



CRIMINAL SANCTIONS IN THE FIELD OF TAXATION BETWEEN LEGAL PROVISIONS IN INDONESIA AND LAW IN CHINA

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ABSTRACT

Taxes are a source of state revenue, it can be seen that income from the tax sector is one of the largest sources of state revenue. One of the efforts to increase state revenue is to enforce the law in the field of taxation. In order to support law enforcement, the imposition of sanctions is carried out correctly, precisely and does not overlap so that it can provide legal certainty and benefits both from the government side and from the taxpayer side. The author compares tax law with China regarding criminal acts of taxation, imposition of sanctions such as law enforcement for taxpayers who commit violations and/or crimes that violate the provisions stipulated by law. The results of the comparison regarding the provisions of tax law in China, it is necessary to reform the tax law, that is, the imposition of sanctions is enough to only use fine administrative sanctions if the state's losses have been returned by the perpetrators of crime, implement a blacklist system against tax evaders and tax violations, imposition of sanctions against Tax officials should be included as a codified unit in the tax law.

Keywords: Tax Sanctions, State Revenue, Tax Law Reform.

INTRODUCTION

The Republic of Indonesia is a unitary state which was formed with the aims and ideals of the state as mandated in the Constitution, as formulated in the Preamble to the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia). In order for these goals and ideals to be implemented and achieved, a long-term national development plan is needed that can formulate more concretely the achievement of state goals based on the mandate of the opening of the 1945 Constitution of the Republic of Indonesia.¹

Article 1 paragraph (3) of the 4th (fourth) amendment to the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) requires that the Republic of Indonesia, whose organizational principles are formulated in the Constitution, regulates that "the State of Indonesia is a state of law". It is explicitly explained in the explanation that the Indonesian State is based on law (*rechtsstaat*), not based on mere power (*maachtsstaat*) and the Government is based on a constitutional system (basic law) not based on absolutism (unlimited power).²

The legal basis for tax is contained in Article 23 A of the 1945 Constitution of the Republic of Indonesia which reads: "Taxes and other levies of a coercive nature for state needs are regulated by law". So every tax collected by the government must be based on law, so it is impossible for there to be taxes that are only collected based on government regulations or based on other regulations that are lower than the law.³ Tax collection based on

¹ Fourth paragraph of the 1945 Constitution of the Republic of Indonesia.

² Simon Nahak, *Tax Criminal Law Concept of Penal Policy for Tax Crimes in the Perspective of Legal Reform*, Setara Press, Malang, 2015, p. 2.

³ Sudikno Mertokusumo, *The Discovery of Law, Liberty*, Yogyakarta, 2009, p. 7.

regulations means that tax collection has received approval from the people through their representatives in the DPR, which is usually called a juridical basis. With this principle, it means that the government has provided a firm legal guarantee for the state's right to carry out its obligations. In a rule of law, the authority to carry out supervision is based on the principle of legality. So that the authority to carry out supervision must be written in statutory regulations as a legal basis.⁴

Tax crimes are acts under tax law committed by individual taxpayers and corporate taxpayers, for whose actions they can be held responsible because according to tax law they can be categorized as offenses that can be punished.⁵

Government legal action in relation to tax law enforcement can be carried out in the form of preventive and repressive legal action. Preventive action is providing socialization contained in the regulations, while repressive action is an action that tends to be imperative in nature and there are sanctions for taxpayers when they commit violations in the tax sector, the imposition of sanctions is regulated in taxation laws and regulations.⁶

According to Soemitro, tax is an obligation that arises because of a law which creates an obligation for the state to deposit a certain amount of income to the state, the state has the power to compel it, and the tax money must be used for government administration. So in general, taxes are people's contributions to the state treasury based on law, so they can be imposed without receiving direct compensation. Taxes are collected based on legal norms for government expenditure (routine and development) for the benefit of the general public.

From the definition of tax, it can be concluded that there are five elements inherent in the definition of tax, namely:⁷

1. Tax payments must be based on law
2. It can be forced
3. There are no counter-achievements (rewards) that are directly felt by taxpayers
4. Tax collection is carried out by the state, by the central and regional governments (it cannot be collected by the private sector)
5. Taxes are used to finance various government expenditures for the benefit of the general public.

