

CRIMINAL RESPONSIBILITY OF PUBLIC ACCOUNTANT TO TAX CRIME

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Abstract

Criminal Responsibility of Public Accountant regarding to the Law Number 5 of 2011 based on malicious to benefiting own self or specific party unlawfully. Meanwhile regarding to General Provisions and Tax Procedures (KUP) criminal responsibility of Public Accountant based on subjective fault in form of negligence or deliberately which cause losses to the revenues of the state. The difference base of criminal responsibility rise conflict against law enforcement of tax crime resulting Public Accountant become free or burdened with criminal responsibility. Through normative law research, the problem assessed to discover the ideal regulation for criminal responsibility of Public Accountant on tax crime with taking attention aspects of justice, benefit, and legal certainty. The research which performed with regulations approach conclude that objective fault is become ideal base of criminal responsibility for Public Accountant which having own characteristic profession. Objective fault is not determined by inner connection between the man with his act, but have firm and clear measurement. Beside that, jointly responsibility also can be combination factor for criminal responsibility base of Public Accountant on tax crime. With jointly responsibility make Public Accountant have opportunity to participate in recover losses to revenues of the state caused by tax crime. Thus, the revenues of the states which become main objectives will more guaranteed.

Keywords: *Criminal Responsibility, Normative Fault, Public Accountant*

1. INTRODUCTION

In a legal state all activities of statehood must be carried out based on a rule of law, including in the case of tax collection. Similarly, the state of Indonesia, where tax collection activities are based on a law. Article 23A of 1945 Constitution Law of the Republic Indonesia (UUD 1945) is the constitutional foundation of tax collection activities in Indonesia. Taxes are mandatory contributions that are coercive and used for the benefit of the state. Therefore, paying taxes becomes a state obligation that must be carried out by every citizen who has met certain requirements so that against him is designated as a taxpayer.¹

The amount of tax to be paid is determined based on the additional economic capabilities received or obtained by each taxpayer. So as to calculate the amount of additional economic capabilities, then to the taxpayer of private persons who do business activities or free work and corporate taxpayers are required to carry out bookkeeping.² Through bookkeeping organized by taxpayers must be able to calculate the amount of taxes owed. Therefore, bookkeeping should be held with good faith in mind and reflect the actual circumstances or activities of the business.

¹ Article 2(1) Law No.28 2007 Concerning Thrid Revision of Law No.6 1983 Concerning General Provisions and Tax Procedures.

² Article 28(1) Law No.36 2008 Concerning Fourth Revision of Law No.7 1983 Concerning Income Tax.

The tax self-assessment system implemented in Indonesia requires the independence of taxpayers in carrying out their obligations, ranging from calculating taxes owed, depositing to state funds, and reporting them through a tax returns. Thus, the level of taxpayer compliance with the applicable provisions will greatly determine the success of the tax collection carried out. For the purpose of ensuring taxpayer compliance in carrying out their obligations in accordance with applicable provisions, fiscus conducts supervision through tax returns submitted by taxpayers.

Tax returns is a form of taxpayer responsibility for the implementation of their tax obligations so that it must be filled properly, fully, clearly, and signed.³ One form of completeness in SPT reporting is to attach financial statements. Through the attached financial statements, it can be traced back to the calculation of the amount of taxes owed that have been done by the tax payer. Therefore, financial statements should reflect the actual circumstances or activities of the business. Given the importance of the quality of financial statement information in order to determine the level of compliance of taxpayers, the falsification of financial statements or the presentation of information that does not describe the actual circumstances is regulated as a form of action that can be threatened with criminal sanctions.⁴

Public accountant as the only profession that can provide assurance services have a role in improving the quality and credibility of financial information that has been compiled by an entity.⁵ Similarly, in the field of taxation that recognizes the important role of Public Accountant in the implementation of tax collection with a self-assessment system, which requires that audit reports from public accountants be attached at the time of submission of tax returns. Violation of the obligation in question will cause the tax return that has been submitted by the taxpayer will be considered incomplete so that it becomes considered not delivered.⁶

