict enforcement of law and tax collection of tax debt to the public should be offset by the government's obligation to provide public services and the fulfillment of the rights of the people to secure their welfare, security, and peace of life. Fulfilling the rights of the community as a taxpayer basically also has a close correlation with the increased awareness and compliance of the community in fulfilling its tax obligations as a state obligation. Compliance and obedience in carrying out taxpayer tax obligations have a significant correlation with public services provided by the government and all components of civil servants. Bad, low-quality, and inadequate government in fulfilling the tuntuntan and public expectation in providing public services, making people less inclined to comply with taxes and even perform worse actions, such as tax hijacking and look for other alternatives to tax evasion (Bovi and Cerquiti, 2013).

The action of Directorate General Tax to issue a warrant to carry out the hostage-taking constitutes the realization of the free authority of the state administrative agency in the form of state administrative decree (*beschikking*). The discretionary authority of DGT, in addition to giving freedom to self-determination of the policies to be pursued by the relevant state administrative bodies, also has an obligation for the civil servants to use its powers appropriately and properly. The use of the authority of the bodies or officials of state administration is essentially the ability to exercise their discretionary power responsibly and to demonstrate good judgment in their decisions (Boll, 2016).

An act of government as well as a decree of state administration issued by a state administrative body / officer may occur prioritizing the basic value of benefit and the effectiveness of a goal (*doelmatigheid*) to carry out the duties of the administration of the public interest. Just as the law must contain the basic values of justice, benefit and certainty, a governmental act can be useful

(nuttig) and effective (*doelmatig*) if it is as much as possible to pursue justice (*rechtvardigheids*). Thus the actions of the government will be authoritative if able to organize and guide human life together on the principles of justice.

The use of gizjeling as a force tool for collection of tax debt is influenced by several factors that are juridical and non juridical. The legal factors / juridical factors affecting the application of the hostage institution as a forced tool for collection of tax debt can be classified into juridical factors that inhibit and support the implementation of hostage institutions in the collection of tax debt. The juridical factors affecting the implementation of the hostage agency are:

1. SEMA Nr. 02 of 1964, Supreme Court Decree 951 K/Sip/1974, SEMA Nr. 04 of 1975, and Circular Leter of Director General of Taxes Nr. 06/Pj.4/1979;
2. SEMA Nr. MA/Pemb/0109/1984 and Circular Letter of Director General of Taxes Nr. SE 12/PJ.62/1984;
3. The position and function of the hostage institution in the collection of tax debt; and PERMA No.1 Year 2000 on Imprisonment for Civil Debt.

As the highest judicial institution, the opinion or fatwa established by the Supreme Court shall serve as reference for other institutions in dealing with the same legal matter. Issuance of SEMA Nr.02 of 1964, Supreme Court Decree 951K/Sip/1974, and SEMA Nr. 04 of 1975 seen its influence on DGT policy in applying the hostage institution for collection of tax debt, that is with the issuance of the Circular Leter of Director General of Taxes Nr. 06/Pj.4/1979. This provision is one of the factors inhibiting the application of detainee to the collection of tax debt.

Supreme Court Letter Nr. MA/Pemb/0109/1984 dated January 11, 1984 is the answer to the letter of Directorate of Ministry of Home Affairs Nr. 303/KPD-IV/1983 dated December 31, 1983 which stated that the freezing of hostage institutions in SEMA Nr. 2 of 1964 and Nr. 4 of 1975 only for the interest of accounts receivable in civil law (*een civiel rechtelijke person*) and not aimed at hostage in the collection of tax debt for state interest (*publiek rechtelijke persoon*). In this regard, the Director General of Taxes through SE Nr. SE 12/PJ.62/1984 dated July 4, 1984 also asserted that the hostage institution is still as a tool of force in the collection of tax debt. But in practice it is instructed to avoid / restrict the use of hostage institutions for the sake of strict collection of tax debt. This of course does not support the effectiveness of hostage application for the benefit of tax debt collection. Institution hostage in Law Nr. 19 of 1959 is thus only listed as a formally forcible instrument of force.

Law enforcement by means of detainee is not only influenced by legal factors / juridical factors, but also influenced by non juridical factors. Some non juridical factors that influence the application of detainee as a means of forcibly in the collection of tax debt are among others:

1. Taxpayer / tax bearer compliance level.
2. Tax apparatus, especially tax inspectors and tax bailiffs.
3. Administration of taxation and facilities / means of hostage taking.

