

Application of Criminal Sanctions for Perpetrators of Tax Crimes (Case Study of Case Decision Number: 213/Pid.Sus/2021/PN.Jkt.Brt)

Jus Marson dang Manullang¹, Rina Arum Prastyanti², Indra Hastuti³

Fakultas Hukum Dan Bisnis
Universitas Duta Bangsa Surakarta

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Abstract

This study aims to find out and describe the mechanism for resolving the application of sanctions for tax crime perpetrators and the consideration of the Panel of Judges in applying criminal sanctions to tax crime perpetrators as stated in Case Decision Number: 213/Pid.Sus/2021/PN.Jkt.Brt where the Panel of Judges imposes a prison sentence of 2 (two) years and 6 (six) months, which is lower than 9 (nine) months compared to the Public Prosecutor's demands. The type of data in this study is secondary data. The data collection technique uses the library search method, which is to systematically study and analyze laws and regulations, books, magazines, newspapers, materials from the internet and other materials related to the object of research, namely tax crimes. Based on the results of research on tax crime cases at the West Jakarta District Court with Decision number: 213/Pid.Sus/2021/PN.Jkt.Brt with the Defendant Bambang Purwosetiyo, Judge's Consideration Based on the Testimony of Witnesses, Evidence, Public Prosecutor's Indictment and Public Prosecutor's Demands. Based on these considerations, the Judge stated that the Defendant must be declared to have been legally and convincingly proven to have committed a criminal act. In addition, during the examination at the trial, the Judge did not see that the Defendant was suffering from an illness, the Defendant was able to answer well and smoothly the questions posed to him, both by the Panel of Judges, the Public Prosecutor, thereby strengthening the opinion and confidence for the Panel of Judges that the Defendant is able to be responsible according to criminal law for the acts he committed. The judge decided to impose a prison sentence of 2 (two) years and 6 (six) months and a fine 2 x 2 X Rp. 4,761,272,973,- (one billion two hundred and seventy-four million six hundred and fifteen thousand eight hundred and twenty-one rupiah). = Rp.9,522,545,946,- (Nine billion five hundred and twenty-two million five hundred and forty-five thousand nine hundred and seventy-three rupiah), while the Public Prosecutor demanded a prison sentence of 3 (three) years and 3 (three) months and a fine of 2 X Rp. 4,761,272,973,- (one billion two hundred and seventy-four million six hundred and fifteen thousand eight hundred and twenty-one rupiah). = Rp.9,522,545,946,- (Nine billion five hundred and twenty-two million five hundred and forty-five thousand nine hundred and seventy-three rupiah), thus the Judge's decision is 9 (nine) months lower than the Public Prosecutor's demand. There is no detailed explanation regarding the Judge's consideration in deciding on a prison sentence that is 9 (nine) months lower than the Public Prosecutor's demand.

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Corresponding Author:

Jus Marson dang Manullang, Rina Arum Prastyanti, Indra Hastuti

Fakultas Hukum Dan Bisnis

Universitas Duta Bangsa Surakarta

Email: jusmar.manullang@gmail.com

1. INTRODUCTION

Taxes are a source of national income that is very important for the performance and development transition of a country. Article 23A of the 1945 Constitution reads: "Taxes and other levies of a coercive nature for state needs shall be regulated by law", furthermore the definition of Tax according to Article 1 paragraph 1 of the KUP Law is a mandatory contribution to the state owed by an individual or entity that is of a coercive nature based on Laws, without receiving direct compensation and used for state needs for the greatest prosperity of the people.

The funds needed for national development can be determined from the State Revenue and Expenditure Budget (APBN) which comes from Tax Revenue, Non-Tax Revenue and Grants. Currently the main source of income for a country is taxes. The income generated

by taxpayers contributes to state income and has broad implications for state development. This is a challenge for the Government, namely efforts to increase public awareness of paying taxes.

Taxes are an income that has potential through population growth and economic stability. In this regard, tax management is a priority for the Government.

As can be seen recently, tax crimes often occur, both from taxpayers and vice versa. This has a very detrimental impact on state finances, so it is necessary to be firm in these criminal acts which must be handled properly so as not to harm society or the state.

The problem of criminal acts in the field of taxation is an important problem, especially in the context of law enforcement which must be implemented so that legal provisions can be implemented properly, especially in fulfilling the community's sense of justice in the certainty of the law itself. A criminal offense in the field of taxation is an act of violating tax laws and regulations which results in state financial losses, and the perpetrator may be subject to criminal sanctions. In Indonesia there are still many tax evaders using tax invoices that are not based on actual transactions (TBTS). This causes a possible loss of state revenue of up to trillions of rupiah.

