



ANALYSIS OF TAX AVOIDANCE CRIMES ACCORDING TO TAX LAW AND CRIMINAL LAW IN INDONESIA

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Abstract

The purpose of this study is to analyze taxation and criminal law against tax evasion crimes. This study used descriptive qualitative method. The type of data used in this study is qualitative data, which is divided into two categories, namely primary data and secondary data. Sources of data obtained through library research techniques (library research). The results of this study are tax avoidance or resistance to taxes are obstacles that occur in tax collection resulting in reduced state treasury revenues. Resistance to taxes consists of active resistance and passive resistance. In Indonesian tax books, tax evasion is always defined as a legitimate activity (such as minimizing the tax burden without violating tax regulations), while tax evasion (tax fraud) is defined as an illegal activity (such as manipulating the books to reduce the tax burden). Criminal Law Against Tax Avoidance Crimes are contained in; Law Number 28 of 2007, Law Number 36 of 2008, PP Number 80 of 2007, Regulation of the Minister of Finance Number 213/PMK.03/2016, Regulation of the Minister of Finance Number 22/PMK.03/2020, Regulation of the Director General of Taxes PER-43/ PJ/2010, Director General of Taxes Regulation PER-32/PJ/2011, Director General of Taxes Regulation PER-32/PJ/2011, Director General of Taxes Circular Letter Number SE-04/PJ.7/1993, Director General of Taxes Circular Number : SE-50/PJ/2013.

Keywords: Tax; Tax Avoidance; Tax Law; Criminal Law

INTRODUCTION

Taxation is the foundation of government operations, and taxation is the largest source of national fiscal revenue today (Willmart & Puspit, 2019). The Directorate General of Taxes as part of the Ministry of Finance of the Republic of Indonesia has the responsibility to collect taxes from the public. Companies as taxpayers try to pay as little as possible the tax owed, while on the other hand the government needs funds to finance state administration, most of which comes from tax revenues (Rahayu & Fujiati, 2018). For company management, a high tax burden will reduce the company's financial performance, this will encourage company management to reduce tax payments through various ways, both legally and illegally. 2 The practice of tax avoidance or tax

avoidance has been carried out by many companies, such as those carried out by Apple Inc, Google, Starbucks, Nike, Microsoft and Amazon.com. These companies carry out financial engineering through engineering corporate headquarters so that in financial law, these companies are not wrong if they pay low taxes. Tax avoidance actions can occur because a company does not carry out good corporate governance (Tandean, 2015). The poor implementation of corporate governance in Indonesia occurs because company managers, including executives, have not implemented the principles of corporate governance properly (Irawan & Farahmita, 2012). This relates to the accountability and responsibility of the executive in managing the company in accordance with the interests of the company.

Decisions on corporate tax avoidance policies are made by the company's executives (board of directors). Tax avoidance is the withholding or reduction of a company's tax liability. 2 Currently, tax evasion by corporate taxpayers is no longer carried out in the usual way but with a more schematic method. In the context of international taxation in general, the schemes usually carried out by PMA are mainly according to Nurchalis, (2018), namely (1) Transfer Pricing, (2) Thin Capitalization, (3) Controlled Foreign Corporation/CFC, (4) Treaty Shopping. In its development, the modes and methods of tax avoidance are actually growing, taking advantage of loopholes in the legislation with certain schemes that can usually only be done by corporations as corporate taxpayers. In economics itself, the term tax planning or tax management is known, which is a means to fulfill tax obligations without the risk of violating the law, but the amount of tax paid can be reduced as low as possible to obtain the expected profit and liquidity (Pohan, 2022). 4 However, the legality of tax planning is highly dependent on the interpretation of laws and regulations, because it is made based on legal loopholes in tax regulations. Therefore, herein lies the power of tax avoidance with the scheme, because it is planned by taking advantage of existing legal loopholes.

The Global Financial Integrity Report entitled *Illicit Financial Flows from Developing Countries* states that Indonesia is ranked 9th in the world in terms of illegal flows of funds out of Indonesia, which between 2004 and 2013 reached 18,071 billion US dollars. 5 It is stated that the assessment of the flow of illicit/illegal funds is assessed from two sources, namely: 1) Trading with an incorrect invoice value on purpose 2) Leaks in the balance of payments. Trading with incorrect invoice values is a major cause of illicit/illegal flows of funds from developing countries. The amount is about 83.4 percent of the total illegal flow of funds. The report states that as a profit-oriented company, of course, a company will try to get as much profit as possible through various kinds of cost efficiencies including tax cost efficiency (TAFTAZANI, 2020). From the company's point of view, taxes are one of the cost components that reduce company profits. The high tax burden encourages many companies to try to do tax management so that less taxes are paid (Santoso & Muid, 2014). One way of tax management that can be done is through tax avoidance, where companies try to reduce their tax burden in a legal way that does not conflict with tax laws, or alternatively take advantage of the weaknesses of the applicable tax laws. Of course, the more complex the plan for financial transactions in the business world, it will also open up opportunities for companies to plan their taxes (Sitanggang et al., 2011).