Understanding and awareness of taxpayers / tax bearers on their rights and obligations is a determining factor in complying with the provisions of tax laws. The level of compliance and awareness of the taxpayer in complying with the tax legislation starts from his knowledge of the function and role of tax in the life of the state. The role of fiskus in providing services and counseling is one of the factors that support the implementation of tax law enforcement. The higher level of ability and willingness of the people in paying taxes (willingness to pay) also have an impact on the process of implementing sanctions and implementation of tax collection.

Tax officer is the perpetrator who directly involved in tax law enforcement. Tax officer is one of the role holder and role officer in tax law enforcement efforts. High level performance of the tax officer, which involves the discipline and mental employee taxation, as well as a high level of professionalism, is one of the determining factors in tax law enforcement. Study on the representation of women in the fulfillment of tax obligations in the working relationship with the company mentioned that corporate institutions, government institutions that have authority in tax law enforcement have a significant role to realize the compliance of female employees and awareness in paying income tax (Roman Lanis, et al., 2017).

Administration and tax management systems that support DGT performance from goal setting, to achievement through officer and taxation management based on predetermined control tools and the assistance of available facilities or facilities, are factors that greatly affect law enforcement and effectiveness of implementation collection of tax debt. A tax system can work well significantly resulting in low cost and efficient administrative costs to realize taxpayer compliance. If cost is an important variable affecting tax revenue, then the tax system must be restructured in accordance with the principle (Mihu, 2011).

CONCLUSION

Based on the results of research and analysis described in previous chapters, it can be formulated a conclusion as follows:

1. The juridical construction of Imprisonment for Civil Debt (*gijzeling*) from the perspective of administrative law, is a punitive form of government (*bestuurdwang*) which is punitive and is the means used as the last option (*ultimum remedium*);
2. In tax law enforcement praxis, validity basis of juridical considerations of the involuntary use of gijzeling agency is to provide deterrent effect and psychological coercion against taxpayers to pay off the tax debt.

From the analysis of research results and conclusion formulation obtained, then here are some recommendations related to the subject of research problems:

1. Tax law enforcement should put forward a persuasive approach rather than the use of physical coercion (*gizjeling*);
2. In any tax law enforcement, the government should encourage public participation with a model of communicative action.

ACKNOWLEDGEMENT

This research received no specific grant from any funding agency in the public, commercial, or not-for profit sectors.
The authors report there are no competing interests to declare.

