

The Role Of The Public Prosecutors In Tax Criminal Prosecution

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Abstract

The problem in this study is how the role or authority of the Public Prosecutor in prosecuting tax crimes and how the process of prosecuting tax crimes. The approach method used is Sociological Juridical, with Analytical Descriptive Specifications. The data obtained by the Interview Method and Literature Study. The conclusion of this study is that the Civil Servant Investigator (PPNS) of the Directorate General of Taxes conducts a Tax Crime Investigation which is submitted to the Public Prosecutor to conduct research on the case file. Directorate General of Taxes (P-18,P-19), if the case file is complete, the Public Prosecutor will declare the Case File complete (P-21), then the Public Prosecutor will delegate the Tax Case to the District Court Judge who is authorized to adjudicate for decided so that it has permanent legal force, then the Public Prosecutor shall carry out the decision which has permanent legal force.

Keywords: Public Prosecutor; Prosecution; Tax Crime Court.

1. Introduction

The State of Indonesia is a state of law, this is based on Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. The State of Indonesia is based on law (*Rechtsstaat*), not based on mere power (*Machsstaat*)¹. One of the principles of the rule of law is the rule of law².

Prosecutor's Office is a term for institutions in the criminal justice system that have the function of prosecuting and making documents such as indictments and letters of indictment. Prosecutors are the main figures in the administration of criminal justice.³ The Prosecutor's Office is the only government agency implementing state power which has duties and authorities in the field of prosecution and other authorities based on the law, must be free from the influence of the power of any party, which is carried out independently regardless of the influence of government power and the influence of other powers and the Prosecutor's Office. is one and inseparable, namely one basis in carrying out its duties and authorities in the field of prosecution which aims to maintain

¹ Explanation of the 1945 Constitution.

² Jimly Asshiddiqie, 2006, *Konstitusi dan Konstitusionalisme Indonesia*, Sekretaris Jenderal dan Kepaniteraan Mahkamah Konstitusi, Jakarta, p.124.

³ Yosy Budi Santoso, Umar Maruf, *Kebijakan Pembuktian dan Penuntutan oleh JPU dalam Pemberantasan Tindak Pidana Korupsi*, Jurnal Hukum Khaira Ummah Vol.12 No.2 June 2017 p.360

a unified policy in the field of prosecution so that it can display characteristics that are unified in the thinking, behavior and working procedures of the Prosecutor's Office.

The legal basis of the Prosecutor's Office is regulated in Law of the Republic of Indonesia No. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia.

In carrying out his duties and authorities, the Prosecutor must be able to realize legal certainty, legal order, justice and truth based on the law and heed religious norms, decency and decency and must explore the values of humanity, law and justice that live in society.⁴

The position of the Public Prosecutor under the auspices of the Prosecutor's Office in criminal justice is very central as a bridge that connects the stages of Investigation, Prosecution and implementing court decisions that have permanent legal force (as the executor).

In the handling of Tax Crimes, Civil Servant Investigators (PPNS) of the Directorate General of Taxes carry out Tax Crimes Investigations are submitted to the Research Prosecutor to conduct research on the case file, if the case file is not complete, the Research Prosecutor will provide instructions to complete the case file to Investigators of the Directorate General of Taxes (P-18, P-19), then Investigators of the Directorate General of Taxes complete the case file in accordance with the instructions from the Research Prosecutor and the case file which has been completed by the Investigator of the Directorate General of Taxes is returned to the Prosecutor's Office, if the case file is complete, the Research Prosecutor will declare the case file is complete (P-21), then the Public Prosecutor delegates the Tax Case to the District Court Judge who has the authority to adjudicate for a decision so that it has permanent legal force and then the Public Prosecutor implements the decision which has permanent legal force.

The national tax law is regulated in Act No. 6 of 1983 concerning General Provisions and Tax Procedures as amended by Act No. 16 of 2009 (KUP Law).

The purpose of tax law is not only to find fault or punishment as retaliation against tax criminals, but the purpose of tax law is to focus more on realizing the level of public compliance as taxpayers so that state revenues in the taxation sector can be fulfilled. Tax law gives legitimacy to raise the state from the tax sector.⁵

Criminal threats in the field of taxation are basically a final measure (*ultimum remedium*) in an effort to improve taxpayer compliance in relation to tax revenue targets.