Tax itself does not necessarily have a form of influence that can directly reach the community, it can take the form of a guarantee to the community, and like every form of public financial management, many variables are the main key to this, and the efficiency of absorption Taxes are also a problem, with allocation problems giving rise to externalities.⁸

In 1983, the government together with the People's Representative Council (DPR) agreed to reform the existing tax law and promulgate five tax law packages that were easier to learn and practice, even the tax system which was originally an official assessment was changed to a *self-assessment*.⁹

⁴ Alif Nabila, Swallow's Nest Regional Tax Collection in the Context of Increasing Original Regional Income, *Jurist-Diction*, Vol 3, No 4, 2020, p 1278.

⁵ Geraldina Chintyarizma, Notary Actions Which Have Implications for Criminal Acts in the Field of Taxation, *Jurist-Diction*, Vol 1, No 1, 2018, p 122.

⁶ Novita Wahyu Indriyanti, Regulation of Income Tax Collection for Imported Goods Deposit Services Activities, *Jurist-Diction*, Vol 3, No 6, 2020, p 2317.

⁷ Wirawan B, Ilyas and Richard Burton, *Tax Law Analysis Theory and Development 6th Edition*, Salemba Empat, Jakarta, 2013, p. 7.

⁸ Lawrence Daniel Ferwinz, Andi Lolo, Achmad Dani Maulana and Decmonth Nuel Pasaribu, Carbon Tax Transparency as a Catalyst in Low Carbon Development in Indonesia, *Jurist-Diction*, Vol 5, No 1, 2022, p 217.

⁹ Izzan Razaka Praditama, Legality of Collecting Income Tax on the Joox Music Streaming Application, *Jurist-Diction*, Vol 2, No 2, 2019, p 508.

One of the laws that will be discussed in this article is Law No. 8 of 1983. The Law on General Provisions and Tax Procedures has undergone several changes, most recently by Law No. 16 of 2009 concerning the Fourth Amendment to Law No. 6 of 1983 and in 2021 codified Law Number 7 of 2021 concerning Harmonization of Tax Regulations, one of which contains the KUP .

If you pay attention to the State Revenue and Expenditure Budget (APBN) documents, the sources of APBN income are tax revenues, non-tax state revenues and grant receipts from within the country and abroad. Of the three sources of income, income from the tax sector is one of the country's largest sources of income. This shows that the role of tax revenues in filling the APBN treasury in the context of national development is very important and strategic, apart from that it is also used to pay government debt.

Indonesia is a developing country, where in its development Indonesia cannot be separated from foreign debt. Apart from that, Indonesia is one of the countries that has carried out tax amnesty three times, namely in 1964, 1984 and 2008. With taxes, foreign debt will be slightly reduced. ¹⁰To date, up to March 31 2023, the total debt is IDR 7,879 trillion ¹¹, so indirectly this could erode state revenues, because it is also used to pay debt interest as well as routine costs and government operational costs, this causes the need for an increase in state revenues. One of them is efforts to implement taxation of state revenues, because if left unchecked this will result in economic growth being hampered, service budgets being reduced, subsidies being revoked one by one and at the most extreme, the country could possibly experience a prolonged economic crisis.

One effort to increase state revenues is to enforce the law in the field of taxation, means of law enforcement can include sanctions for failure to submit tax returns, interest charged for late payments, and criminal charges in the event of tax smuggling. Provisions regarding sanctions and other formal provisions are contained in the KUP.

In order to support law enforcement, the imposition of sanctions should be carried out correctly, precisely and not overlapping so that it can provide legal certainty and benefits from both the government and taxpayers' side. In this writing, the author conducted research on what will be given to taxpayers who violate it as well as the authorized institutions to carry out legal comparisons with China regarding tax crimes, the imposition of sanctions such as law enforcement for taxpayers who commit violations and/or crimes that violate the provisions stipulated. has been established by law.

