

Corporate Responsibility in Tax Crimes (Analysis of Criminal Decisions Number 334 / PID.SUS / 2020 / PN.JKT.BRT)



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ABSTRACT: Criminal sanctions for corporations are generally not in the form of a single sanction. In addition to fines, confiscation, as well as various prohibitions for corporations are sanctions that are considered effective. Sanctions of prohibition in its various forms can be referred to as corporate imprisonment. In addition, additional sanctions in the form of announcements of judges' decisions can increase the coercive power to prevent criminal acts from being committed by corporations, but in practice, tax cases often do not involve corporations as legal subjects and criminal liability only to management or agents is considered sufficient. in the tax case Number: 292/PID.SUS/2019/PN.JKT.BRT and the tax case Number: 62/PID.SUS/2019/PN.YYK, where in that case, criminal responsibility is charged to the management or agent while the corporation is not be asked for criminal responsibility, and contrary to the Aggregation Theory where the activities of a corporation which is the output of the joint efforts of some administrators or agencies so that those who are fully responsible for these activities are the responsibility of the corporation and also to the Identification Theory (direct corporate criminal liability). According to this theory, corporation can commit a number of delicts directly through agencies who are closely related to the corporation, acting for and on behalf of the corporation.

In accordance with the purpose of punishment and the deterrent effect theory, corporations can be held criminally responsible for tax crimes committed by corporations together with management or agents so that criminals will no longer repeat their crimes (deterrence effect) and against corporations who are asked to be held criminally responsible in addition to applying fines, against the corporation may be subject to additional penalties in the form of revocation of business licenses and dissolution of the company and it is hoped that law enforcement officers who handle tax cases will make a legal breakthrough to optimize criminal liability for corporations and their management in order to increase state revenue from the tax sector and make updates to the KUP Law to regulate firmly against legal subjects by imposing criminal responsibility on management and corporations.

KEYWORDS: Corporate responsibility in tax crime cases.

A. INTRODUCTION

1. Background

Tax has been known for a long time in Indonesia but with different collection methods. History has recorded that tax collection has existed since the time of the kingdom, at this time the people paid taxes in the form of tribute to the king and reciprocally the king guaranteed order to his people. Continuing in the Dutch East Indies colonial period, specific taxes were applied, such as house taxes, business taxes, land rents and taxes to traders.¹

Corporations have been recognized in the business sector for several centuries. The development of the corporation is moving rapidly in the fields of banking, agriculture, defence and technology as well as in other fields. The contribution of corporations cannot be ruled out, especially in the economic field, namely on state revenues in the form of taxes. Globalization is one of the drivers of increasing the role of corporations in human life. Initially, the corporation was only a forum for cooperation of the owners of capital to gain mutual benefits. After the industrial revolution, the corporation developed into a legal entity. The corporation has emerged as the dominant controlling institution with its largest of them reach almost all countries in the world.²

The teaching of responsibility in criminal law is a central concept called the principle of error. The teaching of error in Latin is known as mens rea. The doctrine of mens rea is based on an action, does not result in a person being guilty unless the person's thoughts are evil. The teaching of Errors or mens rea is based on the actions of a person, or in other words cannot be blamed if there is no evil intention from that person. Based on this doctrine, there are two conditions that must be met in order to

¹<https://www.kompas.com/skola/read/2020/01/15/190000669/pajak-arti-sejarah-dan-fungsinya?page=all>, accessed on 6th May 2021.

² David C. Korten, transliterated by Agus Maulana, 1997, When Corporations Rule The World, Professional Books, Jakarta p.90.

Corporate Responsibility in Tax Crimes (Analysis of Criminal Decisions Number 334 / PID.SUS / 2020 / PN.JKT.BRT)

be able to convict someone, namely there is a forbidden outward act/criminal act (*actus reus*) and there is an evil/despicable inner attitude (*mens rea*).³ There is debate from legal experts who still think corporations do not have *mens rea*. This is based on the principle of *societas delinquere universitas non protest*, which means that legal materials cannot commit criminal acts. An understanding of the principle of *societas universitas delinquere non protest* can be found in the explanation of the Criminal Code which states that a criminal act can only be committed by an individual (*natuurlijke persoon*).

In this research, the author conducts research on 3 (three) tax criminal case files with the same object or mode but different legal subjects, while the three cases are:

1. Criminal case number 334 / Pid.Sus / 2020 / PN Jkt. Brt, in this case the legal subject is a corporation, namely PT. Brilliant Success Grafindo.
2. Criminal case number 292 / Pid.Sus / 2019 / PN.Jkt. Brt, in this case the legal subjects are Gunawan Wikanto as the managers and Albert Lie as the President Director of PT. Karya Putral Lokatirta
3. Criminal case number 62 / Pid.Sus / 2019 / PN.Yyk, in this case the legal subject is Albert Josep Wienata alias Koh Albert as Director of PT. Trinity Cellular Indonesia.

Based on the description above, the authors are interested in conducting research in the form of a thesis with the title "**Corporate Responsibility in Tax Crimes (Analysis of Criminal Decisions Number 334 / PID.SUS / 2020 / PN.JKT.BRT)**"

I.1 Problem Formulation

Based on the background presented. Described above, the main issues are as follows:

1. How is the judge's consideration of corporate responsibility in the tax crime case in the criminal decision number 334 / Pid. Sus / 2020 / PN.Jkt. Brt?
2. How to optimize law enforcement against corporations that are perpetrators of criminal acts in the field of taxation in order to increase state revenues from the tax sector.