The position of Public Accountant who carries public trust, in order to get reliable financial information for economic decision making, is required to have a professional and independent attitude as part of the characteristics of his profession. To provide legal certainty in protecting the public interest and the interests of the Public Accountant profession itself, it is also regulated regarding criminal provisions against the public accountant profession.⁷ According to the Law on Public Accountants (UU AP) the criminal provisions are formulated as the act of committing or assisting in the manipulation or falsification of data related to the services provided, which is based on malicious intentions to seek profit for himself or others unlawfully based on sufficient preliminary evidence.⁸

³ Article 4(1) Law No.28 2007 Concerning Thrid Revision of Law No.6 1983 Concerning General Provisions and Tax Procedures.

⁴ Article 39 Law No.28 2007 Concerning Thrid Revision of Law No.6 1983 Concerning General Provisions and Tax Procedures.

⁵ Article 3 Law No.5 2011 Concerning Public Accountant.

⁶ Article 4(4b) Law No.28 2007 Concerning Thrid Revision of Law No.6 1983 Concerning General Provisions and Tax Procedures.

⁷ Article 55 Law No.5 2011 Concerning Public Accountant.

⁸ Decision of Constitutional Court of Republic Indonesia No.84/PUU-IX/2011.

In contrast to the Law on Public Accountants, the criminal acts of Public Accountants according to the General Provisions and Procedures of Taxation (UU KUP) are formulated as an act that tells, participates, advocates, or helps show faked or falsified bookkeeping as if it is true or does not describe the actual circumstances so as to cause harm to state revenues.⁹ Therefore, the element of the onset of losses on state revenues is a substantial difference between the UU AP and the UU KUP in determining whether an act is threatened with criminal sanctions or not.

The difference in the regulation of criminal provisions between the UU AP and the UU KUP carries consequences for the criminal liability of Public Accountant in the field of taxation. Criminal tax liability can be requested to the Public Accountant who conducts or assists in data manipulation even if it is not based on malicious intent to seek profit for himself or others unlawfully as long as his actions cause harm to state revenues.

According to the publication on the Performance of Investigations in 2019 as many as 102 case files from a total of 144 case files that have been declared complete by the Prosecutor's Office (P-21) have a modus operandi in the form of issuance of tax invoices not based on actual transactions, taxes are levied but not deposited, do not submit tax returns, and misuse of taxpayer Identification Number (NPWP) or Tax Entrepreneur Identification Number (NPPKP).¹⁰ The 2019 Investigation Performance Data reflects that criminal liability for tax crimes still focuses only on taxpayers, administrators, or other parties who are not as Public Accountant.

Departing from the existing problems, the formulation of the problems in this article consists of: (1) How to regulate the responsibility of Public Accountant for tax crimes in Indonesia (*ius constitutum*)?; (2) How is the implementation of Public Accountant's liability for tax crimes since the enactment of Law No. 28 of 2007 on changes to the General Provisions and Procedures of Taxation?; and (3) What is the ideal legal arrangement for the responsibility of Public Accountant for tax crimes (*ius constituendum*)?.

2. RESEARCH METHODS

To find answers to problems that have been built before, legal research activities are carried out in the type of normative legal research. Normative legal research is understood as scientific research to find the truth based on the logic of legal science from its normative side. Normative law research sees law as a separate system that is separate from various other systems that exist in society so as to provide a boundary between the legal system and other systems.¹¹ Therefore, the study of normative legal research views law in an internal perspective where it is a closed system and separate from other systems such as political systems, economic systems, social systems, and other existing systems. In this normative legal research conducted, the focus of its exploration is directed to legal norms about

⁹ Article 38, Article 39, and Article 43 Law No.28 2007 Concerning Thrid Revision of Law No.6 1983 Concerning General Provisions and Tax Procedures.

¹⁰ Annual Report 2019 Directorate General of Taxes. *Peningkatan Kapasitas Secara Berkesinambungan Melalui Penguatan Tata Kelola Data dan Teknologi Informasi Perpajakan*. 76-77.

