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TAX AMNESTY AS THE TERMINATION OF INVESTIGATION IN TAX NONCOMPLIANCE

Mutiara Nastya Rizky¹, Sarwirini²

^{1,2}Department of Criminal Law, Faculty of Law, Universitas Airlangga, Surabaya, East Java,
Indonesia

Corresponding Author: ²sarwirini@fh.unair.ac.id

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ABSTRACT

Tax collection is a form of people's obedience to their country. To ensure the equity in tax collection, the laws regulating tax collection, supervision, and investigation in tax noncompliance are indispensable. Slightly different from the cause of the termination of the investigation in the Indonesian Criminal Code (UU KUHP), in taxation, the reason is known as tax amnesty, which can abort the tax investigation. The purpose of this research is identify and understand what is meant by the termination of the inquiry of criminal acts in the field of taxation as well as to discern whether the termination is against the concept of tax investigation as stipulated in the Law on General Provisions and Procedures for Taxation (KUP). This study is normative research that applies the statute approach to analyze the laws related to the investigation and tax amnesty and conceptual approach to scrutinize the legal opinions and doctrines from the experts. The provisions of the termination of the inquiry mechanism in the Law Number 11 of 2016 on Tax Amnesty are not against the concept of the same issue included in the Law on KUP. In the Law on KUP, furthermore, the termination of investigation is also stipulated for the interest of state revenue, which fundamentally, has the same concept as tax amnesty. Tax amnesty is a stimulus for the state income in the field of taxation. However, in practice, its implementation can terminate the investigation in tax crimes, for the sake of meeting the interest of state revenue.

INTRODUCTION

Tax is one of the income sources of a state that is needed as the social development funding. Tax is often seen as a form of equality of people's welfare. In consequences, since tax is strongly related to people's interests, to ensure and not to reduce people's rights, rules and policies regarding taxes are made. According to Adam Smith, a rule on tax is considered fair if it meets four

conditions, namely equality and equity, certainty, the convention of payment, and economical of the collection (Smith, 2010).

For tax revenue to be adequately achieved, the government enforces tax law by enacting several rules and regulations (Prawira & Farida, 2015). Amongst the forms of tax law enforcement are tax collection, tax supervision, and tax investigation. Moreover, in the Law Number 11 of 2016 on Tax Amnesty, the termination of the inquiry to taxpayers is likely to be done by tax amnesty (M A Ibrahim, Myrna, Irawati, & Kristiadi, 2018; Muhammad Alishahdani Ibrahim, Myrna, Irawati, & Kristiadi, 2017). In other words, in the regulation, it is affirmed that tax amnesty can occur under specific mechanisms. The enactment of the Act is a form of criminalization on tax law, which is an *ultimum remedium* because the real purpose of the criminalization is to obtain tax compliance to the country (Danil & Warman, 2019; Papadopoulou & Hristu-Varsakelis, 2019). Such matters cause differences in the provisions regarding the termination of investigation between the Code of Criminal Procedure of Indonesia (KUHAP) as the general procedural law with the Law on General Provisions and Procedures for Taxation (KUP) and the Law Number 11 of 2016 on Tax Amnesty as a special regulation concerning tax crimes (Kemenkeu, 2016). For that reason, this study focuses on analyzing one of the functions of tax amnesty as the terminator of investigation in tax noncompliance.

METHODS AND MATERIALS

This study is normative research that applies the statute approach and conceptual approach. The prior was used to analyze the research materials in the form of provisions stipulated in the Criminal Code (KUHP), Code of Criminal Procedure (KUHAP), Law on General Provisions and Procedures for Taxation (KUP), and other regulations related to tax amnesty and investigation under the Criminal Code. The latter approach, moreover, was in the form of legal principles and legal doctrines argued by the experts regarding the termination of the investigation in criminal violation of taxation.

RESULTS AND DISCUSSION

Termination of Investigation in Criminal Violation of Taxation

Regarding the investigator, in the Law of General Provisions and Procedures for Taxation (KUP), particularly in Article 1 number 32, it is explicitly stipulated that: "Investigator shall be the certain Civil Servant within the Directorate General of Tax who is assigned with exclusive authority to conduct investigation in taxation crime in accordance with the provision of legislation." The provision of the article is a more specific provision of Article 1 number 1 and Article 6 paragraph (1) of the Code of Criminal Procedure of Indonesia (KUHAP), which stipulated that: "An investigator shall be: a) an official of the state police of the Republic of Indonesia; b) a certain official of the civil service who is granted special authority by law." The authority of the civil service as the investigator in tax crimes is stipulated in Article 44 paragraph (2) of the Law of General Provisions and Procedures for Taxation (KUP).