B. CORPORATIONS AS LEGAL SUBJECTS

In the KUP in Chapter VIII articles 38 to 43 of the law regulates criminal **provisions**, which do not explicitly state that those who can become perpetrators criminal acts that violate are only humans but corporations, however by linking one provision to another, it has adopted the idea of being able to drag corporations into criminal acts.⁴

Marjono Reksodiputro argues that there are three systems in Indonesia with regard to the position as maker and the nature of corporate responsibility, namely:⁵

1. It is the management of the corporation as the maker and the manager who is responsible;
2. The corporation as the maker and the manager is responsible;
3. The corporation as the maker and also the one who is responsible \

In connection with the above, Sutan Remy Sjahdeini is of the opinion that regarding the position as the maker of a criminal act and the nature of the criminal liability of the corporation, there are four possibilities, namely:

1. The management of the corporation is the perpetrator of the crime so that the management must bear the criminal responsibility.
2. The corporation is the maker of the crime, but it is the management who must bear the criminal responsibility
3. The corporation is the perpetrator of the crime and the corporation itself must bear the criminal responsibility
4. The management and the corporation are both perpetrators of the crime and both must bear the criminal responsibility.

In connection with the above, the author is of the opinion that if there is a criminal act in a corporation, then the management and the corporation are responsible.

C. CORPORATE RESPONSIBILITY IN TAX CRIMINAL ACTS

Corporations as criminal law subjects are recognized by laws and regulations outside the Criminal Code. In fact, since the mid-1950s corporations have been placed by laws and regulations outside the Criminal Code as subjects of criminal law, so that criminal liability can also be held. Placement of corporations as subjects of criminal law in Indonesia already exists in positive law although it exists in some special criminal laws.⁶

Thus, in criminal law there have been developments that place the corporation as a subject of criminal law. In this regard, the formulation of the corporation as a subject of criminal law and at the same time can be asked for criminal responsibility is the time

³ Mahrus Ali and Ayu Izza Elvany, 2014, Environmental Criminal Law, Environmental Conservation-Based Financing System, UII Press, Yogyakarta, p.76.

⁴ *Ibid* p. 134

⁵ Mardjono Reksodiputro, Op. Cit page 72

⁶ Andi Hamzah : *Perkembangan Hukum Pidana Khusus*, Jakarta, Rineke Cipta, 1991 hal 5

Corporate Responsibility in Tax Crimes (Analysis of Criminal Decisions Number 334 / PID.SUS / 2020 / PN.JKT.BRT)

to be recognized in the Criminal Code in order to be one of the means of controlling the tendency of corporate behaviour to commit offenses.⁷

Corporate criminal acts are basically acts committed by directors and or employees of the corporation, at every level who carry out their duties and functions and can represent the corporation, which can result in criminal liability. Both the corporation and its employees can be held personally accountable, for what the directors or their employees (agents) have done, the following must be fulfilled:

- a. Actus reus, meaning that the act must be done within the scope of his authority. In other words, the act in carrying out its duties is still within the scope of the duties and authorities of the corporation.
- b. The act was done intentionally (mens rea)
- c. The act is carried out by an actor who is mentally or mentally capable.⁸

As a legal research⁹ and in accordance with the distinctive character of jurisprudence¹⁰, as well as the substance of the problem or legal issue to be studied in the research, the approach that will be used is used in accordance with the problems to be investigated, namely the decision on the criminal case number 334 / Pid.Sus / 2020 / PN Jkt. Brt, in this case the legal subject is namely PT. Gemilang Sukses Grafindo, criminal case number 292 / Pid.Sus / 2019 / PN. Jkt.Brt, in this case the legal subjects are Gunawan Wikanto as the management and Albert Lie as the President Director of PT. The work of Putra Lokatirta and the criminal case number 62 / Pid.Sus / 2019 / PN.Yyk, in this case the legal subject is. Albert Josep Wienata alias Koh Albert as Director of PT. Trinity Seluler Indonesia.

C. CONCLUSIONS AND SUGGESTIONS

Conclusions

1. The tax law clearly stipulates that any person or entity that commits a tax crime will be subject to criminal sanctions as stipulated in the KUP Law, but criminal liability against the perpetrator does not refer to the framework of criminal liability theory and does not appear to be has a standard to ensnare the perpetrators of tax crimes, this is illustrated in the case decision Number 334 / PID.SUS / 2020 / PN.JKT.BRT, the legal subjects are management and corporations, criminal case Number 292 / PID.SUS / 2019 / PN.JKT.BRT, the legal subject is the management without involving the corporation and Number: 62 / Pid.Sus / 2019 / PN.Yyk, the legal subject is the management without involving the corporation. Law enforcement officers who handle tax cases should ask for criminal accountability against corporations and their management then against corporate legal subjects other than criminal fines, judges can revoke company licenses so that similar actions do not happen again and produce a deterrent effect, to make other actors think of committing tax crimes in Indonesia in a later date.
2. As a result of not being optimally responsible for criminal acts of taxation, there are more and more tax cases in Indonesia so that law enforcement officers who handle tax cases make a legal breakthrough to optimize criminal liability to corporations and their management in order to increase state revenue from the tax sector.

Suggestions

1. The regulation of criminal liability in tax crimes (KUP Law) needs to be updated to strictly regulate legal subjects by imposing criminal responsibility on management and corporations and against corporate actors in addition to imposing fines, judges can revoke permits and bankrupt corporations.
2. Law enforcement officers (investigators, prosecutors and judges) sit together and work together to create a legal breakthrough related to optimizing criminal liability in tax cases in order to increase state revenues from the tax sector.

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Corporate Responsibility in Tax Crimes (Analysis of Criminal Decisions Number 334 / PID.SUS / 2020 / PN.JKT.BRT)

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