

# Analysis of Penalties For Violators of Taxpayers in Accordance With The Criminal Code And Criminal Procedure Code

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## Abstract

*This qualitative study analyzes and discusses the process of punishing taxpayer violators in Indonesia. Perpetrators of tax violators must be processed and charged with the Criminal Code and the Criminal Procedure Code articles, two traditional law sources that apply in the realm of tax law and taxpayer sanctions. Our first step begins with legal searches and examinations of individual and corporate taxpayers' violations. The next step is to seek and evaluate the law and articles comprehensively before determining the legal articles imposed by following the types of taxpayer violations committed. After discussing the findings, we reviewed the articles of infringement law from both legal sources (KUHP, KUHPA), tax laws, and secondary laws. Finally, we conclude that severe legal violations by taxpayers that result in loss of state revenue are usually subject to criminal sanctions. The minimum sentence is six months, and the maximum is six years. Thus, the findings of this study can add to the repertoire of new understanding for many parties with interest in the law on taxpayer violations in Indonesia.*

**Keywords:** Taxpayer Law, Investigator Procedure, Criminal Code and Criminal Procedure Code

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## INTRODUCTION

Every citizen is obliged to pay taxes. Because taxes are coercive for the state, they are regulated by regulations based on the 1945 Constitution, in Article 23A. In the Law on General Provisions and Tax Procedures, from now on, referred to as UU KUP. (Wulandari and Budiaji, 2018). The tax collection system in Indonesia changed in 1983, namely adopting a self-assessment taxation system, where taxpayers were entrusted with calculating, depositing, and reporting the amount of tax owed themselves. This system is primarily determined by taxpayer compliance and supervision from the directorate general of taxes, referred to as "DGT." (Amalia, 2016). Most taxpayers still do not want to pay taxes in truth and always try to avoid paying taxes.

In the self-assessment system, every individual and corporate taxpayer who has met the Subjective and Objective requirements must register to have a Taxpayer Identification Number, from now on referred to as NPWP. After registering, the taxpayer performs the calculation, deposit, and reporting of his tax online or at the Tax Service Office where the taxpayer is registered. If the taxpayer is late in making payments and reporting his tax return, the taxpayer is subject to administrative sanctions through the issuance of a tax collection letter or a tax audit process, and a legal product is issued in the form of a tax collection letter, from now on referred

to as an STP and underpaid tax assessment letter from now on, referred to as SKPKB by the Tax Service Office. (Bohari, 2017). Taxes are the primary source of the most significant state revenue. In order to avoid a reduction in tax payments by taxpayers resulting in-state losses, the government is obliged to conduct socialization and increase awareness for taxpayers to pay taxes. For perpetrators of tax crimes that cause state revenue losses, it is necessary to apply criminal law sanctions oriented towards state revenues.

This study will discuss whether the taxpayer audit process is following applicable procedures. (Bwoga, 2005). So this study will discuss the minutes of the Decision of the New Week High Court Number: 19/PID.SUS/2015/PT.PBR to the Annual Notification Letters that are not following Article 39 of the KUP Law, and the researcher will recommend overcoming these problems. With the Decision of the New Week High Court Number: 19/PID.SUS/2015/PT.PBR with Defendant Alexander Patra acting as an Individual Taxpayer with the Sony Electronic Store business brand responsible for fulfilling tax obligations in the form of reporting Annual Tax Returns (SPT).

The problem is simple; if a taxpayer violates the tax law, he will get penalties and sanctions that will receive punishment for violating the tax law. Following the Criminal Code, Article 41 B of the KUP Law stipulates that “everyone who intentionally obstructs or complicates the investigation of a criminal offense in the taxation sector shall be sentenced to a maximum imprisonment of 3 (three) years and a maximum fine of IDR 75,000,000.00 (seventy-five million rupiah)”. (Supit, 2016). Other examples include tax sanctions, imprisonment for a minimum of six months or a maximum of six years, a fine of at least double the amount of tax owed that has not been or is not paid, and the amount of tax that is not or underpaid is at most four times 2019.

In this case, the determination of the status of criminal penalties must be based on the results of the examination conducted by the Directorate General of Taxes, consisting of officials who have special investigative authority for unlawful acts in the field of taxation with consideration of the risk of state losses caused by taxpayer violations and subject to sanctions. Therefore, taxpayers who violate can be subject to sanctions for late tax payments and late submission of SPT. Taxpayers are required to impose tax sanctions in the form of fines and interest if the Annual SPT is not submitted on time. (Pujiwidodo, 2016).