REFERENCES

1) Ancok, Djamaludin. 1995. "*Pajak, Law Enforcement, dan Keadilan: Keadilan Pembagian Beban Pajak Dalam Kaitannya Dengan Kesadaran Wajib Pajak"* (Taxes, Law Enforcement, and Justice: Justice Distribution of Tax Expenses In Relation With Taxpayer Awareness), a National Seminar Paper in Tax Law Enforcement and Justice Distribution of Tax Expenses Seminar, Faculty of Law of Undip, Semarang, d. 25 September 1995, p. 6,
2) Aruna, Dian Citra, Jaya, Tresno Eka, and Megawati, Corry. 2011. *The Influances Of Tax Addiction in Admission Letter And Enforcement Letter On Tax Delay Of Payment Flow :Case Study In Tax Office Directorate General Of Taxation West Jakarta Territory, The 3rd International Conference on Humanities and Social Sciences, April 2, 2011 Faculty of Liberal Arts, Prince of Songkla University, Proceedings- Organization and Social Context*
3) Boll, Karen. 2016. Deciding on Tax Evasion –Front Line Discretion and Constrains. *Journal of Organisation Ethnography*, Vol. 4 No. 2. Emerald Group Publishing Limited, 2046-6749, DOI 10.1108 / JOE-07-2014-0018, p. 194
4) Bovi, Maurizio and Cerquiti, Roy. 2014. *A Quantitative View on Policymaker,s View Goal, Intsitution and Tax Evasion*, Qual Quant (2014) 48:1493-1510, Online Publishing: 3 May 2013, © Springer Science + Business Media Dordrecht, 2013
5) Cuza, Alexandru Ioan. 2014. Analisys Legal Instruments for Preventing and Fighting Tax Evasion in some European Legal Systems. *Journal of Criminal Investigation*, ISSUE 2/2014
6) Damayanti, Theresia Woro. 2012. Changes on Indonesia Tax Culture, is There A Way? Studies Through Theory of Planned Behaviour. *International Revereed Research Journal*, www.researchersworld.com-vol.-III, issue, IV(1), October 2012 (8)
7) Gilboa, David. 2015. Punishment Justifiable as a Quasi Tax. *Economics and Philosophy*, No. 35. 2015. 10, 1017 / S026626711500019X, journals.cambridge.org/eap,© Cambridge University Press
8) Hartl, Barbara, Eva Hofmann, Katharina Gangl. 2015. *Does The Sole Describtion of Tax Authorities Affect Tax Evasion? The Impact of Described Coercive and Legitimate Power*, Power PlosOne/DOI:1731/journal.pone.123355, April 29, 2015
9) Lanis, Roman, Grant Richardson, and Grantley Taylor. 2017. Board of Director Gender and Corporate Tax Aggressiveness: An Empirical Analysis. *J Bus Ethics* 144:577–596, DOI 10.1007/s10551-015-2815-x, Springer Science+Business Media Dordrecht, 2015
10) Lukman, Marcus. 1996. *Eksistensi peratruran Kebijaksanaan Dalam Bidang Perencanaan dan Pelaksanaan Rencana Pembangunan di Daerah Indonesia Serta Dampaknya Terhadap pembangunan Materi Hukum Tertulis Nasional*, Disertasi, Fakultas Pasca Sarjana Universitas Padjadjaran, Bandung.
11) Lumbantoruan, Sihol. 1996. *Ensiklopedi Perpajakan Indonesia*. Jakarta: Erlangga Publishers. P. 316
12) Luttmer, Erzo FP and Singhal, Monica. 2014. Tax Morale. *Journal of Economics Perspectives* Vol.28 No.4.
13) Mihu, Stefan. 2011. Reforming The Tax Code: Modern Principles of Taxation. *Economic, Management, and Financial Markets* Vol. 6(1) 2011, ISSN 1842-3191
14) Mustafa, Bachsan. 1998. *Pengantar Hukum Administrasi Negara*. Bandung: Citra Aditya Bhakti.
15) Panggabean, Henri. 2001. *Fungsi Mahkamah Agung Dalam Praktek Sehari-hari*. Jakarta: Sinar Harapan.
16) Pfeifer, Michael G. and Yoon, Sae Jin. 2016. *The Ethical Limits of Tax Planning*, Trusts and Trustees, Vol. 22, No. 1, February 2016, Oxford University Press p.162
17) Priyambodo, Dadut. 2000. *Paksa Badan atau Krisis Lagi*, *Kompas* Daily, dated on 11 October 2000
18) Prodjodikoro, Wirjono. 1986. *Asas-asas Hukum Pidana di Indonesia*. Bandung: Eresco Publishers, p.82
19) Rosjidi, Muchtar. 1989. Sekitar Penyanderaan Dalam Hukum Pajak. *Law and Development Magazine* No.3 June of 1989, p. 242.
20) Saputra, M. Nata. 1988. *Hukum Administrasi Negara*. Jakarta: Rajawali.
21) Soemitro, Rochmat. 2014. *Dasar-dasar Perpajakan Jilid I, II dan III*. Bandung: Eresco Publisher.
22) Vallentini, Laura. 2011. Coercion and (Global) Justice. *American Political Science Review*, Vol. 105, No. 1, February 2011
23) Visockaitė, Audra. 2013. Ethic in Tax Administration. *Societal Studies* 5(3) 2013.

24) Wijk, van H.D. 1984. *Hoofstrukken van Administratief Recht,* 5e druk, Vuga,'S-Gravenhage, Willem Konijnenbelt.

LEGISLATION

1) TAP MPR RI No. III/ MPR/ 2000 on the Source of Law and Order of Legislation Regulations
2) UU No. 14 year 1985 about the Supreme Court
3) UU No. 19 year 1959 until then replaced by Law no. 19 of 1997 jo Law no. 19 of 2000 on the Collection of Taxes by Forced Letter.
4) UU No. 19 year 2000 on Amendment to Law no. 19 of 1997 concerning Tax Collection by Forced Letter (PPSP)
5) Perpu No. 1 year 1998 jo UU No. 4 year 1998 on Bankruptcy and Suspension of Payment Obligations
6) Presidential Decree No. 44 of 1974 on the Principles of Organization of the Ministry of RI
7) PERMA No. 1 year 2000 on Gizjeling
8) Decision of the Supreme Court of the Republic of Indonesia No. 951 K/Sip/1974
9) Circular letter MA RI No. 2/ 1964
10) Circular letter MA No. 4/ 1975
11) Anonymous, Community SE MA RI year 1951-1978, Publisher of the Directorate of Law and Justice, Jakarta, 1975
12) Letter of Chairman of Supreme Court RI Nr. MA / Pemb / 0109/1984 dated January 11, 1984, addressed to Dirjen PUOD cq. Pj. Director of Regional Finance in Jakarta, regarding the explanation of SEMA No. 2/1964 and SEMA No. 4/1975
13) North Jakarta / East Jakarta Court Decision dated. May 27, 1974 No.1 / 1974 / Gijz
14) Director General of Taxes Circular Letter no. SE 12 / PJ.62 / 1984