Tax crimes are specifically regulated in Article 38, Article 39, Article 39A, Article 40, Article 41, Article 41A, Article 41B of Law Number 16 of 2009 concerning the Fourth Amendment to Law Number 6 of 1983 concerning General Provisions and Procedures. Tax Method. This law regulates acts that can be categorized as tax crimes, whether committed by taxpayers or by officials.

Case Decision Number: 213/Pid.Sus/2021/PN.Jkt.Brt. declare the Defendant legally and convincingly guilty of committing a Tax Crime as regulated in Article 39A jo. Article 43 paragraph (1) of Law Number 16 of 2009 concerning the Fourth Amendment to Law Number 6 of 1983 concerning General Provisions and Procedures for Taxation and the Panel of Judges imposed a prison sentence of 2 (two) years and 6 (months) months and impose a fine of 2 X the amount in the Tax Invoice of 2 X Rp. 4,761,272,973,- (one billion two hundred seventy four million six hundred fifteen thousand eight hundred and twenty one rupiah). = Rp. 9,522,545,946,- (Nine billion, five hundred and twenty-two million, five hundred and forty-five thousand, nine hundred and seventy-three rupiah), and the demands of the Public Prosecutor impose a prison sentence of 3 (three) years and 3 (three) months and a fine of 2 X the amount in the Tax Invoice of 2 X Rp. 4,761,272,973,- (one billion two hundred seventy four million six hundred fifteen thousand eight hundred and twenty one rupiah). = Rp.9,522,545,946,- (Nine billion five hundred twenty-two million five hundred forty-five thousand nine hundred seventy-three rupiah).

Article 39A jo. Article 43 paragraph (1) of Law Number 16 of 2009 concerning the Fourth Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures regulates that the prison sentence shall be a minimum of 2 (two) years and a maximum of 6 (six) years. year and a fine of at least 2 (two) times the tax amount in the tax invoice. Thus, Case Decision Number 213/Pid.Sus/2021/PN.Jkt.Brt, by setting a prison sentence of 2 (two) years and 6 (six) months, is a lower decision of 9 (nine) months compared to the demands Public Prosecutor. This research will discuss what the Panel of Judges considered in applying the criminal sanction of imprisonment for 2 (two) years and 6 (six) months, which is 9 (nine) months lower than the Public Prosecutor's demands.

Based on the description above, research was carried out and outlined in the form of legal writing with the title: "Application of Criminal Sanctions for Perpetrators of Tax Crimes (Case Study of Case Decision Number: 213/Pid.Sus/2021/PN.Jkt.Brt)".

2. RESEARCH METHOD

The type of research used in this research is normative juridical research, namely process for discovering legal rules, legal principles, and doctrines law to answer the legal issues researched with refers to the legal norms contained in applicable laws and regulations as a normative basis. Normative juridical research can also be said to be a literature study because what is researched are statutory regulations and other written regulations. The data collection technique uses the library search method, namely systematically studying and analyzing laws and regulations, books, magazines, newspapers, materials from the internet and other materials related to the object of research, namely criminal acts. tax.

3. RESULTS AND DISCUSSION

This case began with an introduction between the defendant Bambang Purwosetiyo and the witness Lukmanul Hakim around 2010, during which the defendant *offered* witness Lukmanul Hakim to cooperate in the issuance of tax invoices that are not based on actual transactions (TBTS), where witness Lukmanul Hakim acts as the publisher and Parman as the party who orders or markets the tax invoices that are not based on actual transactions (TBTS) to companies or taxable entrepreneurs (PKP) who will use it.

Defendant Bambang Purwosetiyo has committed an act of deliberately participating together with witness Lukmanul Hakim in issuing Tax Invoices that are not Based on Actual Transactions, namely by marketing or selling the Tax Invoices to other parties, namely 3 (three) user companies to be used as input Tax Invoices, carried out consecutively from January 2011 to December 2013 and as a result of the Defendant's actions, it caused a loss of state revenue amounting to Rp. 4,761,272,973,- (four billion seven hundred sixty one million two hundred seventy two thousand nine hundred seventy three rupiah) namely the amount of VAT value contained in the Tax Invoice used by companies or PKP Users

The process of prosecuting criminal acts, as regulated in Article 43A paragraph 1 Law Number 16 of 2009 concerning the Fourth Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures (UU KUP), starting from the Preliminary Evidence Examination of Taxpayers who Issue Tax Invoices Not Based on Actual Transactions (TBTS) carried out by the Directorate General of Taxes, where the Taxpayer is registered at the Jakarta Duren Sawit Pratama Tax Service Office, the Jakarta Cilandak Pratama Tax Service Office, the Tax Service Office Pratama Jakarta Pasar Minggu, Pratama Tax Service Office Jakarta Pesanggrahan, Pratama Tax Service Office Jakarta Kebayoran Baru Dua, and Pratama Tax Service Office Jakarta Kebon Jeruk Satu. Preliminary Evidence Examination followed by Investigation.