¹¹ Johnny Ibrahim. *Teori dan Metodologi Penelitian Hukum Normatif Edisi Revisi*. (Malang: Bayumedia Publishing. 2007). 57.

criminal liability in the field of taxation against perpetrators with professional characteristics, especially the profession of Public Accountant.

The scientific value of discussion and problem solving in a study will depend on how the approach is used. Approach is the perspective of researchers in choosing the spectrum of language space that is expected to be able to provide clarity of description of a scientific work substance.¹² A legal study may incorporate several alternative approaches available, so that there are two or more appropriate approaches in the study. However, the statute approach is an approach that is definitely used in a normative legal research. Similarly, this legal research uses a statute approach as main approach, which examines legal norms on criminal liability in the field of taxation by Public Accountant contained in the laws and regulations.

This legal research activity uses research materials in the form of (1) legal materials consisting of primary legal materials as well as secondary legal materials, and (2) non-legal materials. Primary legal material is an authoritarian legal material, consisting of legislation, official records or treatises in the making of legislation, and judge's decisions. While secondary legal material includes all publications about the law that are not official documents such as legal books, legal journals, or comments on court rulings. Non-legal materials are materials beyond the topic of law, which is intended to enrich the insights of researchers. Legal materials and non-legal materials used have been adjusted or relevant to the formulation of existing problems, namely regarding criminal responsibility of taxation against Public Accountant.

Previous legal research related to the topic of criminal responsibility of taxation directs the focus of its research to the taxpayer, especially corporations as corporate taxpayers. In addition, according to the current UU KUP, the basis of criminal tax liability is placed on the element of fault that is subjective in the form of ignorance or intentionality. The criminal provisions are considered not in accordance with the characteristics and role of Public Accountant in the self assessment system applied in Indonesia. So this legal research seeks to find a new form of legal arrangement regarding criminal liability of Public Accountant in the field of taxation, which is in line with the values of justice, expediency, and legal certainty. Thus, this study has a newness and originality that can be accounted for academically.

3. ANALYSIS AND DISCUSSION

3.1. Specificity of Tax Law in Tax Crimes

Taxes are a very strategic source of state finances, and there is not even a single country in the world that does not collect taxes. As a state tax obligation is levied under the law. According to Rochmat Soemitro, taxes are people's dues to state coffers under the law, which can be imposed by not getting direct lead (counterpressive) services, and which are used to pay for general expenditures.¹³ While in the UU KUP defines taxes as mandatory contributions to the state owed by private persons or entities that are coercive under the law by not getting directly rewarded and used for state purposes for

¹² I Made Pasek Diantha. *Metodologi Penelitian Hukum Normatif Dalam Justifikasi Teori Hukum*. (Jakarta: Prenadamedia Group. 2019). 156.

¹³ R. Santoso Brotodihardjo. *Pengantar Ilmu Hukum Pajak*. (Bandung: PT Eresco. 1993). 2.

the maximum prosperity of the people.¹⁴ Romli Atmasasmita considers that taxes are very important in the welfare state, where taxes as one of the incomes to improve the social welfare of the people in the country concerned.¹⁵

Apart from various reasons, motivations, and all the problems that occur that tax collection has been carried out by various countries in various places and times. In the course of its history taxes experienced the dynamics of development over time, ranging from the development of the significance of the role of taxes for a country to the complexity of the challenges faced in collecting taxes.

In the microeconomic point of view, taxes are understood as the transition of wealth from the private sector to government that can be imposed without obtaining direct rewards. Thus taxes are considered a burden, reducing income, reducing purchasing power, and ultimately reducing individual well-being. So that there is resistance to the implementation of tax collection in the form of tax evasion which is a tax criminal act. Tax crimes can be classified as: (1) neglectfully of delivering tax return that is not true, (2) intentionality for certain actions, (3) intentionality for issuing tax invoice, tax withholding slip, or tax deposit slip, (4) neglectfully or intentionality in perform certain position, (5) intentionality does not provide evidence or provide evidence but that is not true in order to carry out the provisions of the tax regulations, (6) intentionally obstructing tax investigations, and (7) intentionally does not provide evidence or provide evidence but that is not true in the framework of supervision of taxpayer compliance.¹⁶

