International Journal of Innovation, Creativity and Change. www.ijicc.net
Volume 8, Issue 5, 2019

Strengthening Tax Crime Regulation and Tax Crime Responsibility for Corporation in Indonesia

Jhon Eddy[a], Mella Ismelina Farma Rahayu[b], [a,b]Tarumanagara University – Jakarta, Email: [a]Jhoneddy38@yahoo.com, [b]mellaismelina@yahoo.com

Through this paper, the authors will discuss the strengthening of tax crime regulation and tax crime responsibility for corporation in Indonesia. This topic starts from introducing the subject of tax crime, whether the tax sanction can only be imposed on each person/human or "natural resources" or the tax sanction can also be imposed on legal entity or "legal person", as well as a discussion about the types of tax crimes which are regulated in Indonesian tax legislation. Subsequently, the authors will also discuss about the notion of tax, tax crime, the nature of tax crime sanctions, concepts and types of tax crime responsibilities theories. The discussion will cover how tax crime regulations are being practiced, the types of tax crime sanctions and which tax crime responsibilities theories are being applied in Indonesian tax legislation as well as how the application of the imposition of tax crime sanctions (for corporations) that have been in effect all this time. Finally, at the end of this paper, the authors will provide some suggestions on how to strengthen the tax crime regulations in tax legislation and amendments to the issue of tax crime responsibilities for corporations in Indonesia.

Key words: *Tax crime, corporate crime and tax crime responsibility.*

Introduction

Basically, the one that can be categorized as a crime offender is an individual person or a natural person (*natuurlijke person*). However, in its development a new legal subject emerges which is considered to be capable of committing criminal offences and should be held legally responsible for those offences, namely the corporation.

Indonesian Criminal Law provides a broad meaning of corporation. The meaning of corporation according to Indonesian Criminal Law is not the same as the meaning of corporation according to Indonesian Civil Law. The meaning of corporation according to the criminal law is broader than that of according to the civil law. According to civil law, legal subject is the one that is capable or authorized to carry out legal action, consisting of 2 (two) types, namely the individual person (human or natural resources) and the legal entity (legal person). Whereas according to the criminal law, the notion of corporation does not only cover legal entity (*rechtpersoon*), such as: limited liability company, foundation, cooperative business entity or association that has been legitimized as legal entity that is classified as cooperative business entity. But also recognizes non-legal entity (*non rechtpersoon*), such as: firm, limited partnership or CV and partnership or *maatschap* as corporation.

Subsequently, what is meant by corporate crime, Ron Kramer of Western Michigan University argues that: "…illegal and/or socially harmful behaviours that result from deliberate decision making by corporate executives in accordance with the operative goals of their organization." Which can also be interpreted as "Illegal behaviours and/or behaviours that cause social loss resulting from intentional decision making by company executives in line with the objectives of their organization's operation."[1]

Someone's action is classified as a criminal offence if that action is in accordance or deemed to have similarity to the definition or the action's definition is stated in the law. In other words, it can be said that to understand whether the nature of the act is prohibited or not, it must be seen from the formulation in the law. The principle that stipulates there is no action that is prohibited and threatened with criminal law, if not being determined first by statutory regulation is known as *legalitas* principle, which in legal term is called *"Nullum delictum nulla poena sine praevia lege poenali*" as it is regulated in the provision of Article 1 paragraph (1) Criminal Law (*Kitab Undang-Undang Hukum Pidana / KUHP*).

This phenomenon in Indonesia has emerged in the last few decades, where many legal experts, especially experts in criminal law, classify and call it "*corporate crime.*" This corporate crime term is often associated with crimes that are categorized as unconventional in the context of white collar crime, organization crime, organized crime, crime of business and syndicate crime which is generally meant as an organizational crime that sourced from the

[1] http://www.critcrim.org/redfeather/crime/005corporate.html accessed on 27 November 2015.

motives of economic benefits, which is reflected in the existence of contradiction between the corporation's objectives and the interests of various parties such as competitor (rival), labour, consumer, society and the state (Anwar and Adang, 2010). Hence, it is not surprising that this corporate crime spreads rapidly and impacts widely with its enormous loss. This notion is in line with what was stated by Bambang Suheryadi in 2010 that:

"Corporation as criminal perpetrator is not known in KUHP, however in its development, criminal act carried out by corporation has greater impact than criminal act committed by individual person or natural person, seeing this reality, various laws outside KUHP begin to regulate regarding corporation that commits criminal act."

