



Implementation of Sanctions Against Taxpayers Who Conduct Taxation Crimes Reviewed from the Islamic Criminal Law

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Abstrak

Negara Indonesia memerlukan dana untuk pendapatan negara dalam menyejahterakan rakyat, maka dana tersebut di dapat dari rakyat melalui pungutan pajak. Dalam pelaksanaan pemungutan pajak ada wajib pajak yang melakukan tindak pidana perpajakan sehingga harus dikenakan sanksi pidana, karena menimbulkan kerugian pada pendapatan negara. Mengingat orang Islam dituntut untuk merealisasikan kemaslahatan umum dalam kehidupan sesama manusia dan tidak akan terlepas dari kehidupan bermasyarakat dan bernegara, maka harus bijak untuk membayar pajak. Metode penelitian ini menggunakan metode pendekatan yang bersifat yuridis sosiologis, yang membahas berkaitan dengan ketentuan pengaturan secara hukum, dasar hukum dan penjatuhan sanksi tindak pidana perpajakan. Dengan spesifikasi penelitian deskriptif analisis yang bertujuan menganalisa sanksi wajib pajak bagi yang melakukan tindak pidana perpajakan dan ditinjau dari hukum pidana Islam. Dengan jenis dan sumber data primer serta sekunder yang kemudian di analisis kembali data tersebut secara kualitatif. Penerapan sanksi yang dijatuhkan terhadap wajib pajak atau terdakwa yang melakukan tindak pidana perpajakan dalam kasus tindak pidana mengenai tidak menyetorkan pajak yang telah dipotong atau dipungut, sebelumnya dikenakan sanksi administrasi terlebih dahulu, mengingat sanksi pidana dalam hukum perpajakan merupakan *ultimum remedium* yaitu obat terakhir dikehendaki, tetapi apabila tetap tidak dilakukan pembayaran kewajiban pajaknya dalam batas tertentu, maka di proses secara hukum yang berlaku. Dalam persidangan didengar keterangan para saksi, ahli dan terdakwa serta alat bukti, hakim melakukan ijtihad atas putusannya dengan mempertimbangkan berdasarkan perundang-undangan yang berlaku dan keadaan yang memberatkan maupun meringankan serta keyakinan hakim, maka terdakwa diputus dengan dinyatakan bersalah melakukan tindak pidana penggelapan pajak melanggar Pasal 39 ayat (1) huruf i Undang Undang Nomor 16 Tahun 2009 tentang Ketentuan Umum Tata Cara Perpajakan dengan dijatuhi hukuman 2 (dua) tahun dan denda 2 (dua) kali kewajiban pembayaran pajak atau apabila denda tersebut tidak dibayar diganti dengan pidana kurungan selama 4 (empat) tahun.

Kata kunci: Sanksi Pajak, Wajib Pajak, Tindak Pidana.

Abstract

In the implementation of tax collection, there are taxpayers who commit taxation crimes so that they must be subject to criminal sanctions, because they cause losses to state income. Taxation crimes in Islamic criminal law include *Jarimah ta'zir* related to the rights of Allah, so that it depends on the demands of benefit. The data collection technique used is literature study and the conclusion of this research is to analyze the application of punishment on the decision of the Semarang District Court Number: 607/Pid.Sus/2018/PN.Smg in the presence of tax evasion by taxpayers or defendants. The application of sanctions imposed on taxpayers or defendants who commit tax crimes by the Semarang District Court Judges was found guilty of tax evasion violating Article 39 paragraph (1) letter i of Law Number: 16 of 2009 and sentenced to 2 (two) criminal penalties years, a fine of 2 (two) times the tax embezzled was Rp.919,908,128, - (nine hundred nineteen thousand nine hundred eight one hundred twenty eight rupiah) and if the fine is not paid, it is replaced with a 4 (four) month imprisonment. In terms of Islamic criminal law, the consideration and decision of the Panel of Judges was correct. It was based on the tax crime in Islamic criminal law is included in the law of ta'zir because ta'zir law can and must be applied in accordance with the demands of benefit, considering that this legal provision is stipulated by the government as *ulil amri*, in this case the Panel of Judges who view the benefit of the general public in order to create a deterrent effect on those who commit the crime of tax evasion.

