THE RESPONSIBILITY OF TAXPAYERS WHO INTENTIONALLY USE VAT PAYABLE FOR THE OPERATIONAL ACTIVITIES OF A LEGAL ENTITY

(Study of Decision Number 12/Pid.Sus/2022/PN TTE)

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ABSTRACT

This study examines the responsibility of taxpayers who intentionally use the payable Value Added Tax (VAT) for the operational activities of a legal entity, within the context of the case Putusan Nomor 12/Pid.Sus/2022/PN Tte. The case focuses on Yan Quedarusman, the commissioner of CV. Samalita Perdana Mitra, who was charged with failing to report and remit collected taxes, resulting in a loss to state revenue amounting to Rp. 716,823,816.00. The defendant used his personal account for transactions, claiming that the company's account was inactive. This study analyzes whether the defendant's actions are in accordance with Indonesian tax regulations, particularly the Tax Law and the 1945 Constitution of the Republic of Indonesia. This research highlights the importance of the legal responsibility principle in relation to tax obligations, as well as the impact of non-compliance with timely and accurate tax reporting. The findings indicate that the defendant's actions were not in accordance with the applicable tax regulations, and emphasize the importance of compliance with tax obligations to prevent losses to the state.

Keywords*: Tax Responsibility, Tax Non-Compliance, State Loss.*

INTRODUCTION

Indonesia, as a developing country, is home to the fourth largest population in the world, with 279,652,986 inhabitants as of Saturday, June 8, 2024, according to Worldometer's elaboration of the latest United Nations data.[1] According to the Indonesian Dictionary (hereinafter referred to as KBBI), the definition of tax is: "a mandatory levy paid by the people to the state, which varies based on the basis of the levy such as land, earth, roads, wealth, vehicles, development, income, and others." The population of Indonesia accounts for 3.45% of the total world population. The large population in Indonesia leads to increasing demands for both income and expenditure.

Considering that Indonesia is a state governed by law, all behavior and actions must be based on regulations, including the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as UUD NRI 1945), which mandates that the economy, particularly in Indonesia, should be organized and structured as a collective effort based on the principle of kinship to improve the standard of living of the Indonesian people, as stated in Article 33 paragraph (1) of UUD NRI 1945 and in the preamble of UUD NRI 1945.

In order to achieve one of the main objectives of the Indonesian state, which is to provide welfare for all Indonesian citizens, national development requires substantial financial support along with extensive planning. A significant portion of this financial support is obtained from taxes. Historically, taxes were voluntary contributions from the people to the state without any expectation of return. However, over time, taxes have become a mandatory obligation for all income-earning Indonesian citizens. According to the definition of tax in Article 1 point 1 of Law Number 28 of 2007 concerning the Third Amendment to Law Number 6 of 1983 on General Provisions and Tax Procedures (hereinafter referred to as the Taxation Law), tax is defined as: a mandatory contribution to the state owed by individuals or entities that is coercive based on the law, without receiving direct compensation and used for the needs of the state for the greatest prosperity of the people. Based on this understanding, it is evident that tax functions as a source of funds allocated for government expenditures in the State Revenue and Expenditure Budget (hereinafter referred to as APBN) or also used to regulate or implement policies in the social and economic fields.

[1] Worldometer, Populasi Indonesia (langsung), https://www.worldometers.info/world-population/indonesia-population/, diakses pada 10 Juni 2024 pukul 10.00 WIB.