PURPOSE OF COMPARATIVE LAW

The aim of conducting legal comparisons is *legal reform* , for which there are statutory provisions in Law Number 7 of 2021 concerning Harmonization of Taxation, one of the regulations contained in this law contains general provisions and tax procedures, but the applications vary. even though it is with the same object, which in this case is against the provisions of sanctions in the field of taxation.

The approach used by the author is a norm approach. In general, norms are distinguished between ethical norms and legal norms. Basically, ethical norms come from within humans themselves. Ethical norms include moral norms, religious norms and politeness norms. Different from other legal norms, they regulate interpersonal

¹⁰ Citra Agustine Putri Rumpaidus, Tax Amnesty for Indonesian Taxpayers Involved in the Panama Paper Case, *Jurist-Diction*, Vol 2, No 1, 2019, p 79.

¹¹ <https://www.liputan6.com/bisnis/read/5280409/utang-indonesia-tembus-rp-7879-triliun-sri-mulyani-tenang-kas-government-besar>, accessed 1 June 2023.

relationships, both directly and indirectly, with the aim of peaceful living together, peace and order in living together. Legal norms have the characteristics of external coercion in the form of legal threats in the form of sanctions for violators and are general in nature, meaning they apply to anyone.

In general, the law contains:¹²

1. Instructions (*gebod*), which contain what humans must do, in the form of an order to do something.
2. Prohibition (*verod*), which contains what must not be done.
3. Permissibility (*mogen*), contains what is permitted, meaning prohibited and not ordered.

Law focuses on regulating aspects of humans as social creatures and external aspects of humans. In terms of its objectives, legal norms are established in order to maintain a form of social life as a mode of survival. Although the law sometimes regulates human life as individuals, these regulations are intended for the individual to interact with other individuals or between individuals and groups.¹³

In this article, the norms used are Law Number 7 of 2021 concerning Harmonization of Tax Regulations (UU HPP), the Law on General Provisions and Tax Procedures which has been amended several times, most recently amended by Law Number 16 of 2009 concerning the Fourth Amendment to Law Number 6 of 1983 and Law Number 1 of 2004 concerning State Treasury.

The reason the author uses a micro approach to norms is because the comparison is only carried out on several articles in the form of criminal acts and sanctions in the field of taxation, where these sanctions can be used as a means to increase state revenue.

METHOD

Comparative Law Methodology

The author uses a comparative *functional method* because China adheres to a civil law system which has characteristics, namely codification, judges are not bound by precedent so that the law is the main source of law, and the judicial system is inquisitorial.¹⁴ Apart from that, China also has sanctions in the tax sector, both in the form of administrative sanctions and criminal sanctions. China has regulatory provisions regarding criminal acts and sanctions in the tax sector.¹⁵

Taxes are one of the largest sources of income in China, serving as an important economic lever and are used to strengthen the macro economy and have a significant impact on socio-economic development in China. Apart from that, avoiding taxes can be said to be a crime that gets more attention so that it has legal consequences for those who violate it, because tax avoidance *is* an act that cannot be tolerated because it has the effect of reducing tax revenues for the state, tax avoidance will definitely result in reduced tax revenues by country.¹⁶ The term tax avoidance is often also referred to as tax avoidance.¹⁷ Therefore, the government in China has made regulations in the form of laws that impose harsh and firm sanctions so that there is no evasion of tax payments, tax reporting and tax fraud.

Legal Comparative Stage

¹² Danang Widoyoko, *Legal Discovery and Reasoning*, Ubhara Press, Surabaya, 2017, p. 21.

¹³ Peter Mahmud Marzuki, *Introduction to Legal Studies Revised Edition*, 2021, p. 78

¹⁴ *Ibid*, p. 244

¹⁵ *Decree of Ministry of Finance of The People's Republic of China No. 6*

¹⁶ Zulfikar Muhammad Rafif, *Tax Avoidance in Potential Tax Nominee Agreements in Transferring Rights to Land and/or Buildings*, *Jurist-Diction*, Vol 2, No 6, 2019, p 2280.

¹⁷ Kukuh Leksono S Aditya, *Analysis of Transfer Pricing As A Tax Avoidance And Proposed Suggestion To Prevent Its Disadvantage*, *Juridika*, Vol 30, No 1, 2015, p 140.