Keywords: Tax Sanctions, Taxpayers, Criminal Acts.

Introduction

Indonesia is one of the countries that places taxes as one of the state's revenues, as stated in the preamble to the 1945 Constitution, paragraph IV (four) which reads: "To protect the entire Indonesian nation and all the blood of Indonesia and to advance public welfare, to educate the nation's life and participate in implementing world order based on social justice". In Indonesia itself, state revenue funds are obtained from the State Budget (APBN), where this APBN contains several sectors of fund revenue consisting of the tax sector, the non-tax state revenue sector and grants, while the largest funding income in Indonesia is obtained by the tax sector¹. Hence, the state needs funds for state income in the welfare of the people, so these funds are obtained from the people through tax collection.

Payment of taxes is a manifestation of the state's obligations and the participation of Taxpayers to directly and jointly carry out tax obligations for state financing and national development, in accordance with the philosophy of taxation law². Paying taxes is not only an obligation, but it is the right of every citizen to participate in state financing and national development.

¹ Octavia Paramitha & Diah Probawulan, Juni 2020, *Pengaruh Faktor Diskriminasi, Keadilan dan Teknologi Informasi Terhadap Persepsi Wajib Pajak Mengenai Penggelapan Pajak di KPP Pratama Jember*, Jurnal Akuntansi Profesi, Vol.11 No.1, p 59-67.

² DjokoSlamet Suryoputro, 2009, *Buku Pedoman Hak dan Kewajiban Wajib Pajak*, Direktorat Penyuluhan Pelayanan dan Humas, Jakarta, p 3.

Evidence that the tax sector is an important sector for bringing prosperity to the people, development is needed in all aspects that come from the State Budget (APBN), and the APBN comes from tax payments by taxpayers, individuals, legal entities and third parties which are the main sources. The revenue from state finance revenue is approximately 80%³.

Taxes have a very strategic and significant role in state revenue in the taxation sector, but it is unfortunate that the potential income from these taxes has not been utilized properly for the welfare of the people. This is because tax crimes often occur, namely in the form of negligence and deliberation, both by taxpayers, Fiskus (tax officers, employees, officials or tax officials) and third parties (banks, notaries, tax consultants, public accountants, administrative offices) who are not depositing tax money to the State treasury, resulting in a loss of revenue from State financial revenue originating from taxes.⁴ Therefore, the context of tax law in relation to a tax crime is defined as an unlawful act committed by a person whose action can be accounted for and by the tax law it has been declared a criminal act which can be subject to penalties. Even though the regulations have existed and are in effect, in reality the criminal act of tax evasion still occurs.⁵

The taxation law does not explain tax crime at all, but tax crime is found in the explanation of Article 33 paragraph (3) of Law Number 25 of 2007 concerning Investment which states as follows: "The meaning of taxation crime is : Incorrect information regarding reports related to tax collection by submitting notification letters, but whose contents are incorrect or incomplete or attach untrue information so as to cause losses to the state and other crimes regulated in the laws governing taxation".⁶ In connection with tax violations and criminal acts, it has also been regulated in Law Number 28 of 2007 concerning General Provisions and Tax Procedures as amended by Law Number 16 of 2009 which regulates criminal sanctions.

In law enforcement of tax crime, investigators have a very important role in conducting investigations. Civil servant investigators of the Directorate General of Taxes must be progressive and able to enforce the rule of law stipulated in legislation. As for civil servant investigators in criminal law enforcement, it is specifically regulated in Article 6 paragraph (1) letter b of the Criminal Procedure Code (KUHAP) that investigators are: "Certain civil servant officials are given special authority by law. law ", while the provisions for investigation in Law Number 28 of 2007 as amended by Law Number: 16 of 2009 concerning General Provisions and Tax Procedures, are regulated in Article: 44

³ Simon Nahak, 2014, *Hukum Pidana Perpajakan*, Setara Press, Malang, p 8.

⁴ *Ibid*, p 8.

⁵ Eka Ulfadani, Dahlan Ali, May 2019, Tindak Pidana Penggelapan Pajak (Suatu Penelitian Di Wilayah Hukum Pengadilan Negeri Meulaboh), Jurnal Ilmiah Mahasiswa Bidang Hukum Pidana Fakultas Hukum Universitas Syiah Kuala, Vol.3 (2), pp.301-319.