In reality, not all taxpayers pay their taxes on time, and sometimes they delay payment, resulting in tax arrears. There are also instances where taxpayers do not report their taxes accurately and honestly. Consequently, the state has the authority to collect tax debts, given that tax payments are mandatory or coercive. Tax regulations are based on Article 23A of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), which is considered to have been approved by the taxpayers themselves. This principle is also recognized in developed countries such as the United Kingdom and the United States through the maxim: "no taxation without representation is robbery," meaning that taxation without law or representation is considered robbery. [2]

As a result, taxpayers who intentionally fail to report and consequently do not pay taxes within the stipulated time are deemed to have tax arrears. According to the definition of tax arrears in Article 1 point 8 of the Taxation Law, it is: "tax that is still payable including administrative sanctions in the form of interest, fines, or increases stated in a tax assessment letter or similar document based on the provisions of tax legislation." This implies that the taxpayer, whether an individual or entity, is responsible for the tax debt, including any representative who exercises tax rights and fulfills tax obligations as prescribed by law. [3]

Legally, for an act to be accountable, it must be based on an event or action that gives rise to a legal right for someone to demand accountability from another. According to Shidarta, the principle of responsibility is "a crucial matter in the study of consumer protection law, given the numerous cases of consumer rights violations that occur, making it necessary to carefully analyze who should be held accountable and to what extent the responsibility can be attributed to the relevant parties."

As experienced by Yan Quedarusman alias Nyong Ade (hereinafter referred to as the Defendant), acting as Commissioner or Silent Partner of CV. Samalita Perdana Mitra, and Witness George Peter Quedarusman, the Defendant's biological son, acting as Director according to the deed of Notary Faruk Alwy, S.H. Number 03 dated August 8, 2018. Essentially, CV. Samalita Perdana Mitra, engaged in agriculture, plantation, livestock, and forestry businesses, was established based on the deed of Notary Faruk Alwy, S.H. Number

[2] Tjaraka, Heru. 2019. *Pengantar Perpajakan*. Jakarta: Universitas Terbuka. Hal 3.
[3] Samosir. Hotmian Helena. 2020. Tanggung Jawab Pengurus sebagai Penanggung Pajak dalam Peralihan Kepengurusan Perusahaan. *Simposium Nasional Keuangan Negara*. Hal 05.

05 dated November 9, 2015, concerning the Deed of Partnership of CV. Samalita Perdana Mitra, which was registered as a Taxpayer at the Primary Tax Office (hereinafter referred to as KPP) Pratama Ternate on January 26, 2016, and received a Tax Identification Number (hereinafter referred to as NPWP) 75.027.928.3-942.000, and was confirmed as a Taxable Entrepreneur (hereinafter referred to as PKP) on May 3, 2017, in accordance with the PKP Confirmation Letter Number: S-6PKP/WPJ.16/PPK.14/2017, in April 2019 or at a certain time in 2019 at the Primary Tax Office (hereinafter referred to as KPP) Pratama Ternate at Jalan Yos Sudarso Number 1, Ternate Tengah, Ternate City, North Maluku Province.

In relation to his position, the Defendant was alleged to have committed a criminal act, namely: "intentionally not submitting a tax return and not remitting the taxes that have been deducted or collected, which may cause a loss to state revenue." This allegation originated in 2016 when the Defendant, as the commissioner of CV. Samalita Perdana Mitra, conducted a site survey and partnered with farmer groups. The Defendant applied for a Forest Utilization Permit from the Sula Islands Regency Government to use the area as a nutmeg plantation. After obtaining the permit from the Sula Regency Government, CV. Samalita Perdana Mitra applied for a Timber Processing Permit (hereinafter referred to as IPK) from the North Maluku Provincial Government in the name of CV. Samalita Perdana Mitra. On June 23, 2016, the Head of the North Maluku Province Forestry Service issued a Decree Number: 522.1/KPTS/79/2016 dated June 23, 2016, regarding the IPK for CV. Samalita Perdana Mitra.

Based on this permit, the Defendant, as the Passive Manager of CV. Samalita Perdana Mitra, entered into a Round Timber Sale and Purchase Agreement with CV. Bintang Terang with NPWP 71.473.890.3-612.000, which was formalized in the Round Timber Sale and Purchase Agreement signed by the Defendant and Witness Eddy Suprapto as the President Director of CV. Bintang Terang. As a result, the Defendant received working capital from CV. Bintang Terang in the Defendant's account at Bank Rakyat Indonesia (hereinafter referred to as BRI) KCP Sanana with account number 2163-01-000314-562. After the loading, the remainder was recalculated and paid into the account of CV. Samalita Perdana Mitra at BRI for reforestation and PSDH funds, amounting to approximately Rp300,000 (three hundred thousand rupiah) per cubic meter.