Tax law actually enters the realm of administrative law, but so that the tax law has coercive power and is obeyed by the legal subjects it regulates, then the legislation is given criminal sanctions (penal sanctions) in the form of fines and imprisonment. seen

⁴Djunaedi, *Tinjauan Yuridis Kedudukan Jaksa dan Surat Dakwaan Demi Tercapainya Nilai-Nilai Keadilan*, Jurnal Pembaharuan Hukum, Volume I No.1 January-April 2014, p.86

⁵ Ade Kusuma, Umar Maruf, *Pelaksanaan Penelaahan Keberatan Terkait Pengajuan Pengurangan atau Penghapusan Sanksi Administrasi Wajib Pajak di Kantor Wilayah Dirjen Pajak Jateng I*, Proceedings of the Student National Seminar, April 2019.

by the regulation of various norms governing criminal acts in tax laws and regulations with the aim that tax law has coercive power so that people obey it.⁶

The problem of non-compliance by taxpayers can lead to tax disputes and or tax crimes. A tax dispute is a dispute between tax payments (central/regional-taxpayers, customs and excise taxpayers) and the official who determines the tax due to a decree from the tax official. Therefore, the settlement of tax disputes is included in the state administration environment. Tax crime is the act of any person who in implementing the tax law that causes state losses (taxes/customs/regional taxes) which is threatened with criminal penalties.⁷

That Tax Crimes that are authorized to adjudicate are District Courts where the location of the case (*locus delicti*) occurred in this case the author will conduct a study of tax crimes that occurred in the jurisdiction of the city of Semarang so that it is the authority of the Semarang District Court to try them.

Based on the description above, there are problems related to the role of the Public Prosecutor and tax crimes, so the author tries to analyze it in the form of research with the title, "The Role of The Public Prosecutors in Tax Criminal Prosecution".

Based on the description above, the objectives of the research are as follows: to find out and analyze the Role or Authority of the Public Prosecutor in the Prosecution of Tax Crimes, to find out and analyze the Process of Prosecuting Tax Crimes.

2. Research Methods

This study uses a sociological juridical approach, namely a legal approach method that looks at the implementation of norms in the field. The specification of this research is descriptive analysis, which describes the applicable laws and regulations related to legal theories and the practice of implementing positive law concerning the above problems.

This study uses primary data and secondary data, while the data collection method is by field studies through direct interviews and library research. The method of data analysis is qualitative analysis, which is a research procedure that produces descriptive data analysis, namely what has been obtained from library research, researched and studied as a whole.

3. Results and Discussion

3.1. The Role or Authority of the Public Prosecutor in the Prosecution of Tax Crimes.

In Act No. 8 of 1981 concerning the Criminal Procedure Code, Article 1 point 6 states that: "Prosecutors are officials who are authorized by this Law to act as Public Prosecutors and carry out Court Decisions which have permanent legal force."

Public Prosecutor is a Prosecutor who is authorized by this Law to carry out prosecutions and implement the Judge's decision.

⁶ Timbo Mangaranap Sirait, 2019, *Hukum Pidana Pajak Indonesia (Materiil dan Formil)*, Depublish, Yogyakarta, p.15.

⁷Bustamar Ayza, 2018, *Hukum Pajak Indonesia, Prenamedia Group (Divisi Kencana)*, Jakarta, p. 210.

Prosecutors are officials who are authorized by this Law to act as public prosecutors and carry out court decisions that have permanent legal force (Act No. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia). Furthermore, in Act No. 16 of 2004 it is also explained that the prosecutor's office is a government institution that exercises power in the field of prosecution. The provisions regarding the position of the Prosecutor's Office are regulated in Article 2 of Act No. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia which is detailed as follows:

- 1) The Prosecutor's Office of the Republic of Indonesia, hereinafter referred to as the Prosecutor's Office, is a government institution that exercises state power in the field of prosecution and other authorities based on the law.
- 2) The power of the state as referred to in paragraph (1) is exercised independently.
- 3) The Prosecutor's Office as referred to in paragraph (1) is one and inseparable.