Moreover, in Article 44 paragraphs (3) and (4) of the Law of General Provisions and Procedures for Taxation (KUP), it is stipulated that investigator within the Directorate General of Tax, in carrying out an investigation, coordinating a relationship with Indonesia National Police because in some issues, the authority in investigations, such as arrest and detention, is the authority of the Indonesia National Police investigator. In contrast to the Indonesia National Police investigators, in the investigation carried out by the civil service, the submission of the results of the investigation to the public prosecutor is done through the Indonesia National Police investigator as the manifestation of the relationship and coordination of the civil service by the police investigator (Salam, 2005). Such provisions are stipulated in Article 107 of the Code of Criminal Procedure of Indonesia (KUHAP)

After an investigation is carried out, as for the next process, the prosecution or investigation can be terminated due to the reasons as regulated in the Code of Criminal Procedure of Indonesia (KUHAP) and the Law of General Provisions and Procedures for Taxation (KUP). In terminating an investigation in a tax crime, however, there are differences between regulations in the taxation regulations and the Code of Criminal Procedure. In the Law of General Provisions and Procedures for Taxation (KUP), for instance, there is a possibility for termination of investigation for the taxpayer who has gotten amnesty. This concept, however, is contrary with the one stipulated in Article 109 of the Code of Criminal Procedure of Indonesia (KUHAP), which stated that terminations are only allowed if there is not sufficient evidence, if the act is not a criminal offence, and if the investigation is terminated by the law (Rachman, 2010).

Termination of Investigation Mechanisms According to the Code of Criminal Procedure of Indonesia and the Law of General Provisions and Procedures for Taxation

Termination of investigation, as stated in the Code of Criminal Procedure of Indonesia, is a process where an investigation is terminated due to insufficient amount of evidence, or if the case is not a criminal case, or if the termination is carried out for the sake of the law. Termination of investigation of a criminal case is regulated in Article 109 paragraph (2) of the Code of Criminal Procedure of Indonesia, which stipulated that: "Where an investigator terminates an investigation because of the absence of sufficient evidence or it has become clear that said event did not constitute an offense or the investigation has been terminated by virtue of law..."

Table 1. The Differences in Cause for Termination of Investigation between the Code of Criminal Procedure (KUHAP), Criminal Code (KUHP), Law of General Provisions and Procedures for Taxation (KUP), and Tax Amnesty Act

KUHAP	KUHP	KUP	Tax Amnesty Act
1. The absence of sufficient evidence	Termination of investigation in the name of law (Articles 77, 78, 79):	1. Insufficient evidence (Article 44A).	1. Termination of investigation due to the state revenue (Law Number 11 of 2016).

<p>(Article 109). 2. The event is not considered as a criminal act (Article 109).</p>	<p>a) <i>Nebis in idem</i> b) The suspect died c) Expired</p>	<p>2. The event is not a criminal act (Article 44A). 3. The investigation is terminated because it has expired (Article 44A). 4. The investigation is terminated because the suspect died (Article 44A). 5. Termination of investigation due to the interest of state revenue (Article 44B).</p>	<p>2. Termination of investigation due to the state revenue (Article 44 of the Law of General Provisions and Procedures for Taxation).</p>
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It is reflecting on the success of other countries in the implementation of tax amnesty, in 2016, the Indonesian government-stipulated Tax Amnesty Act. Furthermore, in Law Number 11 of 2016 on Tax Amnesty, it is explicitly disclosed that the law is made based on the interest of state revenue that is influential to the state economic development. Thus, it is deemed necessary to have a tax amnesty mechanism that will result in a halt to the investigation of a tax crime. In the meantime, Indonesia has implemented the second period of tax amnesty, which first was started on 1 July 2016 and ended on 30 September 2016 (Muhammad Alishahdani Ibrahim et al., 2017).

The Mechanism of Termination of Investigation in Tax Crime Related to Tax Amnesty

Article 44B of the Law of General Provisions and Procedures for Taxation (KUP) also includes provisions regarding termination of investigation for state revenue. Both matters are seen as forms of the amnesty given to taxpayers to achieve tax fulfilment that can be beneficial for the state revenue. In the field of taxation, there is a sunset policy, which refers to the amnesty for taxpayers who report the number of tax dependents correctly (Wardiyanto, 2009). Sunset policy has similarities with tax amnesty. One of those similarities is the purpose of achieving the tax revenue from taxpayers, which then will be used for the interest of national development. However, there are also differences between those two laws: in sunset policy, the matter to be erased is the administrative sanctions, while in tax amnesty, what to delete is both the administrative and criminal sanctions.

With the presence of a sunset policy that is implemented after the provision of Law Number 28 of 2007 on the General Provisions and Procedures for Taxation, the effectivity to increase tax revenue is also noticed. Bako quoted three things on the benefits of tax amnesty, for instance: "(1) for tax amnesty countries can increase the tax ratio (of tax revenue); (2) for taxpayers who do not yet have tax

ID for tax amnesty can avoid tax sanctions; and (3) for tax amnesty officials can increase the number of taxpayers and bring order to tax administration so that the tax revenue can be optimally increased" (Idiandari, 2017).