It is known that out of the 1,500 hectares of permitted land, most had been logged. The logging permit for CV. Samalita Perdana Mitra ended at the end of 2018, and transportation

continued until early 2019. The Defendant sold to CV. Bintang Terang by felling, cleaning the logs in the log pond, and then selling them under a log sale and purchase contract with Witness Edi Suprapto using the FOB (Free On Board) method, meaning that the responsibility for the logs until they were on the ship rested with the Defendant as the manager of CV. Samalita Perdana Mitra, and the remaining responsibility was on the buyer, namely Witness Edi Suprapto as the President Director of CV. Bintang Terang.

In this case, based on his position, the Defendant has given orders and has full authority over the operational activities of CV. Samalita Perdana Mitra, including to Witness George Peter Quedarusman while serving as the Director of CV. Samalita Perdana Mitra. This is evidenced by the ignorance of Director George Peter Quedarusman about his duties and responsibilities, the authority to manage outgoing and incoming funds using the Defendant's personal account, and the fact that the Director has not received a salary or compensation in any form, whether monetary or otherwise, from the beginning of his appointment as Director until now.

Based on these facts, the Defendant becomes the Taxpayer representing CV. Samalita Perdana Mitra NPWP 75.027.928.3-942.000, as regulated in Article 32 paragraph (1) and paragraph (4) of the Tax Law, thereby having the obligation to report the Tax Invoices issued by CV. Samalita Perdana Mitra NPWP 75.027.928.3-942.000 for the purchase of log wood by CV. Bintang Terang as well as payment for the reforestation fund and PSDH during the 2019 Tax Year amounting to Rp716,823,816.00 (seven hundred sixteen million eight hundred twenty-three thousand eight hundred sixteen rupiah) on May 18, 2019. Considering that the VAT tax invoice has been fully paid on May 18, 2019, to CV. Samalita Perdana Mitra as evidenced by the transfer proof into the Defendant's BRI KCP Sanana account with account number 2163-01-000314-562. The Defendant decided to use his personal account on the grounds that the bank account in the name of CV. Samalita Perdana Mitra was no longer active and it was more convenient for transactions.

The facts indicate the presence of data from the Information System of the Directorate General of Taxes (hereinafter referred to as SIDJP) of CV. Samalita Perdana Mitra, NPWP 75.027.928.3-942.000, in the reporting data of the Value Added Tax (hereinafter referred to as VAT) Return for the Tax Period of January to December 2019, which only reported the tax value on January 1, 2019, amounting to Rp 1,357,385,753. Based on this data, it is known that

CV. Samalita Perdana Mitra never reported the VAT results from the transactions with CV. Bintang Terang. On the other hand, it is known that CV. Bintang Terang, with NPWP 71.473.890.3-612.000, reported and credited the Tax Invoice issued by CV. Samalita Perdana Mitra for the Tax Period of April 2019 in the VAT Return for the reporting period of April 2019 to KPP Madya Gresik.

Based on the report on the Calculation of State Revenue, it is stated that failing to submit the Tax Return and failing to deposit the tax that has been deducted or collected during April 2019 caused a loss to state revenue amounting to Rp716,823,816.00 (seven hundred sixteen million eight hundred twenty-three thousand eight hundred sixteen rupiah). Therefore, the author conducted research titled: "The Responsibility Of Taxpayers Who Deliberately Use Outstanding Vat For The Operational Activities Of A Legal Entity (Case Study of Verdict Number 12/Pid.Sus/2022/PN TTE)" with the aim of determining whether the impact and responsibility of the Defendant as a Taxpayer according to Verdict Number 12/Pid.Sus/2022/PN Tte is in accordance with the Indonesian Legislation.