⁶ R. Santoso Brotodihardjo, 1998, *Pengantar Ilmu Hukum Pajak*, PT. Refika Aditama, Bandung, p 2.

paragraph (1) which reads: tax crimes can only be committed by certain Civil Servant Officers within the Directorate General of Taxes who are given special authority as investigators of criminal acts in the field of taxation”.

In carrying out their tax obligations, taxpayers must master the rules and obligations they carry out in order to avoid applicable sanctions.⁷ Based on the description above, the writer wants to analyse the decision of the Semarang District Court Number: 607/Pid.Sus/2018/PN.Smg in connection with the imposition of criminal sanctions in Article 39 paragraph (1) letter i of Law Number: 16 of 2009 concerning General Provisions and Procedures Taxation for a Defendant who committed a criminal act of taxation/tax evasion as committed by the Director of CV Jasa M A named SH who deliberately did not deposit the tax that had been withheld or collected so that it could cause losses to state income.

This paper reviewed the Islamic criminal law review of the Semarang District Court Decision Number: 607/Pid.Sus/2018/PN.Smg, about tax evasion committed by the Defendant SH (Director of CV. Jasa MA) with the decision of the Panel of Judges to sentence him to imprisonment for 2 (two) years and a fine of 2 (two) times the tax embezzled (2 x Rp. 459,954,064, - = Rp. 919,908,128, - (nine hundred nineteen million nine hundred eight thousand one hundred and twenty-eight rupiah provided that if the fine is not paid, it is replaced by a prison sentence of 4 (four) months. If the legal basis for taxes is traced and searched, both in the Al-Qur'an and in the Hadith directly, it will be implied to be found in it, because taxation is the result of ijtihad and thoughts from the friends of Umar bin Khatab which refers to the benefit of the people, which then these thoughts are continued and developed by the scholars in order to create a prosperous and prosperous society.⁸ Based on the problem mentioned earlier, this paper try to analyse how is the application of sanctions against taxpayers who commit tax crimes and how is the Judicial Review based on Islamic Criminal Law on taxation crimes.

Imposing Sanctions Against Taxpayers Who Commit Taxation Crimes

In achieving the objectives of development, it is for the welfare of the people and creating social justice, so that the state has a very important role in achieving these goals, and legal protection is an effort regulated by law to prevent tax crime violations. One of the efforts to achieve the independence of a country in financing development is by collecting taxes on its people. However, in its implementation, taxpayers often commit acts of irregularities, one of which is due to taxation crimes. Therefore, for taxpayers who commit taxation crimes, namely committing violations as stipulated in Article 39 paragraph (1) letter i of Law Number 28 of 2007 concerning General Provisions for Tax Procedures as

⁷ Wanda Surahman & Ulinnuha Yudiansa Putra, 2018, Faktor – Faktor Persepsi Wajib Pajak Terhadap Etika Penggelapan, Jurnal Reksa (Rekayasa Keuangan, Syariah, dan Audit), Vol.5, No.1, p 1-10.

⁸ Bachtiar Arif Makmur, 2002, Tinjauan Hukum Pidana Islam terhadap Tindak Pidana Perpajakan, Skrepsi, IAIN Sunan Ampel, Surabaya, p 20.

amended by Law Number 16 of 2009, it is very necessary. The imposition of criminal sanctions if after administrative sanctions is still ignored.

In the consideration of the Panel of Judges of the Semarang District Court who examine and adjudicate tax crime cases, the tax crimes can cause losses to state revenue, implies that losses to state revenues have either occurred or are still potential to occur, can be convicted. State revenue losses are calculated by subtracting the value of state revenue that should be received from the value of state revenue. In the event that the criminal offense in the field of taxation committed by the defendant violates Article 39 paragraph (1) letter i of Law Number 6 of 1983, amended by Law Number 28 of 2007, amended again by Law Number 16 of 2009 concerning General Provisions and Tax Procedures, which reads: "Every person who deliberately does not pay taxes that have been withheld or collected in law is subject to imprisonment for a minimum of 6 (six) months and a maximum of 6 (six) years and a fine of at least 2 (two) times the amount of tax payable that is not or underpaid and a maximum of 4 (four) times the amount of tax payable that is not or is underpaid.