Tax Amnesty Act, moreover, also includes the purposes of the formation of the Act, which is stipulated in Article 2 of Law Number 11 of 2016, as follows: "The purposes of Tax Amnesty are to a. accelerate economic growth and restructuring through transfer of Assets, which among others will impact to the increase in domestic liquidity, improvement of rupiah exchange rate, decrease in interest rate and increase in investment; b. support taxation reformation toward a fairer taxation system and expansion of taxation data basis that is more valid, comprehensive, and integrated; and c. increase tax revenue, which will be used among others for development funding."

In reality, the Law of the General Provisions and Procedures for Taxation (KUP) has covered enough of provisions regarding the termination of investigation related to state revenue and the mechanism of the amnesty of administrative sanctions for taxpayers, or better known as sunset policy. However, the Tax Amnesty Act provides more convenience along with the elimination of criminal penalties that the people are more attracted to pay the payable taxes, unpaid taxes, or underpaid taxes (Darmayasa, Sudarma, Achsin, & Mulawarman, 2018). The effectivity of state revenue is related to the form of tax amnesty followed by Tax Amnesty Act, namely by providing an opportunity for taxpayers to report and pay only the principal tax debt. On the other hand, interests, penalties, and criminal sanctions are forgiven (Wijaya, 2008). Tax Amnesty Act, moreover, provides its definition regarding tax amnesty that is explicitly stipulated in Article 1: "Tax Amnesty shall be elimination of tax that should have been payable, not being subject to tax administrative sanctions and criminal sanctions in tax area by declaring Assets and paying tax redemption as regulated in this Law."

Termination of Investigation in Tax Amnesty According to Law Number 11 of 2016 on Tax Amnesty and Other Regulations

The formation of Law Number 11 of 2016 on Tax Amnesty was due to the economic conditions in Indonesia, which were considered unfavourable; thus, through tax amnesty, it is expected that the state economic conditions will improve, given tax is one of the significant state revenues (Darmayasa, Sudarma, Achsin, & Mulawarman, 2016). According to Article 8 paragraph (3) of Law Number 11 of 2016 on Tax Amnesty, the conditions to terminate tax amnesty investigation include the requirements for taxpayers to a. having Tax Identification Number; b. paying Tax Redemption; c. settling any Tax Arrear; d. Settling any tax that has not been paid or has been underpaid or settling any tax that should not have been returned for Taxpayer who is in the preliminary evidence tax audit and/or investigation; e. submitting Last ITR for Taxpayer who has already had an obligation to submit Annual Income Tax Return; and f. revoking applications for (1) refund of tax overpayment, (2) reduction or elimination of taxation administrative sanction in Tax Assessment Letter and/or Tax Collection Letter which contains the principal tax payable; (3) reduction or cancellation of incorrect tax assessment; (4) objection; (5) revision of tax

assessment letter and decision letter; (6) appeal; (7) lawsuit; and/or (8) judicial review in the event that Taxpayer is submitting the application and no decision or judgment has been issued.

As stipulated in Article 44 paragraphs (3) and (4) of Law of the General Provisions and Procedures for Taxation (KUP) regarding the termination of an investigation by civil services who are not Indonesia National Police investigators, by taking notes on the PProvisions on the Law (KUP) and Code of Criminal Procedure (KUHAP), the termination carried out by civil services is conveyed to the Attorney General through Indonesia National Police investigators as a form of the coordination mechanism between police investigators and public service investigators. The Minister of Finance Regulation Number 55/PMK.03/2016 on the Procedures for Termination of Investigation in the Area of Taxation in the Interest of State Revenue regulates the termination mechanism for the interests of state revenues. The conditions are such follows 1. Taxpayers submit a statement to the Minister to obtain tax amnesty; 2. Taxpayers receive receipts; 3. Taxpayers or appointed authorities on behalf of the Minister issue a statement that the Taxpayer obtains tax amnesty facilities, one of which is the termination of investigation of criminal acts in the area of taxation; 4. Termination of investigation is carried out by the authorities within the Directorate General of Tax who carries out the duties and functions of the investigation (civil services).

From the schema above, it can be noticed that the authority for termination of investigation regarding tax amnesty is the authority of civil services. This matter is following the provision as stipulated in Article 11 paragraph (6) of Law Number 11 of 2016 on Tax Amnesty, as follows: "Termination of investigation as referred to in paragraph (5) letter d shall be conducted by an official in the vicinity of the Directorate General of Taxes performing investigation duties and functions in accordance with the provisions in taxation laws and regulations." As for the further and more in-depth regulations regarding the termination mechanism, it has been stipulated in a circular letter number SE-30/PK/2016 on the Instruction for Implementing Tax Amnesty.

CONCLUSION

Tax amnesty can be used as a means to terminate the investigation process in tax crime by taxpayers for the interest of state revenue. The provisions of the termination mechanism stipulated in Law Number 11 of 2016 on Tax Amnesty is not contrary to the concept of termination of investigation stipulated in the Law of the General Provisions and Procedures for Taxation (KUP). The similarity is because fundamentally, in the Law (KUP), there is also termination under the interest of state revenue, which refers to the same interest as tax amnesty.

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