The author makes a comparison of the classification of criminal acts along with the sanctions imposed on taxpayers for their actions. Then make differences and similarities in the classification of actions along with the sanctions.

Law In China

The following is the regulation of criminal offenses and sanctions in the field of Chinese taxation as contained in the Decree *of the Ministry of Finance of the People's Republic of China No. 6* :¹⁸

Article 36 regulates violations of tax invoice administration which include: failure to print a tax invoice or producing a falsified tax invoice, failure to purchase a tax invoice, failure to produce an output tax invoice, failure to obtain a tax invoice, failure to maintain the security of the invoice as specified, failure to receive a tax audit as determined by the government.¹⁹

For these administrative violations, whether committed by individuals or legal entities, the authorities (SAT) can carry out:²⁰

- Ask the person concerned to make improvements within certain limits
- Confiscating illegitimate profits.

These two actions can be carried out together with a maximum fine of 10,000 RMB. If an individual or legal entity commits two or more violations, they may also be subject to separate sanctions.

Article 37 regulates actions that involve bringing, sending, transporting or misrepresenting fraudulent tax invoices.

Regarding these violations, the authorities (SAT) can take action in the form of:²¹

- Confiscate tax invoices
- Confiscate illegal profits obtained
- If carried out simultaneously, a maximum fine of RMB 10,000 can be imposed.

Article 38 regulates the issuance of invalid tax invoices which include falsifying activities and changing what is supposed to be done, issuing invoices that do not reflect actual trade transactions, as well as making/issuing seals as security for making tax invoices and special anti-falsified products for bills.

Regarding these violations, the authorities (SAT) can take action in the form of:²²

- Confiscate or destroy the unauthorized tax invoice.
- Confiscate illegal profits obtained from the issuance of unauthorized tax invoices and
- Confiscating tools used for issuing unauthorized tax invoices.

In addition to the actions above, perpetrators of issuing illegal tax invoices may be subject to fines ranging from RMB 10,000 to RMB. 50,000, if the action taken is a crime against the perpetrator, an investigation will be processed to be held criminally responsible.

Article 39 regulates tax evasion and tax fraud, if it is related to administrative violations aimed at evading tax obligations, the authorities (SAT) can take action to confiscate profits obtained illegally and at the same time can be subject to a fine equal to the value evaded or obtained from the fraud.²³

Example: Huang Wei alias Viya, paid a fine of 1.34 billion yuan or the equivalent of IDR 3

¹⁸ Asep N Mulyana , *Tax Sanctions Based on State Revenue Revised Edition* , Rajagrafindo Persada, Depok, 2020, p. 176.

¹⁹ Ibid, p. 177.

²⁰ Ibid

²¹ Ibid

²² Ibid

²³ Ibid, p. 178

trillion due to tax evasion.²⁴

Article 40 regulates objections to the imposition of sanctions determined by the authorities (SAT), objections can be submitted by parties who feel dissatisfied to higher authorities or through legal processes in judicial institutions. If the taxpayer does not file an objection or legal process in a judicial institution, the tax authority (SAT) asks the court to require the perpetrator of the violation to carry out the sanctions and obligations imposed on him.

Article 41 regulates tax officials who take advantage in carrying out their duties. Included in the category of criminal acts, namely:²⁵

- Tax officials who deliberately force individual taxpayers and legal entities to issue and use inappropriate tax invoices, or
- Tax officials who violate the law and conflict with regulations in the tax sector in determining the amount of tax debt and administrative fines.

So that criminal acts committed by the tax authorities will be held accountable.

Law In Indonesia

The following are the types of criminal sanctions for violations and crimes in the field of taxation, namely:

Article 38²⁶

- Taxpayers do not submit Tax Returns (SPT) or
- Submitting an incorrect or incomplete SPT can result in losses to state revenues and this act is an act after the first act, subject to a fine of at least once the amount of tax owed, a maximum of 2 times the amount of tax owed or imprisonment for a minimum of 3 months, a maximum of 1 year .