The position of tax law in the national legal system has specificities indicated through (1) the subject and object of tax law does not fully follow the principles of law that applies in general, (2) the existence of civil nature in the form of compromises that can change criminal sanctions with administrative penalties, and (3) do not fully follow the general legal adagium.¹⁷ The specificity of tax law is also reflected through the establishment of its own judicial authority that is authorized to conduct the judiciary to enforce tax law. A tax court is a judicial body that exercises judicial power for taxpayers or tax insurers seeking justice to tax disputes.¹⁸ The existence of the Tax Court as the institution of the holder of judicial power has been regulated in Article 24 paragraph (3) of UUD 1945. Thus, judicial power relates to all types of taxes levied by the central government, including import duties and excise duties, and taxes levied by local governments, carried out by the Tax Court.

¹⁴ Article 1 Law No.28 2007 Concerning Thrid Revision of Law No.6 1983 Concerning General Provisions and Tax Procedures.

¹⁵ Romli Atmasasmita. *Sekitar Masalah Korupsi: Aspek Nasional dan Aspek Internasional*. (Bandung: Mandar Maju. 2004). 39.

¹⁶ Timbo Mangaranap Sirait. *Hukum Pidana Pajak Indonesia Materiil dan Formil*. (Sleman: Penerbit Deepublish. 2019). 19.

¹⁷ Anshari A. Ritonga. *Tinjauan Hukum Pajak Sebagai Ilmu Hukum Bersifat Khusus*. (Jakarta: Pustaka El Manar. 2017). 15-22.

¹⁸ Article 2 Law No.14 2002 Concerning Tax Court.

The presence of law in society is to integrate and coordinate the interests that can collide with each other, so that by law those interests are integrated in such a way that they can be suppressed in the least amount.¹⁹ Simply put, tax law is understood as a set of regulations governing rights and obligations, as well as the relationship between the taxpayer and the government as a tax collector. Tax law also contains criminal provisions related to the implementation of rights and obligations in the field of taxation. Given that tax law is special (*lex specialis*) then liability for a criminal act of taxation must be subject to tax laws and regulations, even though the perpetrators of tax crimes are also the legal subject of a particular legislation.

3.2. Normative Fault as An Element of Criminal Responsibility of Taxation Against Public Accountant

In criminal law liability applies the principle of no criminal without fault or *geen straf zonder sculd* or *actus reus mean rea*. The principle is the basis of criminal liability and is not found in the law.²⁰ Moeljatno argues that a person cannot be held accountable if he does not commit a criminal act, but even though he commits a criminal act, he cannot always be convicted.²¹ Thus, the person who commits a criminal act is not necessarily punishable by the criminal law because it depends on whether the person can be held accountable or not. In essence, criminal liability is a form of mechanism that was created, in reaction to violations of what has been agreed upon.²² So it becomes unfair to impose a criminal on someone who violates the actual criminal provisions of the person has no fault.²³

Criminal provisions that apply to taxpayers also apply to representatives of taxpayers, power of attorneys, taxpayer employees, or other parties such as Public Accountant and Tax Consultant who order, participate, advocate, or help commit criminal acts in the field of taxation.²⁴ The act of participating (*medeplegen*) has a different characteristic because it requires a joint act (*meedoet*) between the material actor (*pleger*) and the perpetrator participates in doing (*medepleger*), so that criminal acts will not be realized without such cooperation. The act of participating is seen as an extension of the criminal delik formulation. According to Langemeijer that participating in doing does not require the culprit to have the same qualities as the maker and is not

¹⁹ Satjipto Rahardjo. *Ilmu Hukum*. (Bandung: PT Citra Aditya Bakti. 2014). 53.

²⁰ Eddy O.S. Hiarij. *Prinsip-Prinsip Hukum Pidana Edisi Revisi*. (Yogyakarta: Cahaya Atma Pustaka. 2016). 153.

²¹ Moeljatno. *Asas-asas Hukum Pidana*. (Jakarta: PT Rineka Cipta. 2008). 155.