The next consideration is that the value of state income that should be received is the entire value of the VAT (Value Added Tax) that has been collected as stated in the output tax invoice issued by the taxpayer/taxable entrepreneur concerned, while the value of state income that has been received is a tax credit reported in the SPT (Annual Tax Return) for the period of VAT in the amount of the entire value of the VAT that has been collected and listed in the input tax invoice as well as the amount of VAT that has been paid in accordance with the proof of payment. Thus, the Defendant did not support the government program in achieving state revenue from the tax sector. So, it has fulfilled the elements in the article charged by the public prosecutor. The defendant was found guilty of committing the crime of tax evasion.

Another consideration is that in imposing criminal sanctions on the Semarang District Court Judges, it is necessary to first consider the conditions that are burdensome and which relieve the defendant. The situation is burdensome:

1. The defendant did not support the government's program to increase state revenue from the tax sector.
2. The defendant's actions have caused losses to state revenue from the tax sector.
3. The defendant has enjoyed the proceeds of the crime he committed.

Relief conditions:

1. The defendant has never been convicted.
2. The defendant was polite at trial.
3. The defendant regretted his actions and promised not to do it again.

Considering that the Defendant was sentenced to punishment, he must also be burdened with paying the court fees. Taking into account, Article 39 paragraph (1) letter i of Law Number 6 of 1983 concerning General Provisions and Tax Procedures as amended several times by Law Number 28 of 2007 and

amended again by Law Number 16 of 2009 for the 2009 Tax Year and 2012 as well as other relevant laws and regulations.

Then the panel of judges who examined and tried the case Number: 607/Pid.Sus/2018/PN.Smg based on the legal facts revealed in the trial, both the testimony of witnesses, experts, defendants and evidence as well as the conviction of the judge, imposed the following sanctions :

Adjudicate:

1. To declare that the Defendant was legally and convincingly proven guilty of committing the crime of "Tax evasion" as in the single indictment of the Public Prosecutor.
2. To impose a penalty against the Defendant with imprisonment of 2 (two) years and a fine of 2 (two) times the tax embezzled, provided that if the fine is not paid, it is replaced by imprisonment of 4 (four) months.
3. To determine that the entire period of arrest and detention the Defendant has served is deducted from the sentence imposed.
4. Determine that the Defendant will remain in detention.

Based on this decision, it can be analysed that the Semarang District Court Judges in applying the article on tax evasion as a criminal sanction is correct, we can compare this decision of the Semarang District Court Number: 607/Pid.Sus/2018/PN.Smg with other court decisions, namely :

1. Decision of the High Court of Surabaya Number: 663/Pid/2017/PT.SBY, regarding "Notary Responsibilities for Embezzlement of Tax Custodians" with the verdict: Notary APW was found guilty of the criminal act of tax evasion of his client can be given sanctions for the actions of the notary as an individual receiving tax payments by the taxpayer to the notary public, so the rights and obligations of the notary will arise either in the form of a criminal or civil. With the existence of this tax evasion must be held personally accountable, because it violates the principles of honesty and responsibility that must be owned by a notary public.⁹
2. The decision of the Palembang District Court on the case of tax evasion by 2 (two) defendants of the Palembang City government civil servants, namely: the defendant NM who was sentenced to imprisonment for 2 (two) years and 3 (three) months imprisonment and a fine of Rp. 376,548,854, - subside 6 (six) months imprisonment. The defendant SM was sentenced to 1 (one) year and 5 (five) months imprisonment and a fine of Rp. 376,548,854, - a subsidiary of 5 (five) months imprisonment.¹⁰

From these decisions, it can be concluded that low tax compliance causes low tax revenue to be received by the state. Hence, it is an indication that the risk of tax evasion behaviour is quite large. This is in line with research conducted by Mukharomah (2014) which states that taxpayer compliance will minimize tax

⁹ Marsica Lestari , Tanggung Jawab Notaris atas Penggelapan Titipan Uang Pajak (Analisis Putusan Pengadilan Tinggi Surabaya) , Jurnal Content, Vol.2, No. 2 (2020) .