RESEARCH METHODS

Normative research methods and case studies are two approaches that can be used together to understand and analyze legal or normative issues in a practical context. The normative research method is generally used to analyze applicable legal or moral norms, focusing on legal theory, legal concepts, and related principles. This approach involves analyzing legal documents, legal literature, and theoretical arguments to develop an understanding or opinion on what should be done based on existing legal norms.

On the other hand, case studies involve the application of theories and legal norms analyzed through concrete examples in real life. Case studies can provide illustrations of how legal norms are applied or not applied in certain situations and can help test the validity or relevance of the legal theories applied.

By combining normative research methods and case studies, one can develop a deeper understanding of existing legal theories and apply them in a concrete practical context. This approach also allows for the identification and analysis of the differences between what is expected by legal norms and how they are applied in real case situations. This type of research is empirical juridical. It aims to understand social phenomena or problems related

to legal regulations in Indonesia. [4]

RESULT AND DISCUSSION

Case Analysis According To Decision Number 12/Pid.Sus/2022/PN TTE

In this case, the Defendant, who is also the Director of CV Samalita Perdana Mitra, is charged with failing to report and remit the Value Added Tax (VAT) due on the sale and purchase transactions of timber with CV Bintang Terang. Despite evidence of a tax invoice payment amounting to Rp716,823,816 in May 2019, CV Samalita Perdana Mitra never reported the VAT results in the 2019 VAT Return. The transfer of funds to the Defendant's personal account is also under scrutiny, although the reason given for using the personal account was that the account of CV Samalita Perdana Mitra was inactive.

Regardless, the Defendant held control over the company's operational activities, including transactions with CV Bintang Terang, which were conducted on an FOB basis. The tax invoices for the purchase of log timber were signed by the Defendant or under his direction, but the VAT Returns reported by CV Samalita Perdana Mitra did not reflect the actual transactions. This raises the suspicion that the Defendant deliberately did not submit notifications and remit the VAT owed, causing a loss to state revenue.

Before determining whether the Defendant as a commissioner has responsibility for his actions in using the owed VAT for the operational activities of CV Samalita Perdana Mitra, it must first be proven whether the Defendant has violated the provisions of Article 39 paragraph (1) letters c and i of the Tax Law, which state that: “any person who deliberately does not submit a tax return and does not remit the tax that has been withheld or collected, thereby causing a loss to state revenue.”

Analysis Of The Defendant's Liability As A Commissioner For The Use Of Outstanding Vat Used For Operational Activities Of Cv Samalita Perdana Mitra

As known, according to Janus Sidabalok, theoretically, accountability relates to the legal relationship that arises between the party demanding accountability and the party being

[4] Noor Muhammad Aziz, “Urgensi Penelitian Dan Pengkajian Hukum Dalam Pembentukan Peraturan Perundang-Undangan,” *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 1, no. 1 (April 30, 2012): 17, https://rechtsvinding.bphn.go.id/ejournal/index.php/jrv/article/view/104.

held accountable. Based on this premise, two types can be distinguished based on the type of legal relationship or legal event. First, fault-based liability arises due to default, unlawful acts, or negligent actions. Second, risk-based liability must be fulfilled as a risk that must be borne by a business operator for their business activities. [5]

This element has been fulfilled as it meets Article 1 number 1 in conjunction with Article 32 paragraphs (1) and (4) of the Tax Law, as the Defendant is a representative of the entity and acts as a manager, who has real authority in determining all matters, including policies and decision-making to run the company. The interpretation of the term "manager" has been expanded to include individuals whose names are not listed in the management structure or are not mentioned in the deed of amendment but are still considered managers. In relation to the above case, the Defendant, as a shareholder or commissioner of CV Samalita Perdana Mitra, controlled all the actions of George Peter Quedarusman as Director and made all decisions, including using his personal account due to inactivity of the company's account and failing to clarify the director's authority, duties, and rights to salary and compensation, has fulfilled all these elements.