1. In the Criminal Procedure Code (KUHP), before investigating a criminal act, it will go through a previous stage called an investigation. In the Criminal Procedure Code, investigations are regulated in articles 102 to 105. When an incident occurs reasonably suspected to be a criminal act, the competent authorities are obliged to investigate whether the incident originates from a report or complaint submitted orally or in writing. In carrying out their duties,

investigators are required to show their identification as investigators to interested parties.

The KUHAP process at this stage of the investigation indirectly describes examining taxpayers before an investigation is carried out. (Ardani, 2010).

2. Meanwhile, the investigation is regulated in Articles 106 to 136 of the Criminal Procedure Code. Investigators who receive a report that an event that is reasonably suspected to be a criminal act has occurred must immediately carry out an investigation. If in the process, it turns out that there is strong evidence, then the event or case is submitted to the Public Prosecutor. However, if sufficient evidence is not obtained or it turns out that the incident is not a criminal act, the investigation must be stopped for the sake of the law.
3. The tax crime case in the Pekanbaru High Court Number: 19/PID.SUS/2015/PT.PBR with the defendant Alexander Patra charged with committing a criminal act. (Suwartono, 2014). Violation in the field of taxation, intentionally submitting a Tax Return and or information whose contents are incorrect or incomplete on behalf of the defendant's Taxpayer with Taxpayer Identification Number 06,898.082.0-211,000 so that it can cause losses to state revenue.

Based on the Decision of the New Week High Court Number: 19/PID.SUS/2015/PT.PBR, the Public Prosecutor in his indictment, demanded that Defendant Alexander Patra be sentenced to imprisonment for 6 (six) months and a fine of 2 (two) times the unpaid tax payable amounting to 2 X IDR 5,595,272,850,- (five billion five hundred ninety-five million two hundred seventy-two thousand eight hundred fifty rupiahs) = IDR 11,190,545,700,- (eleven billion one hundred ninety million five hundred forty-five thousand seven hundred rupiahs) subsidiary 6 (six) months imprisonment.

## LITERATURE REVIEW

The system of penalties and sanctions for taxpayer violators in Indonesia: What is the punishment for taxpayer violators? According to Ladjoma, (2020) criminal sanctions are often applied when a taxpayer commits a severe violation, resulting in repeated and repeated state revenue losses. The penalty is imprisonment for a minimum of 6 months and a maximum of 6 years. What are the sanctions for taxpayers? Sanctions based on Winerungan, (2013) are imposed on taxpayers who do not comply with tax regulations, for example, payment of Article 21 Income Tax, late reporting of Article 23 Income Tax Return, etc. The sanctions referred to here include the following. It can be in the form of a tax invoice or a tax assessment letter.

Penalties for taxpayer violations begin with penalties based on the Taxpayer Law. Rahayu, (2017) said that if a taxpayer does not carry out his obligations, his punishment has a legal basis

in Article 7 of the KUP Law, which imposes a fine of IDR 100,000 against individual taxpayers who do not disclose their SPT. At the same time, the fine is set at Rp. 1 million for business taxpayers. Fuadi and Mangoting, (2013) added that taxpayers are punished because taxpayers violate their tax violations. About criminal offenses in the field of taxation, the tax period, part of the tax year, or tax year concerned ends 10 (ten) years after the end of the tax period.

The idea of justice for the penalties imposed on taxpayers is also present in the framework of justice. Arifka, (2018) considers the concept of justice about sanctions imposed on taxpayers, namely sanctions imposed on taxpayers depending on what violations were committed, to provide strict sanctions if the person evades taxes, but they are late in paying taxes should also be warned.

Everyone who intentionally does not register or misuses or uses a Taxpayer Identification Number (NPWP) or a Taxable Entrepreneur Confirmation (TEC) without rights, or who does not submit an SPT or provides an SPT and information whose contents are wrong or incomplete, must understand taxation. Violations. (Hasibuan et al., 2015). Article 1(1) of the KUP Law stipulates that Taxpayers are individuals or entities, including Taxpayers, Tax Collectors, and Tax Collectors, who have tax rights and obligations following the provisions of tax laws and regulations, as well as taxpayer crimes and elements of the crime. Taxation. (Juli and Suharti, 2012) (tax provisions).

Meanwhile, the time for committing a criminal act is 10 (ten) years from the time the tax becomes due, the end of the tax period or the tax year concerned since the criminal sanction imposed on the Taxpayer is imposed as a violation of the Taxpayer, part of the Fiscal Year, or Fiscal Year. Tax criminal rules. (Kusuma, 2016). Article 41 B of the KUP Law is punishable by a maximum imprisonment of 3 (three) years and a maximum fine of IDR 75,000,000.00 (sixty-five million rupiahs) for any person who deliberately obstructs or participates in the conduct of an investigation crime in the field of taxation.