After the Directorate General of Taxes has completed the investigation, in accordance with Article 138 paragraph (1) of the Criminal Procedure Code Law, it hands over the case files to the Public Prosecutor. Next, the Public Prosecutor, after stating that the file is complete (P-21), makes an Indictment Letter (article 140 paragraph (1) of the Criminal Procedure Code Law).

There is 2 (two) categories of judge's consideration in deciding a case, namely the judge's consideration which is juridical in nature and the judge's consideration which is non-juridical in nature, as follows:

- a. Juridical considerations are the judge's considerations based on factors that have been revealed in the trial and that have been determined by law as matters that must be included in the decision. These juridical considerations are as follows:

- 1). Public Prosecutor's Indictment

The Public Prosecutor's indictment is usually made in the form of a letter or deed containing a formulation of the criminal act he is charged with which will be concluded and drawn from the results of the investigative examination and is the basis for the judge when examining him at trial.

2). Criminal Charges

The criminal complaint usually states the types and severity of the actions required by the Public Prosecutor to hand down a court decision against the defendant. The preparation of the indictment by the Public Prosecutor has been adjusted to the Public Prosecutor's indictment by looking at the evidence in a trial, which has also been adjusted to the form of indictment used by the Public Prosecutor before finally arriving at the demands in the requisition. Usually, the Public Prosecutor will explain one by one. one about the elements of the criminal act that he is accusing the defendant of, by giving reasons for his opinion.

3). Witness Statement

A witness statement is one of the pieces of evidence in a criminal case which is a statement from a witness regarding a criminal incident that he himself heard, saw for himself and experienced by stating the reasons for his knowledge. Witness statements are evidence as regulated in Article 184 paragraph (1) of the Criminal Procedure Code letter a. A witness statement is a statement about a criminal incident that he himself, saw himself and experienced himself, must be presented in court by taking an oath. Witness statements submitted before the complaint hearing which are merely the result of thoughts or inventions obtained from other people's testimony cannot be considered as valid evidence. This kind of testimony in criminal procedural law is referred to as *testimonium de auditu*. This testimony may occur at trial

4). Defendant's statement

In Article 184 paragraph (1) of the Criminal Procedure Code letter e, it is stated that the Defendant's statement is classified as evidence. The Defendant's statement is what the Defendant stated at trial about the actions he committed or that he himself knew about or that he personally experienced, this is regulated in Article 189 of the Criminal Procedure Code. The defendant's own statement may include information in the form of a denial and information in the form of a confession or all that is alleged against him.

5). Evidence

Evidence is goods used by the defendant to commit a crime or goods as a result of a crime. Items used as evidence presented in a court trial aim to strengthen witness statements, expert statements, and Defendant statements to emphasize the Defendant's guilt. The presence of evidence shown at the trial will increase the judge's confidence in assessing whether the actions alleged against the defendant are true or not and of course the judge will be more confident if the evidence is known and acknowledged by the defendant and the witnesses.

6). Chapter-articles in the Criminal Code

The formulation of Article 197 letter e of the Criminal Procedure Code states that one of the things that must be included in the sentence decision is the statutory regulations that form the basis of the sentence. The articles charged by the Public Prosecutor are the basis for the judge's consideration in handing down a decision

- b. Non-juridical considerations consisting of the background of the defendant's actions, the defendant's economic condition, plus the judge must be sure whether the defendant

committed a criminal act or not as contained in the elements of the criminal act with which he is charged. Another definition related to non-juridical considerations is that they are aggravating circumstances and mitigating circumstances for the Defendant.

A defendant can be sentenced to criminal sanctions if he has been legally and convincingly proven to have committed the act of which he is charged. Evidence is carried out to find out whether the defendant is guilty or vice versa, then evidence is carried out at trial and then the judge can examine and decide the case. The system of evidence in criminal cases refers to the Criminal Procedure Code. This evidentiary system adheres to a negative evidentiary system where the defendant's guilt or innocence is determined by the judge's belief based on methods and evidence that are valid according to the law.

Based on Article 183 jo. Article 184 of the Criminal Procedure Code states that evidence must be supported by a minimum of two valid pieces of evidence and the judge's belief. Legal evidence has been regulated in a limited manner in Article 184 paragraph (1) of the Criminal Procedure Code, including witness statements, expert statements, letters, instructions and defendant statements.