Tax planning can be done to reduce the taxes that must be paid by the company. 4 The government, in this case the Directorate General of Taxes, always tries to optimize its tax revenues in order to accelerate the development of the country. However, the government's efforts to optimize tax revenue have encountered many obstacles, one of which is tax avoidance activities.

Tax avoidance is an effort to reduce the tax burden by not violating existing laws and regulations (Suryani, 2022). Even though no laws were violated, all parties agreed that tax evasion was unacceptable. This is because tax avoidance has a direct impact on the decline in state revenues.

Currently, to minimize tax avoidance in the tax law, Article 18 of the Income Tax Law specifically regulates anti-tax avoidance rules. Income tax is levied on the subject of income tax received or earned during the tax year (Purwaningsih, 2014). The tax subject can be subject to tax if he receives or earns income. A similar study was also conducted by Nurchalis with the title "Effectiveness of Criminal Sanctions in the Law on General Provisions of Taxation in Overcoming the Avoidance of Corporate Taxes." However, the KUP Law still adheres to the criminalization of individuals as adopted by the Criminal Procedure Code/KUHAP without any further explanation, so that it becomes a problem in its application to corporations. Previous research focused on the effectiveness of sanctions while in this study, the discussion is more directed to the sanctions that apply to tax violators.

METHODS

The research method used in this study is a qualitative descriptive method. The type of data used in this study is qualitative data, which is categorized into two types, namely primary data and secondary data. Sources of data obtained through library research techniques (library study) which refers to sources available both online and offline such as: scientific journals, books and news sourced from trusted sources. These sources are collected based on discussion and linked from one information to another. Data collection techniques used in this study were observation, interviews and research. This data is analyzed and then conclusions are drawn.

RESULTS AND DISCUSSION

Tax Avoidance as a Business Strategy and Crime

In the 9th edition of the Black Law Dictionary, a tax is defined as: "An ordinary monetary fee levied by a government on a person, entity, transaction or property for the purpose of generating public revenue". According to the professor. Rochmat Soemitro, Taxes are: "Contributions made by the people to cash, but are not directly raised and used to finance the main services of public expenditure. The above understanding shows that taxes are the obligations of citizens because they are mandatory. The mandatory nature of the consequences that arise for those who violate them. The consequences arise in two forms, administrative consequences and criminal consequences. Therefore, Articles 38, 39, 39A, 41, 41A of Law Number 28 of 2007 state that the Basic Law The main points of the taxation procedure for imposing tax crimes have been regulated. In the implementation and implementation of taxation, taxpayers try to reduce their tax obligations to avoid tax obligations, which are called tax conflicts. Tax avoidance can be divided into two parts, namely:

1. Passive tax avoidance This type of tax resistance includes barriers that make tax collection difficult. As the name suggests, this resistance is not actively or actively carried out by taxpayers, but the other way around. These obstacles are closely related to the economic structure of a country, the intellectual development and education of its people, morality, and the existence of a taxation system that is not easily applied to the people concerned.

2. Active tax evasion Active resistance includes all efforts directed at the tax authorities for the purpose of tax evasion. This active resistance can be in the form of tax evasion, tax evasion/smuggling, and tax evasion.

Common Forms of Tax Avoidance

Efforts are being made to reduce the tax burden through tax planning. Simply put, tax planning is a taxpayer's effort to minimize the amount of tax owed. Tax planning can be done in various ways, both tax-compliant (legal) and tax-violating (illegal). Tax avoidance or resistance is an obstacle in tax collection and administration, which results in a decrease in state treasury revenues. Resistance to taxation includes active resistance and passive resistance. In the Indonesian tax book, tax evasion is always defined as a legal activity (eg minimizing the tax burden without violating tax regulations), while tax evasion (tax fraud) is defined as an illegal activity (eg by manipulating the books to reduce taxes).

Tax Evasion

Tax evasion occurs before the SKP is issued. This is against the law and the aim is to avoid taxes/reduce the basis of tax determination by hiding part of the income. Tax evasion is a crime against Indonesian tax law. Because taxpayers try to reduce taxes owed by illegal means. Tax evasion is a violation of tax laws, for example, a taxpayer submits an income tax return that is lower than the actual one (underreporting income) or reporting costs that are higher than the actual one (overreporting income). reduction) on the other hand. A more serious form of tax avoidance is that taxpayers (WP) do not report their income at all (do not report income). Taxpayers see taxes as a threat because they reduce income. Tax evasion by illegal means is tax evasion. In this case, it can be shown that the taxpayer acts detrimental to himself, and the taxpayer often tries not to report the tax that has been paid properly. The act is a criminal act because it violates the applicable rules, including the intentional incomplete and clear reporting of tax recipients.