¹⁰ Media Release, Kanwil DJP Sumatera Selatan dan Kep. Bangka Belitung, Tuesday, 1 December 2015.

evasion behaviour.¹¹ The reason is that there is still discriminatory behaviour committed by tax officials. It will lead to bad thoughts, so that it can make taxpayers commit tax evasion.¹²

Judicial Review based on Islamic Criminal Law on Taxation Crimes

Based on the description of the case above, the sentence imposed on the Defendant is imprisonment of 2 (two) years and a fine of 2 (two) times the tax embezzled, provided that if the fine is not paid, it is replaced by imprisonment of 4 (four) months. Violating Article 39 paragraph (1) letter i of Law Number 16 of 2009 concerning General Provisions and Tax Procedures, which reads: "Anyone who does not pay taxes that have been withheld or collected", so as to cause losses to State income, shall be punished by imprisonment for a minimum of 6 (six) months and a maximum of 6 (six) years and a fine of at least 2 (two) times the amount of unpaid or underpaid taxes and a maximum of 4 (four) times the amount of tax payable that is not or less pay.

In terms of Islamic law, Muslims are required to realize the benefit of the ummah in general in the life of their fellow human beings and cannot be separated from the life of society and the state. In realizing the benefits for social life and the state, the government makes rules by imposing criminal sanctions. As people who obey the law and are wise, they must pay taxes to meet the learning needs of State development infrastructure that are beneficial to the public interest in order to achieve prosperity for the community and the State.

Umar bin Khattab as a caliph figure who had very revolutionary thoughts on Islamic law had positioned him as a caliph who was known to be intelligent, brave, assertive, and capable of capturing universal messages in the Koran and al-Hadith to realize just Islamic law.¹³ Tax is only a system that is run and controlled by humans (Fiskus and taxpayers), however, the appearance of tax collection cannot be separated from the ethical and religious values adhered to by the implementing person.¹⁴

This crime of tax evasion is declared as an act of wrongdoing, because the impact is detrimental to the people and threatens the stability of the State's finances. In Islamic law, the tax crime committed by the Defendant is included in the Jarimah ta'zir. Where ta'zir means refusing or preventing, the punishment is

¹¹ Ni Komang Trie Julianti Dewi, *Faktor-Faktor yang Mempengaruhi Persepsi Wajib Pajak Mengenai Etika atas Penggelapan Pajak (Tax Evasion)*, E-Jurnal Akuntansi Universitas Udayana, Vol. 18. 3, Maret (2017) : 2534-2564.

¹² Enggar Pratiwi dan Ronny Prabowo, *Keadilan dan Diskriminasi Pajak terhadap Penggelapan Pajak : Persepsi Wajib Pajak Orang Pribadi*, AFRE Accounting and Financial Review, Vol. 2 (1) : 8-15.

¹³ Ali Murtado Emzaed dkk, Juni 2018, *Tax Avoidance (Penghindaran Pajak) Oleh Wajib Pajak Dalam Perspektif Islam*, El-Maslahah Journal, Vol.8, No.1.

¹⁴ Ika Alfi Nur Izza & Ardi Hamzah, *Etika Penggelapan Pajak Perspektif Agama : Sebuah Studi Interpretatif*, Jurnal FAI Universitas Islam '45, <https://smartaccouting.files.wordpress.com>. Diakses pada tanggal : 25 April 2021.

aimed at preventing the person concerned from repeating his actions and making him a deterrent.¹⁵

Jarimah ta'zir is the sanction imposed on the perpetrator of the *Jarimah* who commits an offense, whether related to the rights of Allah or human rights and is not included in the category of hudud or *kafarat* punishment, because *ta'zir* is not directly determined by the Qur'an and Hadith. The form of light punishment is all left to the judge's consideration, in deciding the type and size of *ta'zir* sanctions and must pay attention to the instructions of the texts carefully, because they involve the general benefit.¹⁶

Tax crime in Islamic criminal law is included in the finger of *Ta'zir*, the law of *ta'zir* may and must be applied in accordance with the demands of benefit, in this connection there is a rule:¹⁷ "*Ta'zir* is very dependent on the demands of benefit"