Considering that the Defendant, as a taxpayer, is obliged to withhold or collect taxes levied from other parties or related third parties, the withheld or collected tax essentially becomes the state's right. Therefore, within the specified time frame, the taxpayer is obliged to report and deposit the calculation in the Tax Return. According to Article 9 paragraph (1) of the Tax Law, it is stated that: "The due date for payment and deposit of the tax payable for a certain time or tax period for each type of tax is no later than 15 (fifteen) days after the due date of the tax or the end of the Tax Period."

Therefore, it can be concluded that the Defendant deliberately did not submit the VAT Return to the Tax Office for the output tax invoices issued in the April 2019 Tax Period with the transaction counterpart being CV Bintang Terang, nor did he deposit the withheld/collected tax funds into the state treasury through the Tax Office, thereby fulfilling this element.

[5] Janus Sidablok, op.cit, hlm 101.

Analysis Of The Elements That Constitute Tax Crimes

The Defendant served as Commissioner and Shareholder, but the Defendant's behavior reflects that of a manager and shows responsibility for CV Samalita Perdana Mitra, evidenced by several factors:

1. All policies and decisions were made by the Defendant.
2. The Defendant did not explain and inform the Director of CV Samalita Perdana Mitra about his duties and authority.
3. The Defendant managed all operations related to payments and billing documents related to CV Samalita Perdana Mitra.
4. The Defendant did not provide the rights of the Director of CV Samalita Perdana Mitra, such as basic salary and other compensation.

Additionally, from the Sale and Purchase Agreement documents between CV Samalita Perdana Mitra and CV Bintang Terang, which included a Tax Invoice billed to the buyer and signed by the Director of CV Samalita Perdana Mitra as the buyer, it is known that the invoice was fully paid by CV Bintang Terang as the buyer to the BRI KCP Sanana account in the name of the Defendant in April 2019. However, the VAT amounting to Rp716,823,816 (Seven Hundred Sixteen Million Eight Hundred Twenty-Three Thousand Eight Hundred Sixteen Rupiah) was not reported and the VAT payable was not deposited into the state treasury, as the Defendant used the money for the operational activities of CV Samalita Perdana Mitra, including employee salary payments.

The term "may cause loss to state revenue" means that it includes losses that are not directly visible but are sufficient if there is potential loss that can be prosecuted under this Article. In relation to the above case, it is known that due to the Defendant's actions of not recording and not depositing the VAT paid by CV Bintang Terang as the buyer from the Sale and Purchase Agreement of wood that occurred between them, the state suffered a loss of Rp716,823,816 (Seven Hundred Sixteen Million Eight Hundred Twenty-Three Thousand Eight Hundred Sixteen Rupiah), as this amount has not been deposited to the state since the transaction in April 2019 until now, making the Defendant meet this element.

Since these three elements have been fulfilled, it is considered that the provisions of Article 39 paragraph (1) letter c and letter i of the Tax Law have been violated by the Defendant. It is clear that the Defendant has committed an unlawful act legally and

convincingly according to law, making the Defendant responsible and accountable for his actions, considering that the tax charged or withheld by the Defendant from CV Bintang Terang is the state's right, which should be used for other purposes and not for the operational activities of CV Samalita Perdana Mitra, especially for employee salaries. On the other hand, based on the trial examination, there was no evidence found that showed the Defendant could not be held accountable for his actions, and there were no grounds for exclusion of prosecution, justification, exoneration, or elimination of fault. According to the provisions of Article 183 of the Criminal Procedure Code (hereinafter referred to as KUHAP) and Article 193 of KUHAP, it results in the Defendant being legally and convincingly proven guilty of committing the aforementioned criminal act. Therefore, the Defendant must be imposed with a fair and commensurate sentence for his actions.