Tax Avoidance

Tax evasion is a legal act and arguably justified because it does not violate the law, and in this case absolutely not. The purpose of tax avoidance is to suppress or reduce the amount of tax that must be paid (Darmawan & Sukartha, 2014). Tax avoidance by taxpayers, especially entities, in the form of tax avoidance is indeed possible, or in this case does not conflict with the laws and regulations or applicable legal provisions, because it is believed that practices related to tax avoidance are more of an exploitation or loophole or maybe a loophole in tax avoidance. tax code. Tax avoidance is often associated with tax planning, both of which use legal means to reduce or even eliminate tax obligations. Tax planning is the ability of taxpayers to regulate financial activities in order to obtain minimum tax expenses (burden) (Rioni, 2019). Tax avoidance occurs before the SKP is issued. In this tax avoidance, the taxpayer does not clearly violate the law, even sometimes the law is clearly interpreted not in accordance with the intent and purpose of the legislator. Tax evasion can be classified as legal activity or illegal activity (Inkiriwang, 2017). Tax evasion is illegal if the transaction is solely for tax avoidance purposes or if the transaction has no real business purpose. Therefore, in order to prevent tax evasion by multinational companies, most countries have anti-tax avoidance regulations (Linga et al., 2012). Taxes are a burden for companies, so it is natural that none of the companies (taxpayers) are happy and voluntarily paying taxes (Gula & Mulyani, 2020).

Criminal Law Against Tax Avoidance

Analysis Of Tax Avoidance Crimes According To Tax Law And Criminal Law In Indonesia

The laws and regulations governing criminal and administrative provisions related to corporate taxation are regulated and described as follows:

Law Number 28 of 2007

Law Number 28 of 2007 concerning the Third Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures. The KUP Law is the basis of tax law in Indonesia to determine whether a taxpayer's wrongful act will be subject to administrative sanctions or criminal sanctions. However, Prof. Eddy O.S. Hiarej is of the opinion that tax law enforcement does not have a clear parameter which is an administrative case and a criminal act.¹⁰ The Asian Agri Group case is one example of law enforcement in taxation cases with the imposition of criminal sanctions, the Supreme Court decided that the defendant was proven to have submitted a notification letter and/or information whose contents are incorrect or incomplete continuously. Subject to Article 39 paragraph (1) letter c of the 2000 KUP Law jo. Article 43 paragraph (1) of the 1983 KUP Law jo. Article 64 paragraph (1) of the Criminal Code. However, it is different from decision number 394/Pid.Sus/2015.PN.Plg.

Law Number 36 Year 2008

Law Number 36 of 2008 concerning the Fourth Amendment to Law Number 7 of 1983 concerning Income Tax (UU PPh). The provisions of Article 18 paragraph (3) do not mention the obligation to implement transfer pricing documents explicitly. In practice, many tax auditors find that there are taxpayers who do not carry out transfer pricing documents, so the legal basis for examining allegations of transfer pricing is Article 18 paragraph 3 of the Income Tax Law. To prepare transfer pricing documents, an agreement on transfer prices is required between the taxpayer and the Director General of Taxes. The transfer price agreement is also known as the Advance Pricing Agreement which is abbreviated as APA, the provisions related to APA are regulated in Article 18 paragraph 3a. Transfer pricing agreement aims to reduce the abuse of transfer pricing practices by multinational companies. With an agreement between the Taxpayer and the Director General of Taxes, it will result in an agreement that includes the selling price of the product, the amount of royalties, production and operational costs, loans and other things depending on the agreement.

Government Regulation Number 80 of 2007

Government Regulation (PP) Number 80 of 2007 concerning Procedures for the Implementation of Tax Rights and Obligations Based on Law Number 6 of 1983 concerning General Provisions and Tax Procedures as has been amended several times, the latest being Law Number 28 of 2007. Article 16 Paragraph 2 Number 80 of 2007 stipulates that in the event that the taxpayer conducts transactions with related parties, the taxpayer is required to keep documents and or additional information in addition to books, records and documents that form the basis for the bookkeeping or recording. The storage of such documents is required to prove that taxpayers who have special relationships with other parties have applied the principles of fairness and business practice in every transfer pricing transaction. In line with Government Regulation Number 28 of 2007 (UU KUP), it has indirectly interpreted that the obligation to prove the fairness of transactions that occur between parties that have a special relationship lies with the taxpayer. The following is the text of PP Number 80 of 2007 Article 16 paragraph 1 in the event that the Taxpayer conducts transactions with parties who have a special relationship with the Taxpayer, the obligation to keep other documents as referred to in paragraph (1) includes additional documents and/or information to support that transactions carried out with related