## RESEARCH METHOD

This research with a qualitative approach with normative juridical using primary legal material (a). KUHP and KUHAP Article 1 (b). Tax laws and regulations, (c). Secondary legal material as a primary legal explanation, to analyze and discuss sanctions and penalties for perpetrators of violating the law and taxpayer rules based on the law mentioned above In the form of research using normative juridical materials, with a statutory, conceptual, comparative, and case approach.

In addition, this type of research on normative legal materials also uses primary legal materials and tax regulations and uses secondary legal materials that provide explanations on

primary law in tax cases. While the process of collecting and analyzing data with a case-by-case phenomenological study approach. Our data is searched through the Google application search engine, and we analyze it in-depth, involving a coding system to get accurate and valid data findings or answers according to the questions of this analysis study. We follow the guidelines. (Waluyo, 2018; Creswell, 2009).

## **DISCUSSION AND RESEARCH RESULTS**

### **1. Overview of the Pekanbaru District Court Decision Case**

Based on the decision of the Pekanbaru District Court Number: 19/Pid.Sus/2015/PT. PBR with the defendant named Alexander Patra with NPWP: 06,898,082.0-211,000 who acts as an individual taxpayer with the Sony Electronic Store business brand responsible for fulfilling tax obligations in tax return reporting, from now on referred to as SPT for his business.

The tax crime case in Decision 19/2015 was carried out by the defendant Alexander Patra who committed a crime in a tax-related violation. It was detrimental to the state so that the tax crime continued in the form of intentionally submitting an SPT or information whose contents were incorrect/complete on behalf of the Defendant's Taxpayer own NPWP 06,898,082.0-211,000, and also do not keep books or records, do not show or lend other documents related to taxation, or show false books, records, and documents that do not show the actual situation. Thereby causing state losses. With this, the defendant has violated Article 39 of the KUP Law.

Based on the Decision of the New Week High Court Number: 19/PID.SUS/2015/PT. PBR, the Public Prosecutor in his indictment, demanded that Defendant Alexander Patra be imprisoned for 6 (six) months and a fine of 2 (two) times the unpaid tax payable amounting to 2 X Rp. 5,595,272,850,- (five billion five hundred ninety-five million two hundred seventy-two thousand eight hundred and fifty rupiah) = IDR 11,190,545,700,- (eleven billion one hundred ninety million five hundred forty-five thousand and seven hundred rupiahs) subsidiary 6 (six) months imprisonment.

### **2. Taxpayer Audit Process in Decision No.19 / PIS / SUS / 2015 Pekanbaru High Court**

In the process of the case, Defendant is the owner of a Sony Electronics shop which is located at Jalan Jenderal Sudirman No: 178-182 Pekanbaru which is engaged in the business of buying and selling electronic equipment in the form of refrigerators, TVs, washing machines, LG brand air conditioners, stoves, cameras, laptops, fans and various other electronic devices from Sony, Samsung, Toshiba, and Sharp brands. The sale and purchase of electronic equipment are owned by Defendant and his wife, Mariana. The goods sold by Defendant were goods supplied by several

companies such as PT. Build Global Prosperity on the Riau Pekanbaru Street and PT. Artha Wahana Prakarsa on Jalan Riau for the Sony brand, PT. LG Electronics, Pekanbaru branch for LG brand, PT. Samsung Electronics Medan branch for the Samsung brand, PT. Sharp Indonesia on the road in Riau, Pekanbaru for the Sharp brand. The goods purchased from the supplier were paid for by Defendant in cash, credit card, debit card, and for sale at Defendant's shop; the sale was by credit made through a finance company, namely PT. Adira Quantum and then the proceeds from the sale are kept in his wife, Mariana.

Defendant's actions resulted in dishonesty in her husband's tax reporting. The article imposed on Defendant is in the form of dishonesty in his business financial books where finances are kept or embezzled in another account in the name of his wife, Mariana. Juridically this action is intentionally considered to have tried to be dishonest or violated the article on taxpayer evasion, namely the article on hiding the taxpayer as an act or intentional act which is an unlawful act against the applicable laws and regulations. He was charged with article 372 of the Criminal Code, which very expressly states that "Whoever intentionally and unlawfully owns goods. (Mokodongan, 2018).