Furthermore, article 182 paragraph 4 of the Criminal Procedure Code stipulates that decisions must be based on the indictment and everything that is proven in the examination at trial. Article 14 paragraph 2 and Article 50 paragraph 1 of Law Number 48 of 2009 concerning Judicial Power regulate that in a decision the Panel of Judges must present analysis, arguments, opinions, legal conclusions, and must also contain the reasons and basis for the decision, as well as containing certain articles from relevant statutory regulations or sources of unwritten law that are used as the basis for adjudicating.

The judge's decision is a process of the trial process in court, and the court is the last place for justice seekers so that the judge's decision should be able to meet the demands of justice seekers. Regarding this, the judge's decision must reflect three elements, namely justice, legal certainty and expediency.

The element of justice intended in the judge's decision is impartiality towards one of the parties to the case, recognizing the equal rights and obligations of both parties. In handing down a decision, the judge must comply with existing regulations so that the decision can be in accordance with the justice desired by the community. The winning party can demand or obtain what is their right and the losing party must fulfill their obligations. In order to uphold justice, the judge's decision in court must be in accordance with its true objective, namely providing equal opportunities for the litigants in court. The value of justice can also be obtained when the case resolution process is carried out quickly, simply, with low costs because delaying case resolution is also a form of injustice.

Legal certainty is a situation where the law is certain because of the concrete strength of the law in question. parties seeking justice want to know what the law is in a particular matter before they start a case and protection for those seeking justice. From this view, it can be understood that without legal certainty people do not know what to do and ultimately uncertainty arises. In the end it will lead to violence (chaos) due to the lack of firmness in the legal system. So, legal certainty refers to the application of law that is clear, permanent and consistent, where its implementation cannot be influenced by subjective circumstances. The existence of the principle of legal certainty is a form of protection for justice seekers against arbitrary actions from other parties, and this is related to efforts to maintain order in society.

A judge's decision that reflects expediency is when the judge not only applies the law textually, but the decision can be executed in real terms so as to provide benefits to the interests of the litigants and benefits to society in general.

In the case of Decision Number: Decision:213/Pid.Sus/2021/PN.Jkt.Brt Judge's considerations based on the statements of witnesses, evidence, public prosecutor's indictment, public prosecutor's demands. Based on these considerations, the Judge stated that the Defendant must be declared legally and convincingly proven to have committed a tax crime as regulated in Article 39 A letter a in conjunction with Article 43 paragraph (1) of Law Number 16 of 2009 concerning the Fourth Amendment to Law Number 6 1983 concerning General Provisions and Tax Procedures jo. Article 64 paragraph (1) of the Criminal Code and Law Number 8 of 1981 concerning the Criminal Procedure Code

During the examination at trial, the Judge did not see the Defendant suffering from illness, the Defendant was able to answer well and fluently to the questions asked of him, both by the Panel of Judges and the Public Prosecutor, thereby strengthening the opinion and confidence of the Panel of Judges that the Defendant was capable of taking responsibility according to criminal law for the act he committed.

The judge decided to impose a prison sentence of 2 (two) years 6 (six) months and a fine of 2 x 2 x Rp. 4,761,272,973,- (one billion two hundred seventy four million six hundred fifteen thousand eight hundred and twenty one rupiah). = Rp. 9,522,545,946,- (Nine billion five hundred twenty two million five hundred forty five thousand nine hundred and seventy three rupiah), while the Public Prosecutor demands a prison sentence of 3 (three) years and 3 (three) months and a fine of 2 X Rp. 4,761,272,973,- (one billion two hundred seventy four million six hundred fifteen thousand eight hundred and twenty one rupiah). = Rp. 9,522,545,946,- (Nine billion five hundred twenty two million five hundred forty five thousand nine hundred seventy three rupiah), thus the Judge's decision is 9 (nine) months lower than the Public Prosecutor's demand. There is no detailed explanation regarding the Judge's considerations in deciding on a lower prison sentence of 9 (nine) months compared to the demands of the Public Prosecutor.

4. SUGGESTION

The Panel of Judges in handing down a criminal decision has complied with the statutory provisions for both imprisonment and fines, as regulated in article 39 A letter a of Law Number 16 of 2009 concerning the Fourth Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures, but preferably consider justice for the Government where state revenue in the form of Value Added Tax which is the government's right is ignored by the Defendant, and also provide a deterrent effect for the Defendant and also other members of the public so that they think again about committing tax crimes.

The Public Prosecutor's demand for 3 (three) years and 3 (three) months is still better because it is more than 50% of the maximum prison sentence of 6 (six) years. Therefore, in the author's opinion, the prison sentence is at least more than 50% of the maximum limit, namely more than 3 (three) years in prison. Therefore, in the author's opinion, the prison sentence imposed on the Defendant should be in accordance with the demands of the Public Prosecutor, namely 3 (three) years and 3 (three) months.

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