In other words, the Prosecutor's Office is the only government agency implementing state power that has duties and authorities in the field of prosecution in law enforcement and justice in the general court environment. While the prosecution itself is a series of actions by the public prosecutor to delegate the case to the competent District Court in terms of and according to the method regulated in the Criminal Procedure Code with a request to be examined and decided by a judge in court. According to Article 14 of the Criminal Procedure Code (KUHP)⁸. The Public Prosecutor has the authority to:

- a. Receive and examine investigation case files from investigators or assistant investigators.
- b. Conduct pre-prosecution if there are deficiencies in the investigation by taking into account the provisions of Article 110 paragraphs 3 and 4 by giving instructions in the context of perfecting the investigation and investigator.
- c. Provide an extension of detention, carry out further detention or change the status of the detainee after the case has been delegated by the investigator.
- d. Make an indictment.
- e. Delegating the case to the Court.
- f. Deliver notification to the defendant about the terms and time of the case to be heard accompanied by a summons, both to the defendant and to witnesses, to come at the hearing that has been determined.
- g. Do prosecution.
- h. Closing the case for legal reasons.
- i. Carry out other actions within the scope of duties and responsibilities as a public prosecutor according to the law.
- j. Carry out the judge's determination.

In Act No. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, Article 30 states:

- (1) In the criminal field, the Prosecutor's Office has the following duties and authorities:

⁸ In the Elucidation of the Article it is stated that what is meant by other actions are, among others, examining the identity of the suspect, the evidence with strict regard to the limits of authority and function between investigators, public prosecutors and courts.

- a. Do prosecution.⁹
- b. Carry out judges' decisions and court decisions that have permanent legal force.
- c. Supervise the implementation of conditional criminal decisions, supervisory criminal decisions and parole decisions.
- d. Conduct investigations into certain criminal acts based on the Act.
- e. Completing certain case files and for this purpose can carry out additional examinations before being transferred to the court which in its implementation is coordinated with investigators.

Regarding the prosecution policy, it is the public prosecutor who determines whether a case resulting from an investigation is complete or not to be transferred to the District Court for trial. This is regulated in Article 139 of the Criminal Procedure Code. If according to the consideration of the Public Prosecutor of a case there is insufficient evidence to be forwarded to the court or whether the case is not an offense, then the Public Prosecutor shall make a determination regarding this matter Article 140 paragraph 2 point a of the Criminal Procedure Code. The contents of the decree are notified to the suspect and if detained, they must be released (Article 140 paragraph 2 point b). Regarding the authority of the public prosecutor to close cases for the sake of law as referred to in Article 140 paragraph 2 point a.

Based on the provisions of the Act, the position of the Public Prosecutor under the auspices of the prosecutor's office in criminal justice is very central.¹⁰ because it is a bridge that connects the investigation stage with the examination stage in court. Based on legal doctrine, there is a principle that the public prosecutor has a monopoly of prosecution, meaning that everyone can be tried if there is a demand from the public prosecutor, namely the prosecutor's office because only the public prosecutor has the authority to bring a suspect perpetrator of a crime to trial.

It is very clear that the Prosecutor is a legal profession that has the function of carrying out prosecutions and carrying out court decisions (executions) that have permanent legal force (*inkracht Van Gewijsde*). In this case, the function is realized within the scope of the General Court. The authority of the profession in carrying out its functions is in the capacity to represent the state (the only public institution), in accordance with the Law in the framework of operationalizing criminal procedural law as one of the main-stakeholders in the concept of an integrated justice system.

For the Public Prosecutor in dropping criminal charges, it must be guided by the Circular Letter of the Junior Attorney General for Special Crimes Number: B-397/F/Ft.03/2019 dated March 20, 2019 regarding: Criminal Claims for Fines in Criminal Cases in the Taxation, Customs Field and Excise provides instructions including:

⁹In the elucidation of Article 30 (1) point a, it is explained that in carrying out a prosecution, the Prosecutor may conduct a pre-prosecution. Pre-prosecution is the action of the prosecutor to monitor the progress of the investigation after receiving notification of the start of the investigation from the investigator, studying or examining the completeness of the case file from the investigation received from the investigator and providing instructions to be completed by the investigator to be able to determine whether or not the case file can be transferred to the prosecution stage. .

¹⁰Yudi Kristiana, 2009, *Menuju Kejaksaan Progresif* (Studi tentang penyelidikan, penyidikan dan penuntutan tindak pidana korupsi), LSHP, Yogyakarta, p. 51.