In 2010, Defendant Alexander Patra was subjected to a tax audit by Agus Tofani according to an examination warrant. The audit warrant consists of several tax years, namely Print-09/WPJ.02/BD.0402/2010 dated May 17, 2010, for the fiscal year 2005, Print-10/WPJ.02/BD.0402/2010 dated May 17, 2010, for the fiscal year 2006 tax, Print-11/WPJ.02/BD.0402/2010 dated 17 May 2010 for 2007 fiscal year, Print 12/WPJ.02/BD.0402/2010 dated 17 May 2010 for the 2008 fiscal year. (Afifuddin and Saebani, 2009). By not equipped with the bookkeeping, the taxpayer examiner does not trust the data that has been reported, so that the examiner does several things as follows:

- a. Borrowing of books or records, documents that form the basis for bookkeeping or recording, and other documents related to income earned, business activities, accessible work of taxpayers, or tax payable objects.
- b. Confirming and requesting information and evidence to several manufacturers and distributors of electronic goods suspected of being the defendant's place of purchase. From the letter that has been sent, there are 2 (two) reply letters stating that they made a sale transaction to the defendant Alexander Patra. Requested permission to disclose bank secrets on behalf of the defendant Alexandra Patra and his wife to the Governor of Bank Indonesia on 28 December 2010, and to that request, all banks have provided answers
- c. Whereas if the Gross Income (sales turnover) reported in the Annual SPT cannot be tested by recording made by the taxpayer, another method is used to test and calculate the Gross Income

(sales turnover), namely by calculating based on data and information from the Current Account taxpayers Alexander Patra and Mariana because there is no separation agreement between Alexander Patra and Mariana. (Sudrajat and Ompusunggu, 2015). The customer's savings account in the name of both can be used as the basis for calculating income tax.

- d. The available evidence is a tax audit report, annual SPT, a letter from the head of the KPP Pratama Pekan Baru, minutes of counseling implementation. (Nugroho, 2016). Minutes of refusal to sign the minutes of counseling implementation, counseling implementation reports, letters from the head of the supervision and consulting section III, proof of sales, proof of purchase, letters from PT. LG Electronics Indonesia, the letter from PT. Samsung Electronics Indonesia, proof of handover of goods, current account in the names of Alexandra and Mariana.

### 3. Taxpayer Audit Process According to Taxation Law

Audits to test compliance with tax obligations must be carried out following audit standards. (Herryanto and Toly, 2013). The inspection standard is used to measure the quality of the inspection, which is the minimum achievement. General audit standards include audit implementation standards and audit results reporting standards. According to Article 29 of the KUP Law (Bandiyono, 2017), the inspection process follows inspection standards. For this reason, Aribowo, (2016) study which examines the relevance in understanding several legal remedies contained in Article 36 of the Coup Law that the implementation of the audit must be preceded by good preparation following the purpose of the audit, which at least includes activities to collect and study taxpayer data, prepare an Audit plan (audit plan), and prepare an Audit program (audit program), and receive careful supervision which includes:

- a. The inspection is carried out by conducting tests based on the methods and techniques of the Audit following the audit program that has been prepared. Audit findings must be based on sufficient competent evidence and based on the provisions of the tax laws and regulations.
- b. The audit is carried out by a tax audit team consisting of a supervisor, a team leader, and one or more team members, and in certain circumstances, the team leader can serve as a team member. The Tax Auditor Team can be assisted by one or more persons who have particular expertise, either from the Directorate General of Taxes.
- c. The audit can be carried out at the Directorate General of Taxes office, the residence or domicile of the taxpayer, the place of business activity or free work of the taxpayer, or other places deemed necessary by the tax auditor. Inspections are carried out during working hours and, if necessary, can be continued outside working hours. Implementation of the Audit is documented in the form of audit work papers.

d. The final discussion of the results of the audit and the obligations of the taxpayer to fulfill requests for books, records, and or documents that form the basis for bookkeeping or recording. Boediono, (2003) and other documents, which are borrowed from taxpayers, including:

Pouring out the results of the meeting in the minutes of the meeting with the taxpayer. Submit a notification letter of the results of the audit to the taxpayer. The audit for the fulfillment of tax obligations is completed in the following manner:

- a. Stop the inspection by making a summary inspection report. This examination was postponed because it was followed up with preliminary evidence examination.
- b. Make a report on the results of the audit as the basis for the issuance of a tax assessment letter or tax bill in accordance with the provisions of the tax laws and regulations.

On the examination process in the Pekanbaru High Court Judge Decision no. 19/PIS/SUS/2015/. (YANTI, 2019).