Article 39, taxpayers who intentionally:²⁷

- Not registering to be given a Taxpayer Identification Number (NPWP) or not reporting his business to be confirmed as a Taxable Entrepreneur (PKP).
- Abuse or use without NPWP or PKP rights
- Not submitting SPT and not making tax deposits
- Submitting SPT and/or information whose contents are incorrect or incomplete
- Refusing to be examined
- Showing books of accounts, records, or other documents that do not reflect the truth
- Not archiving all documents related to taxes

For these actions causing loss of state revenue, they are punished with imprisonment for a minimum of 6 months, a maximum of 6 years and a fine of at least 2x the amount of tax owed or underpayment, a maximum of 4x the amount of tax owed or underpayment.

Article 39 A, taxpayers who intentionally:²⁸

- Issuing and/using tax invoices, tax collections, tax withholding receipts and/tax deposit receipts that do not correspond to actual transactions .
- Issuing a tax invoice but not yet confirmed as PKP

²⁴ <https://www.cnnindonesia.com/internasional/20211222162513-113-737386/china-denda-ratu-live-streaming-rp3-triliun-gara-gara-kas-pajak> , accessed June 1, 2023.

²⁵ Asep N Mulyana , *Tax Sanctions Based on State Revenue Revised Edition* ,, Op. Cit., p.176.

²⁶ Article 38 Law No. 7 of 2021

²⁷ Article 39 Law No. 7 of 2021

²⁸ Article 39 A Law No. 7 of 2021

Sentenced to imprisonment for a minimum of 2 years, a maximum of 6 years and a minimum fine of 2x the amount of tax in the tax invoice, proof of tax withholding and/proof of tax deposit, a maximum of 6x the amount of tax in the tax invoice, proof of tax collection, proof of tax withholding and proof of tax deposit.

Tax invoices are closely related to VAT, so if you are late in issuing a tax invoice you will be subject to fines, interest and criminal penalties.²⁹

Entrepreneurs must be confirmed as Tax PKPs so they can issue tax invoices and fulfill the requirements, one of which is to have a turnover for 1 financial year of IDR 4,800,000,000.³⁰

Article 41, officials who, due to negligence, reveal tax secrets, are subject to a maximum imprisonment of 1 year and a maximum fine of 25,000,000, whereas if an official deliberately does not fulfill their obligation to maintain tax secrets, they are sentenced to a maximum fine of 2 years and a maximum fine of 50,000,000.³¹

Article 41 A, every person who is obliged to provide information/evidence but who provides information/evidence that is not appropriate should be subject to sanctions in the form of imprisonment for a maximum of 1 year and a maximum fine of two hundred and five million rupiah.³²

Article 41 B, anyone who intentionally obstructs/makes it difficult to investigate acts in the field of taxation is subject to a maximum prison sentence of three years and a maximum fine of seventy-five million rupiah.³³

After reading and observing the articles described above, there are differences in the imposition of sanctions. For example, in China, for violations that are administrative in nature regarding tax issuance, the sanctions imposed are administrative in nature (imposition of fines), while other sanctions are confiscation of illegal profits, whereas in Indonesia the actions are administrative in nature, for example in article 39 A regarding making tax invoices, the sanctions applied are imprisonment along with fines. Furthermore, in Indonesia, for acts that can cause losses to the state as in Article 38 and Article 39, in addition to being subject to imprisonment and fines. In China, the application of prison sanctions is *ultimum remedium*. Criminal sanctions basically have the character of *ultimum remedium*, except in special cases they can change to *primum remedium*.³⁴

ultimate meaning of *remidium* is that criminal sanctions are used when other sanctions are ineffective. In other words, in a law criminal sanctions are listed as the last sanction, after civil sanctions and administrative sanctions.³⁵

Criminal sanctions should be imposed in Indonesia, especially for acts that are detrimental to state finances (Article 38 and Article 39). the act. The meaning of state financial losses is a shortage of money, securities and goods, which are real and certain in amount as a result of unlawful acts, whether intentional or negligent.³⁶ So referring to the meaning of financial losses, according to the author's understanding, if the state losses have been returned, the

²⁹ Steven Jonathan Suhardi, Government Policy in Collecting Value Added Tax for Marketplace-Based Online Merchants, *Jurist-Diction*, Vol 5, No 2, 2022, p 770.