General Provisions and Procedures Taxation Law (*Undang-Undang Ketentuan Umum dan Tata Cara Perpajakan / UU KUP*) stipulates that tax offences can be differentiated into 2 (two) parts, namely violation and crime. Violation is a tax offence which is carried out unintentionally by anyone due to negligence or mistake such as neglect to submit the Annual Tax Report (*Surat Pemberitahuan Pajak Tahunan / SPT*), or has submitted the Annual Tax Report but with incorrect or incomplete content which can cause loss in state revenues. This tax law violation is regulated in the provisions of Article 38 and Article 41 paragraph (1) UU KUP.

Crime is an offence which is carried out intentionally by anyone in the taxation field. The taxation crime offenders realize their actions are incorrect and not in accordance with or even contrary to the law but are still carried out with the intention of paying lighter taxes, avoiding tax payments, or gaining benefits for themselves, thus causing losses to state revenues. This tax law crime is regulated in the provisions of Article 39, Article 39A, Article 41 paragraph (2), Article 41A, Article 41B, Article 41C and Article 43 UU KUP.

Through this paper, the authors will discuss the strengthening of tax crime regulation and tax crime responsibility issues for corporations. The following will be discussed: tax crime practices that can be carried out by Corporate Taxpayer / Corporation as well as its sanctions that have been in effect so far, followed by whether corporations that commit tax crime offences can be subjected to tax crime sanctions and the concept of criminal tax responsibility for corporation. In the last section of this paper, the authors will discuss how the regulation of tax crime offences for corporation should ideally be regulated in the future.

Discussion

A. The Notion of Tax, Tax Crime and The Nature of Tax Crime Sanction

Before entering into the discussion on types of tax crime offences and tax crime sanctions that have been in effect so far, this paper will discuss the understanding of the basis for tax collection which is based on the state constitution as regulated in Article 23A Indonesian

State Constitution (*Undang-Undang Dasar Negara Republic Indonesia / UUD NRI*) 1945, where it is regulated that: "Tax and other levies that are coercive by nature for state necessities are regulated by Law." Thus this mandate of Article 23A UUD NRI 1945 becomes the basis of the formation of the Taxation Law package. Then based on the provision of Article 1 paragraph (1) UU KUP it is stipulated that "Tax is a compulsory contribution to the state owed by individual person or entity that is coercive in nature based on the law, with no direct compensation and is used for the state's necessity for the maximum prosperity of its people."

From a law point of view, tax law is a part of public law. Public law is the regulation that regulates the legal relationships between citizens and the state concerning public interest. Included in public law are Criminal Law and State Administrative Law. The State Administrative Law regulates government actions and regulates the relationships between the government and citizens or the relationships between government organs. State Administrative Law contains the entire rules relating to the way in which government organs carry out their duties (Huisman). As for the Tax Law, it becomes a normative important aspect and becomes a guideline benchmark that must be adhered to by all related parties (As, & Purba, 2017; Alfian & Tresna, 2017). This is in accordance with the legal task of practicing "**legal certainty and justice**." This legal certainty principle will provide legal protection for both taxpayers and the state (Suhartono and Ilyas, 2010). This legal certainty principle concerns with the definition of state loss and legal subjects that can be convicted whether involving only human/individual or also involving corporation or legal entity.

The tax collection system in Indonesia which being regulated in the provision of Article 12 paragraph (1) UU KUP is a "self-assessment system, (Mardiasmo, 2016)" which means a tax collection system that gives full authority to taxpayers to calculate, make payment and submit report regarding to the amount of tax payable themselves (Joonlaoun, 2017; Purwanto & Purba, 2017). This "self-assessment" system means that the tax report (*Surat Pemberitahuan / SPT*) submitted by the taxpayers in the first stage is considered to be correct and complete in accordance with the taxation provisions, however if the General Director of Tax (*Direktur Jenderal Pajak*) has evidence, stating that the tax report submitted is incorrect and incomplete, the General Director of Tax has the right to determine the tax that deviates from the tax report (SPT) submitted by the Taxpayers which is in accordance with the provision in UU Taxation which adopts the presumption of innocence principle (*asas praduga tak bersalah*) (Binawan, 2015).

In the context of tax law, tax crime is defined as an act that violates the law or Tax Law which is carried out by someone whose action can be accounted for by law and declared as criminal offence that is punishable by law. Regarding the meaning of Taxation Crime itself is regrettably not being regulated in the UU KUP regarding general provisions, thus the meaning of Tax Crime can be *mutatis mutandis*-ly applied by referring to the provision of

"Taxation Crime" in accordance to the explanation of Article 33 paragraph (3) UU No. 25 of the year 2007 regarding Capital Investment, where it is stipulated that:

"What is meant by "taxation crime" is the incorrect information regarding tax report relating to tax collection by submitting the tax report with incorrect or incomplete content or attaching incorrect information which can potentially cause losses to the state and other crimes stipulated in the law governing taxation."