²² Chairul Huda. *Dari Tindak Pidana Tanpa Kesalahan Menuju Kepada Tiada Pertanggung jawab Pidana Tanpa Kesalahan: Tinjauan Kritis Terhadap Teori Pemisahan Tindak Pidana dan Pertanggungjawaban Pidana*. (Jakarta: Prenadamedia Group. 2006). 68.

²³ Hanafi Amrani dan Mahrus Ali. *Sistem Pertanggungjawaban Pidana Perkembangan dan Penerapan*. (Jakarta: Rajawali Press. 2015). 250.

²⁴ Article 43 Law No.28 2007 Concerning Thrid Revision of Law No.6 1983 Concerning General Provisions and Tax Procedures.

required to fulfill the entire formulation of the decal, because it aims to net people who do not meet the decal formula in order to be considered like the maker.²⁵

The act of participating substantively does not have to be followed by a procedural process in determining the people involved in participating as suspects, defendants, even convicts, although it must be proven to be participating. The main problem in participating is the existence of a legal event and the extent of the person's involvement. In the criminal act of taxation the involvement of Public Accountant is indicated by the act of falsifying audit opinions to reduce or even avoid tax payments that should be carried out by the audited party. Therefore, falsification of audit opinion is a form of Public Accountant involvement that can be the basis of criminal tax liability to Public Accountant.

Criminal responsibility of taxation places fault in the form of intentionality or accident as the basis or accident to hold criminal responsibility from the perpetrator. Intentionality is a psychological fault, where intentionality is an inner relationship between the perpetrator and the deeds he does. In the event that the perpetrator wants or wishes his actions, then the mistake is a deliberate. Conversely, if the perpetrator does not suspect his actions then the mistake occurs because of the fault. Fault in the form of intentionality explicitly regulated in the UU KUP cause the mixing of elements of the psychological state of the perpetrator with elements of the deeds he did (objective elements) as a single delik in determining a tax criminal act. So that if there can be no evidence of fault of a psychological nature, then the perpetrator must be given a free verdict (*vrijspraak*).²⁶

In contrast to psychological fault, normative fault are considered to use normative measures to then determine whether an action can be done to the perpetrator and whether the act can be avoided or not by the perpetrator.²⁷ The perpetrator will be judged to have the ability to be responsible for his actions if it has general qualities and special qualities. Awareness of the mind and free will are general qualities of responsible ability, while certain skills become special qualities.

To be able to work as a Public Accountant is required to meet a number of requirements, including being physically and spiritually healthy, having the ability to speak Indonesian, having knowledge of Taxation and Indonesian trade law, and having practical experience in the field of assurance service assignments.²⁸ Public Accountant are required to be professional, independent, and have integrity in mind and in appearance. Therefore, it can be concluded that a Public Accountant has the ability to be responsible for the implementation of his work. Thus, the criminal liability of Public Accountant in the field of taxation can be based on normative fault elements that can be

²⁵ Muhammad Ainul Syamsu. *Pergeseran Turut Serta Melakukan Dalam Ajaran Penyertaan Telaah Kritis berdasarkan Teori Pemisahan Tindak Pidana dan Pertanggungjawaban Pidana*. (Jakarta: Prenadamedia Group. 2018). 65.

²⁶ Agus Rusianto. *Tindak Pidana & Pertanggungjawaban Pidana Tinjauan Kritis Melalui Konsistensi antara Asas, Teori, dan Penerapannya*. (Jakarta: Prenadamedia Group. 2016). 131.

²⁷ Eddy O.S. Hiariej. *Prinsip-Prinsip Hukum Pidana Edisi Revisi*. (Yogyakarta: Cahaya Atma Pustaka. 2016). 159.

²⁸ Article 7 Law No.5 2011 Concerning Public Accountant.

assessed by objective measures in the form of violations of professional obligations that should be adhered to so as to ensure the achievement of justice and legal certainty.