³⁰ Noor Eva Rahma, Transparency in Providing Value Added Tax Incentives Borne by the Government on Shop Rentals in Malls, *Jurist-Diction*, Vol 5, No 2, 2022, p 717.

³¹ Article 41 of Law No. 7 of 2021

³² Article 41A Law No. 7 of 2021

³³ Article 41B Law No. 7 of 2021

³⁴ Sarwirini, Implementation of Restorative Justice in Tax Law Enforcement, *Juridika*, Vol 29, No 3, 2015, p 386.

³⁵ Didik Endro P, *Criminal Law Strains of Thought*, Airlangga University Press, Surabaya, 2019, p. 12

³⁶ Article 1 number 22 Law No. 1 of 2004

perpetrator should not need to be subject to criminal sanctions in the form of imprisonment because their unlawful nature has disappeared. Jeremy Bentham once stated that punishment should not be applied/used if it is " *groundless, needless, unprofitable, or ineffective* ".³⁷

Talking about the objectives of criminal law is impossible apart from the schools in criminal law, namely the classical school and the modern school. In contrast to the classical school of criminal law which aims to protect individual interests from arbitrariness, the modern school of criminal law aims to protect society from crime. If the classical school wants criminal law of action or *daad-strafecht*, then the modern school of criminal law is based on 3 steps, namely fighting crime, paying attention to other knowledge and *ultimum remedium* .³⁸

In China, a blacklist system is implemented for taxpayers who commit violations such as tax evasion, and the list is published on the Chinese government website, while in Indonesia there is no blacklist system implemented. Article 40 Chapter 6 of the tax law in China, if a taxpayer objects to the imposition of sanctions that have been determined by the competent authority, the objection can be submitted through a legal process in a judicial institution, whereas in Indonesia filing an objection is still within the domain of the tax authority, but if the taxpayer wishes to make a direct appeal to the tax court.³⁹ Filing objections in Indonesia can be done with formal requirements.⁴⁰

Article 41 Chapter 6 of the tax law in China for tax officials who abuse their authority by taking advantage in carrying out their duties, the sanctions imposed refer to the tax law in that country, whereas in Indonesia it refers to the Corruption Crime Law.

What China and Indonesia have in common is that they have a tax supervisory board, have laws that specifically discuss taxation, and have tax sanctions in the form of fines and criminal sanctions and have a judicial institution that handles tax cases. In Indonesia, the tax court has absolute competence, where the tax court has the authority to pursue lawsuits and appeals.⁴¹

CONCLUSION

After comparing the law with China, an alternative solution that can be taken is to improve the existing law by reforming the law, namely:

- Article 38 and Article 39 have aspects that could harm the state's finances. It would be better to impose sanctions only by using administrative fines if the state's losses have been recovered by the perpetrator of the crime.
- Implement a blacklist system included in the general provisions and tax procedures for tax evaders and tax violations with clear benchmarks as serious tax crimes and announce them not only in government media but also

³⁷ Barda Nawawi Arief, *Anthology of Criminal Law Policy* , 7th Printing Revised Edition, Kencana, Jakarta, 2014. p.36.

³⁸ Eddy OS Hiariej , *Principles of Criminal Law* , Cahaya Atma Pustaka, Publishing, Yogyakarta, 2014, p. 26.

³⁹ Muhammad Djafar Saidi, *Taxpayer Legal Protection in Tax Dispute Settlement*, Grafindo Persada, Jakarta, p. 172.

⁴⁰ Muhammad Djafar Saidi, *Taxpayer Legal Protection in Tax Dispute Settlement*, Grafindo Persada, Jakarta, p. 172.

⁴¹ Binsar Sitorus, *Independence of Judges in the Tax Justice System in Indonesia*, *Juridika*, Vol 28, No 1, 2013, p 31.

in private media.

- The imposition of sanctions against tax officials should be included as a codified unit in tax law, because to date the inclusion of sanctions against tax officials is spread across several laws.

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