1. To further optimize state revenues, especially in the payment of fines, the Public Prosecutor gives instructions to PPNS Tax, as well as PPNS Customs and Excise so that in each investigator they have carried out asset tracking and blocking or confiscation of property belonging to the perpetrator (based on the Criminal Procedure Code) by involving related parties, so that more optimally in fulfilling the payment of the criminal fines imposed on the Defendant.
2. Handling of criminal cases in the field of taxation, in demanding criminal fines does not directly subsidize with confinement in lieu of fines, but includes the following clauses:

"If the defendant does not pay the fine within 1 (one) month after the court's decision has permanent legal force, then his property can be confiscated by the prosecutor and then auctioned off to pay the fine," followed by the sentence "in the event that the defendant does not have property sufficient to pay the fine, the Defendant shall be sentenced to a substitute term of imprisonment for a maximum of 6 (six) months.

3.2. Tax Crime Prosecution Process

The Directorate General (Dirjen) of Taxes conducts inspections of taxpayers if there are indications of irregularities in the form of Preliminary Evidence of Tax Crimes, it will be submitted to the Civil Servant Investigator (PPNS) The Directorate General of Taxes is raised to the level of Tax Crime Investigation, the results of the investigation are submitted to the Prosecutor The Public Prosecutor through the Police as the Supervisory Coordinator (Korwas), then by the Public Prosecutor a Case File Research is carried out, if the case file is incomplete, the Public Prosecutor's Instructions (P-18, and P-19) will be given to the PPNS Investigator of the Director General of Taxes to be completed with the case file. Then the incomplete case file is returned to the PPNS Investigator of the Director General of Taxes to be completed, After the case file is completed by the PPNS Investigator of the Director General of Taxes, then the case file is returned to the Public Prosecutor through the Police as the Supervisory Coordinator (Korwas), if the case file is complete, the Public Prosecutor will declare the Case File complete (P-21), then the Prosecutor The Public Prosecutor will delegate the tax case to the District Court which is authorized to be examined and decided by the Panel of Judges, if the case has permanent legal force, the Prosecutor will carry out the execution (implementing the Judge's Decision).

That there is often a back and forth of Tax Case Files between Tax Civil Servant Investigators (PPNS) and Public Prosecutors because Tax Civil Servant Investigators (PPNS) cannot complete or fulfill the instructions given by the Public Prosecutor. This back and forth of Tax Case Files is a dilemma in the handling of Tax Crimes. On the one hand, the Tax Civil Servant Investigator (PPNS) feels that the Public Prosecutor provides instructions that are difficult to fulfill while on the other hand the Public Prosecutor feels that the Tax Civil Servant Investigator (PPNS) is not optimal in completing the instructions given so that it often happens back and forth tax cases with unclear resolution.

The Public Prosecutor's authority is to carry out a Prosecution, but before carrying out a Prosecution a Public Prosecutor must conduct a Pre-Prosecution, namely the Public Prosecutor's Action to provide instructions in the context of Completion of Investigations by Investigators.¹¹

In this case, the Public Prosecutor conducts research on the case files he receives from the investigators to find out whether they have fulfilled the formal and material requirements, then from the results of this investigation the prosecutor will prepare an indictment.

The Public Prosecutor stated that they would be the ones to prove the Tax Crimes that were indicted to the Defendant in front of the trial so that the Public Prosecutor was responsible for the evidence before the trial which consisted of at least two valid pieces of evidence and the judge's conviction that a criminal offense was a crime. It is true and the defendant is guilty of committing the crime, while the responsibility of the Tax Civil Servant Investigator (PPNS) is only until the Tax Case File has been declared complete (P-21) by the Public Prosecutor.

4. Closing

Prosecutors are officials who are authorized by this Law to act as Public Prosecutors and implement Court Decisions which have permanent legal force. Public Prosecutor is a Prosecutor who is authorized by this Law to carry out prosecutions and implement the Judge's decision. The Civil Servant Investigator (PPNS) of the Directorate General of Taxes conducts Tax Crime Investigations which are submitted to the Public Prosecutor, then the Public Prosecutor delegates the Tax Case to the District Court Judge who is authorized to adjudicate to be decided so that it has permanent legal force. Investigators of Civil Servants (PPNS) of the Director General of Taxes, Public Prosecutors and judges must be professional as Law Enforcement Apparatus in every handling of Tax Crime cases, the need for synergy between law enforcement officers, namely Investigators of Civil Servants (PPNS) of the Director General of Taxes, the Attorney General's Office and Judges in handling tax crimes and leaving the sectoral ego of each party.

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