parties are in accordance with the principles of fairness and business practice. However, in PP Number 80 of 2007 it does not fully discuss how to organize transfer pricing documents, because they merely give an order or obligation that transfer pricing documents absolutely must be held for taxpayers who are included in the intended target. While the main point of Article 16 paragraph 2 is to verify the similarity of the contents of the transfer pricing document with books, records and other documents as an obligation to be carried out as stipulated in Article 16 paragraph 1.

Regulation of the Minister of Finance Number 213/PMK.03/2016

The Government of Indonesia on December 30, 2016 issued the Minister of Finance Regulation Number 213/PMK.03/2016 concerning Types of Documents and/or Additional Information Required to be kept by Taxpayers Conducting Transactions with Related Parties and Management Procedures.

Regulation of the Minister of Finance Number 22/PMK.03/2020

As a form of the seriousness of the Minister of Finance to avoid transfer pricing practices in Indonesia, a procedure for implementing an advanced pricing agreement was made. To fix problems in the application of rules related to transfer pricing, the Ministry of Finance issued PMK No. 22/PMK.03/2020 which regulates in detail the implementation of transfer price agreements between taxpayers and the Director General of Taxes and the tax authorities of the P3B partner governments involving Indonesian taxpayers. .

Regulation of the Director General of Taxes PER-43/PJ/2010

For the first time, Indonesia is regulated in detail about how the implementation of transfer pricing documents in a broad, clear and detailed manner is regulated in the Regulation of the Director General of Taxes PER-43/PJ/2010 concerning the application of the principle of fairness and business practice in transactions between taxpayers and related parties. PER-43/PJ/2010 has regulated how to determine prices, comparability analysis and transfer price documents. However, this regulation cannot be implemented effectively because the implementation provisions are not clear. So that the government amends and improves by issuing PER-32/PJ/2011 concerning Amendments to the Application of the Principles of Fairness and Business Practices in Transactions Between Taxpayers and Related Parties.

Director General of Taxes Regulation PER-32/PJ/2011

Still in the same realm as PER-43/PJ/2010, this regulation was issued to improve the previous regulation. Despite explaining the transfer pricing method, the most important change is removing the entire hierarchy for the use of the method, a more complete comparability analysis, and also the obligation to implement transfer pricing. PER32/PJ/2011 also introduces the scope of transfer pricing between domestic taxpayers and domestic taxpayers as well as transfer pricing between sesame domestic taxpayers.

Circular of the Director General of Taxes Number SE-04/PJ.7/1993

Circular Letter of the Director General of Taxes Number SE-04/PJ.7/1993 concerning Instructions for Handling Transfer Pricing Cases (Series TP-1). Issued to assist tax examiners in handling transfer pricing cases from tax treatment.

Circular Letter of the Director General of Taxes Number: SE-50/PJ/2013

Circular Letter of the Director General of Taxes Number SE-50/PJ/2013 concerning Technical Guidelines for the Audit of Taxpayers who have a Special Relationship. Families to facilitate

inspection and uniformity of tax examiners in taxpayers who have special relationships for quality audits, in addition to improving SE-04/PJ.7/1993.

CONCLUSION

From the discussion on the review of Islamic law against the crime of treason in Article 107 of the Criminal Code above, several conclusions can be drawn, namely the elements of the criminal act of treason in Article 107 of the Criminal Code in which there are two elements, namely subjective elements and objective elements. Article 107 has a subjective element: with an objective and objective element: treason, which is carried out and overthrows the government. Regarding the elements of the crime of treason above, the author is of the opinion that the elements that were inherent in the perpetrators who aimed to commit crimes against the security of the President and Vice President, attacked the security and territorial integrity of the country and According to Islamic criminal law, criminal acts Makar is called al-baghyu (rebellion). Islamic law does not explain in more detail about the object of the crime of rebellion (al-baghyu), for example crimes against the security of the head of state, security of the territorial integrity of the state and security of the form of government. In terms of differences, in Islamic law the perpetrator is given sanctions if the crime committed has been completed, in other words, al-Baghyu's actions have been completed. Whereas in positive law, the perpetrators of treason can be given sanctions whether the crimes they have committed have not been completed or have been completed. Whereas in terms of similarities, both the perpetrators of al-baghyu and treason, both can be sentenced to death.

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