In Islamic law, a person who commits a crime of tax evasion is subject to *ta'zir* punishment, *ta'zir* punishment is a punishment related to violations of the rights of Allah and humans whose threat is not found in the Al-Qur'an or Hadith.¹⁸ The punishment of *ta'zir* may and must be determined with a demand for benefit, so that the Judge in this case ulil amri is given the authority to impose sentences for the perpetrators of *Jarimah ta'zir* who do not have punishment limits, as there are no restrictions on criminal acts and the form of punishment, including not all immoral acts are punished by *had* and *qishas* in Islamic law. So, *ijtihad* a Judge in deciding a *ta'zir* sentence by looking at the general benefit and the form of safeguarding the basics of Islamic law in the punishment imposed on taxpayers who commit the crime of tax evasion

The consideration of the Panel of Judges at the Semarang District Court is correct in terms of Islamic criminal law, namely the defendant is subject to imprisonment as described in the *Jarimah ta'zir*. The imprisonment imposed on the defendant who commits the crime of tax evasion is punishable by imprisonment of 2 (two) years and a fine of 2 (two) times the tax embezzled provided that if the fine is not paid, it is replaced by a 4 (four) month imprisonment, as referred to referred to in article 39 paragraph (1) letter i of Law Number 16 of 2009 concerning General Provisions and Tax Procedures, can be justified by Islamic law because the provisions of the law are stipulated by the government which views the benefit of the general public and in order to create a deterrent effect on the accused.

The consideration of the Panel of Judges in this case that the defendant was subject to a fine of 2 (two) times the tax embezzled Rp.919,908,128 (nine hundred nineteen million nine hundred eight thousand one hundred and twenty-eight rupiah) is also correct. The legal basis for imposing a fine is in

¹⁵ Rahman Hakim, 2000, *Hukum Pidana Islam* CV.Pustaka Setia, Bandung, p 140.

¹⁶ M.Nurul Irfan dan Masyrofah, 2016, *Fiqih Jinaya*, pa. 136-140.

¹⁷ A. Djazuli, 2000, *Fiqh Jinayah (Upaya Menanggulangi Kejahatan Dalam Islam)*, Raja Grafindo, Jakarta, p 166.

¹⁸ Ahmad Hanafi, 2003, *Asas-Asas Hukum Pidana*, Bulan Bintang edisi 3, Jakarta, p 28.

accordance with the words of Rosulullah SAW:¹⁹ "and whoever brings something out will be fined twice as well as punishment".

Based on the hadith above, Islam imposes a fine of twice the amount of tax calculated, maybe even more if the State is very disadvantaged, because this *ta'zir* penalty returns to the benefit that the Indonesian government deems necessary. Likewise, the application of *ta'zir* punishment to these crimes is in accordance with the jurisprudence of the decision of the Supreme Court of the Republic of Indonesia Number: 898 K/PID.SUS/2014, so that it is deemed appropriate if it is applied in the context of Islamic criminal law.

Conclusion

From the results of the discussion on "The Application of Sanctions against Taxpayers Who Commit Taxation Crimes Reviewed based on Islamic Criminal Law", the following conclusions are whereas the imposition of tax penalties on the Defendant's actions which caused state losses is accused of committing a tax crime as referred to in Article 39 paragraph (1) letter i of Law Number 6 of 1983 concerning General Provisions and Tax Procedures as amended by Law Number 28 of 2007 for the 2008 Tax Year and Article 39 paragraph (1) i of Law Number 16 of 1983 concerning General Provisions and Tax Procedures as amended several times, the latest by Law Nomo 16 of 2009 for the 2009 Fiscal Year and 2012. The defendant's actions by the panel of judges at the State Court Semarang were found guilty of committing a crime of tax evasion, so that he was sentenced to a criminal sentence of 2 (two) years and a fine of 2 (two) times the tax embezzled amounting to Rp. 919,908,128 (nine hundred and nineteen million nine hundred eight thousand one hundred and twenty-eight rupiah). In addition, the consideration of the panel of judges at the Semarang District Court in passing the verdict against the Defendant was correct and appropriate if it was applied in the context of Islamic criminal law, because *ta'zir* is a punishment imposed lightly and the severity of which is determined by *ulil amri*, in this case the judge who first commits *ijtihad*.

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¹⁹ Bakhtiar Arif Makmun, 2009, *Tinjauan Hukum Pidana Islam*, p 84

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