The Pekanbaru High Court stated that the audit process by the tax auditor was following the audit procedure because it had carried out the tax auditor's obligations following the audit standards:

- a. Since Permenkeu Number 82/PMK.03/2011, there has been a Quality Assurance Audit team in the insertion of Article, Article 11A. The Quality Assurance Inspection Team is then assigned: Discuss in the final discussion the results of the examination of differences of opinion between the Taxpayer and the Tax Auditor;
- b. Provide Taxpayers and Tax Auditors with findings and assessments of differences of opinion;
- c. Treating the minutes of the quality assurance audit team, which includes findings and assessments of the results of the discussions signed by the quality assurance audit team and the audit team and taxpayers. Because the audit quality assurance team existed as "above" the tax examiner, the auditors did not accept specific findings from the conversation. Meanwhile, the policy is that the findings of the quality assurance audit team must be consistent with the results of the examination.

Some, among others, rejected the audit findings, saying that the fiscal auditors were responsible. The tax auditor must keep the results of the audit until the time it occurs. He felt irresponsible if he had to get official results. Then who is responsible? Other provisions that support the examination of the audit quality assurance team were later confirmed by Regulation of the Minister of Finance No. 17/PMK.03/2013. Submit a notification letter of field inspection to



the taxpayer if the audit is carried out with the type of field inspection or a summons in the context of an office audit if the audit is carried out with an office audit type. (Sari, 2013).

- a. Conduct audits that have not been agreed upon between the tax auditor and the taxpayer at the end of the audit results. The obligation of the taxpayer to fulfill requests for books, records, and documents forms the basis for bookkeeping or recording and other documents.
- b. Pour out the results of the meeting in the minutes of the meeting with the taxpayer. (Ilyas and Burton, 2007). Submit a notification letter of the results of the audit to the taxpayer. Give the right to be present to the taxpayer in the context of the final discussion of the audit results at a predetermined time. We are delivering audit questionnaires to taxpayers.
- c. Returning books, records, and documents that form the basis for bookkeeping or recording and other documents borrowed from taxpayers. Confidentiality to other parties who are not entitled to everything that is known or notified to him by the taxpayer in the audit context.

In conducting an investigation, there are legal principles that must be considered by tax investigators. (Rahayu, 2010). The legal principles are:

- a. The Presumption of Innocentness
- b. The Principle of Equality Before the Law
- c. The Principle of the Right to Obtain Legal Assistance Procedures for the investigation carried out by the Tax Investigator.

Termination of Investigation of Tax Violations. A second problem arises: can tax violations be stopped? Butar and Hartama, (2015) say that the investigation can be terminated based on Article 44A of the KUP Law if there is no sufficient evidence or the event being investigated is not a tax offense. An investigation can also be concluded if the event ends or the suspect dies. Likewise, according to Waluyo, (2018) the tax investigator in the defendant's case above can take legal action so that the tax investigation has a series of actions taken by researchers to seek and collect information that clearly shows and concludes that there has been a tax violation that does not violate the existing law. In this case, the Judge et al., (2014) believes that what tax investigators can do according to the law is to consist of a series of actions taken by investigators to seek and obtain evidence that shows and finds allegations of tax crimes.

According to Law No. 28 of 2007 and Law no. 16 of 2009 concerning the Criminal Procedure Code. (Lund et al., 2013). In the interest of acceptance at the request of the Minister of Finance and the Attorney General to stop the investigation of a tax crime, the acceptance of a case must meet the following requirements: with the following conditions:

- a. Taxpayers must pay taxes
- b. Taxpayers pay a penalty of 4 (four) times the amount of tax that must be paid.

If these conditions are met, it can be terminated. Or in an investigation by a Tax Investigator, (Prasetyo and Pujiyono, 2016) it can be stopped because of the following: There is not enough evidence, Events that are not tax crimes, The suspect is dead and Case has expired.

## CONCLUSION

The process in the examination of tax violations in accordance with the legislation is as follows:

- a. Conducting an investigation of tax violations which consists of the following stages: (1). Stages in the examination as evidence (2). Stages of Investigation in Minutes and Files. In tax investigations, investigations are carried out through legal actions for summoning suspects and confiscation.
- b. Conduct an investigation into the criminal procedural law of the Criminal Procedure Code. The investigator can stop the investigation of tax violations because there is not enough evidence, and it is not a tax crime, or the suspect has died, or has expired, or is in the interest of the state, or is requested by the minister of finance, the attorney general to stop the investigation.

## IMPLICATION

- a. Examination by the authorities has an impact on the investigation of taxpayers who commit tax violations, and the investigation can make taxpayers aware.
- b. Impact on taxation in fixing and public confidence in the tax department. In carrying out the law enforcement of tax crimes, so that taxpayers in carrying out their obligations to pay taxes.

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