3.3. Concept of *Ultimum Remedium* in Prosecution of Public Accountant

Criminal sanctions threatened to criminal offenders are characteristic of the difference between criminal law and other types of law. Criminal is a reaction to criminal acts (punishment) and the form of a suffering deliberately inflicted by the state or state institutions against the creator of the decal. Suffering is only a nearby goal, not the last goal that is aspired in accordance with the efforts of coaching (treatment).²⁹ The purpose of criminal law, in conjunction with criminal liability, is as deterrance or appropriate or balanced with retribution in a comprehensive criminal system.³⁰

Criminal law must be based on 2 (two) main principles, namely the principle of proportionality and the principle of subsidiarity. The principle of proportionality prioritizes a balance between means and purposes in the sense that a company does not have to burn down a house to catch a mouse. The principle of proportionality is the foundation of law enforcement's work to always question how far behavioral irregularities are needed to impose criminal sanctions. While the principle of subsidiarity is a guide to law enforcement in finding a solution to a legal problem where it is desirable to be sought or used in the most at least risk of loss. Suffering for the perpetrator will depend on how the form of criminal sanctions will be imposed for the criminal act, which, among other things, can be the loss of freedom, loss of property, and even up to the loss of life. Therefore, criminal law becomes not easy to use and the state does not easily impose criminal sanctions on its citizens. Criminal law should be used if there is really no other way to overcome problems in society.³¹

Rommelink argues that from the beginning the establishment of criminal law should be based on 2 (two) main principles, namely the principle of proportionality and the principle of subsidiarity.³² The principle of proportionality prioritizes a balance between means and purposes in the sense that a company does not have to burn down a house to catch a mouse. The principle of proportionality is the foundation of law enforcement's work to always question how far behavioral irregularities are needed to impose criminal sanctions. While the principle of subsidiarity is a guide to law enforcement in finding a solution to a legal problem where it is desirable to be sought or used in the most at least risk of loss.

Barda Nawawi Arief stated that criminal law has limitations in tackling crime because: (1) the occurrence of crime is very complex and is beyond the reach of criminal law, (2) criminal law is only a small part of social control facilities so it is not able to

²⁹ Aruan Sakidjo dan Bambang Poernomo. *Hukum Pidana: Dasar Aturan Umum Hukum Pidana Kodifikasi*. (Jakarta: Ghalia Indonesia. 1990). 69.

³⁰ Agus Rusianto. *Tindak Pidana & Pertanggungjawaban Pidana Tinjauan Kritis Melalui Konsistensi antara Asas, Teori, dan Penerapannya*. (Jakarta: Prenadamedia Group. 2016). 145.

³¹ Topo Santoso. *Hukum Pidana Suatu Pengantar*. (Depok: PT RajaGrafindo Persada. 2020). 123.

³² Jan Remmelink. *Hukum Pidana: Komentar Atas Pasal-Pasal Terpenting dari Kitab Undang-Undang Hukum Pidana Belanda dan Padanannya dalam Kitab Undang-Undang Hukum Pidana Indonesia*. (Jakarta: PT Gramedia Pustaka Utama. 2003). 46.

overcome the problem of very complex crimes, (3) criminal law is only symptomatic treatment and is not a causative treatment, (4) Criminal law sanctions are remedium that contain contradictory properties and negative side effects, (5) fragmentair and individualized treatment systems that are not structural/functional, (6) limitations of the type of criminal sanctions and their rigid and imperative formulation system, and (7) the functioning of criminal law requires more varied means of support and demands high costs.³³

In the field of taxation justice is legality that is in accordance with the provisions of applicable law. So any act that is not in accordance with the provisions of the applicable law is a crime, regardless of how the applicable law (*ius constituendum*). Anshari Ritonga argues that in the interests of state acceptance, against any act that violates the applicable provisions used the principle of *praesumptio iustea causa* and not the principle of *presumption of innocence*.³⁴ Criminal sanctions in taxation are basically intended as deterrence effect and coaching so as not to commit criminal acts so that it will eventually be able to encourage the level of compliance of other taxpayers. Nevertheless, criminal sanctions in taxation are highly counterproductive and not in line with the tax function as state revenue.