Analysis Of The Impact And Consequences Of Using Outstanding Vat For The Operational Activities Of Cv Samalita Perdana Mitra According To The Decision Reviewed From Indonesian Legislation

As previously explained, the Defendant, being responsible for causing losses to state revenue, must be sanctioned according to the Tax Law. Essentially, tax sanctions are divided into two types: criminal tax sanctions and administrative tax sanctions. Given that tax sanctions are a guarantee that the provisions of tax legislation (tax norms) will be followed, adhered to, and complied with, tax sanctions serve as a deterrent to prevent taxpayers from violating tax norms. [6] The definitions of Tax Sanctions are as follows:

1. Criminal Tax Sanctions

   These sanctions serve as a deterrent and legal protection used by the tax authorities to ensure tax norms are followed. As stipulated in Article 39 paragraph (1) of the Criminal Code, criminal sanctions are imposed on individuals who do not pay the deducted tax, and such violations can result in imprisonment for 6 months to 6 years, as well as fines of at least 2 to 4 times the amount of unpaid tax.

2. Administrative Sanctions

   These sanctions are divided into three types:

   a. Fines

[6] Mardiasmo. "*Perpajakan Edisi Revisi Tahun 2016*". (Yogyakarta: Andi. 2016)

The fine for individual taxpayers who do not report their Annual Tax Returns (SPT) and pay taxes on time is Rp100,000. The reporting deadline is three months after the end of the tax year. Beyond that, a fine must be paid. Repeated violations that harm the state can result in fines up to twice the amount of unpaid or underpaid tax.

b. Interest Sanctions

According to paragraphs (2a) and (2b) in the Criminal Code concerning general provisions and tax procedures, sanctions for taxpayers, specifically those with a Taxpayer Identification Number (NPWP) and income above the non-taxable income threshold (PTKP), include a 2% monthly interest charge for late payments.

c. Penalty Increases

Focused on taxpayers committing violations like data falsification, such as underreporting income in the annual tax return (SPT). The increase in tax is typically around 50% of the underpaid tax amount.

Responsibility implies acting as an embodiment of awareness or obligation. Upon analysis, responsibility is an obligation that must be borne as a consequence of one's actions. Based on various concepts and definitions of responsibility explained earlier, it is clear that responsibility is only imposed on the perpetrator of the act. In the context of tax liability, responsibility should only be imposed on the company's management who conduct business activities or make decisions that result in tax debt.

This arrangement provides legal protection and certainty for company management in convincing and proving to tax authorities that they meet the criteria for exemption as the company's tax debt bearers. In this case, the Director of CV Samalita Perdana Mitra should not be held responsible. The consequences of not reporting or depositing the VAT and using the payable VAT for CV Samalita Perdana Mitra's operational activities, especially paying employee salaries, resulted in a criminal and administrative penalty of imprisonment for at least 6 months and up to 6 years, and a fine of at least 2 times the unpaid tax amount and up to 4 times the unpaid tax amount. According to the author, this is correct and in line with the Tax Law and existing responsibility principles.

CONCLUSION

Since the three elements in the provisions of Article 39 paragraph (1) letters c and i of the Tax Law have been fulfilled and are considered to have been violated by the Defendant, it is clear that the Defendant has committed an unlawful act in a legal and convincing manner. The Defendant must be held responsible for his actions, considering that the tax charged or withheld by the Defendant from CV Bintang Terang is the right of the state and should be used for other purposes, not for the operational activities of CV Samalita Perdana Mitra, specifically employee salaries. The Defendant also has the responsibility since there is no evidence showing that the Defendant cannot be held accountable for his actions, and no grounds for exception to prosecution, justification, excuse, or the elimination of wrongdoing were found under Articles 183 and 193 of the Criminal Procedure Code.

Responsibility should only be imposed on the perpetrator or the person committing the act. In the context of tax liability, the responsibility should be placed on the corporate managers who conduct business activities or make decisions that result in the tax debt. Such regulations will provide legal protection and certainty for corporate managers in proving to the authorities that they have met the exclusion requirements as responsible for the corporate tax debt. As in this case, the Director of CV Samalita Perdana Mitra does not hold responsibility. Therefore, the impact or consequences of not reporting or not depositing the VAT and using the due VAT specifically for the operational activities of CV Samalita Perdana Mitra, particularly for paying employee salaries, has resulted in the imposition of criminal and administrative sanctions. According to the author, this is justified and in accordance with the Tax Law and existing principles of responsibility.

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