Romli Atmasasmita wrote of the need to open up new alternatives by making fundamental changes to the principle of criminal law "*no criminal without fault*" to "*no criminal without fault, no fault without expediency*".³⁵ But based on the economic model of criminal behavior approached by Montesquieu, Beccaria, and Bentham states that a person will commit a crime if the profit of the crime exceeds the risk, so the imposition of criminal sanctions is still needed to ensure the risk of a criminal tax crime will still be greater than the profit he will get.³⁶

The concept of *ultimum remedium* according to the current UU KUP is only addressed to taxpayers as the main perpetrators in tax crimes. Public Accountant, who are also taxed for their involvement, are not covered by the concept of *ultimum remedium* as directed to the taxpayer. But consider that criminal sanctions are counterproductive to state revenues that are the main objective in the field of taxation, so criminal sanctions are seen as compensation in the public interest as a result of the loss of tax revenues. The imposition of criminal sanctions in the form of fines, confiscation of property, and up to prison confinement will be imposed gradually to pay attention to the return of the loss of state revenue. The concept of *ultimum remedium* in the field of taxation supports the achievement of legal expediency as one of the objectives of law as expressed by Gustav Radburch. Therefore, the prosecution of Public

³³ Barda Nawawi Arief. *Kapita Selektta Hukum Pidana*. (Bandung: Citra Aditya Bakti. 2003). 88

³⁴ Anshari A. Ritonga. *Tinjauan Hukum Pajak Sebagai Ilmu Hukum Bersifat Khusus*. (Jakarta: Pustaka El Manar. 2017). 49.

³⁵ Romli Atmasasmita. *Rekonstruksi Asas Tiada Pidana Tanpa Kesalahan Geen Straf Zonder Schuld*. (Jakarta: PT Gramedia Pustaka Utama. 2017). 199.

³⁶ Romli Atmasasmita dan Kodrat Wibowo. *Analisis Ekonomi Mikro Tentang Hukum Pidana Indonesia*. (Jakarta: Prenadamedia Group. 2016). 28.

Accountant must be able to provide the widest benefit to the community through the recovery of state revenue losses due to tax crimes.

4. CONCLUSION

Tax crimes are included in the special type of criminal that regulates criminal matters for certain acts related to tax collection. Criminal taxes are regulated separately outside of the general criminal provisions, which are regulated in the UU KUP. According to the current UU KUP (*ius constitutum*) that criminal tax liability against Public Accountant is based on 2 (two) elements. First, the element of fault for participating in the delivery of tax returns whose contents are incorrect by attaching false bookkeeping that has been audited. The element of fault will be judged based on the inner relationship between the perpetrator and his actions or psychological, which is intentional or accidental. Second, the element of loss on state revenues as a result of criminal acts committed.

Since the enactment of Law No. 28 of 2007, tax criminal liability by Public Accountant has been regulated in Article 43. Public Accountant can be punished if they order, participate, recommend, or help show falsified bookkeeping as if it were true or did not describe the actual situation. However, in law enforcement efforts only to taxpayers, taxpayer representatives, or others not as Public Accountant who are held criminally accountable. While the Public accountant's liability for involvement in cases of manipulation of financial statements, which included as criminal acts in the field of taxation, is only limited to administrative sanctions such as written reprimands, freezing, or revocation of permits. The non-running of criminal tax liability against Public Accountant is caused by: (1) difficulty in proving the existence of an element of psychological fault where administrative examination procedures carried out by the competent authorities through tracing document evidence are unable to reach the basis of proof, and (2) disharmony of formal criminal provisions regarding the release of criminal prosecution between the UU KUP and the UU AP which ultimately hinders law enforcement efforts. against the Public Accountant for a criminal tax.

The regulation of legal provisions regarding ideal tax criminal liability against Public Accountant (*ius constituendum*) is done by: (1) replacing psychological fault as the basis of criminal liability with normative fault that are judged on a clear and objective basis so as to better ensure legal certainty, and (2) also make jointly responsibility as the basis of criminal liability for Public Accountant, thus providing an opportunity to participate in the efforts to recover losses on state revenues resulting from tax crimes.

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