Tax crime sanction in essence is "*ultimum remedium*" in nature which means that it is in line with the *legalitas* principle which has been formulated in UU KUP. "*Ultimum remedium*" means that criminal law is the ultimate weapon or final law to be used, if other legal instruments cannot be used to resolve a tax law issue (Nuriansyah, Juniar and Redawati, 2017). This tax sanction with "*ultimum remedium*" in nature is in line with criminal law politics regarding convictions in our taxation law which prioritizes the issue of "**for public interest and maximum state revenues (from tax) reasons**." Which means that the tax law enforcement measures, in efforts to deal with tax crime offenders, should prioritize "administrative sanction (*non penal*)" policy as *premium remedium*, whereas criminal (*penal*) policy is "*ultimum remedium*" in nature.

The nature of tax crime sanction "*ultimum remedium*" itself in reality can become an obstacle in terms of the enforcement of the tax crime law itself. Why is that? Because there are several articles in UU KUP itself, such as the article 8 paragraph (3), article 13A and article 44B UU KUP including UU No. 11 year 2016 about Tax Amnesty which emphazise in imposing administrative sanctions/fines (*non penal*) as the application of the *premium remedium* principle. This condition causes 2(two) different conditions/viewpoints for Tax Payer (*Wajib Pajak*/WP), which is positive in nature because there is an opportunity for WP to pay off the payable tax principle amount plus administrative sanction first, without the need to be subjected to imprisonment/confinement sanctions.

Whereas for tax authority (*fiskus*), it is hoped that the application of the *ultimum remedium* principle should be selective in nature, for example: only subjected to tax evasion WP in this case the Issuer of fictitious Tax Invoices who clearly have caused loss in state revenue, it is appropriate to impose tax crime sanctions (principle tax amount plus administrative sanction and imprisonment/confinement) to the said WP, so it can provide a deterrent effect to the tax crime offender not to repeat this criminal act.

B. The Concept of Tax Crime Responsibility for Corporation

The development of criminal law has now developed the subjects of criminal offences which are considered as subjects of criminal law. Besides human (*natuurlijke person*), it also includes corporate institutions, both legal and non-legal entities that can be considered as

legal subjects and can be convicted. Sudarto stated that for someone to have an aspect of criminal liability, meaning that the offender is being convicted, there are several requirements that must be met, which are (Soedarto, 1986:77):

1. The existence of a criminal act committed;
2. There is an element of error in form of intentional or negligence;
3. There is an offender that can be held responsible;
4. There is no forgiving reason.

In criminal offences in the taxation field, those who are potentially liable to criminal liability are taxpayers, whether in the form of individual legal subject as well as corporate legal entity.

B.1. Criminal Liability Theory

Criminal liability of criminal offences in taxation fields are related to the existence of criminal responsibility from the offender of tax crime related to a legal entity taxpayer, namely company or corporation. In theory of corporation crime liability they are known to have three types of doctrines / theories, which are identification doctrine / theory (direct liability), vicarious liability doctrine / theory (substitute liability) and strict liability doctrine / theory (tight or absolute liability).

Direct Liability Theory (Identification Theory)

According to this theory, a corporation can be held legally liable as the perpetrator or participant for each offence even though there is a requirement of the existence of *mens rea* (fault) by using identification principle. In this theory, all actions or criminal acts committed by senior officers can be identified as the actions of the corporation. Thus, the action of "senior officer" will be seen as corporate action. According to this theory, if criminal acts occur in a corporation, then those criminal acts or crimes are deemed to be carried out by the corporate management, the corporate management is the one that will be held responsible for those crimes (Gatpandan, & Ambat, 2017; Sundar, & Al Harthi, 2015). This is in accordance with the "*societas delinquere non potest"* or "*universitas delinquere non potest*" principles (*vide* Article 59 Criminal Law (*Kitab Undang-Undang Hukum Pidana / KUHP*)) (Kristian, 2016a) which means that the corporation cannot be held accountable, because the corporation does not have *mens rea* (the intention to do evil) and therefore cannot be blamed for the wrongdoing committed by its management or its employees.

Substitute Liability Theory (Vicarious Theory)

The theory of substitute liability means that someone who does not have any personal fault is being held responsible for the action of others. Basically, this substitute liability theory is

based on "employment principle", meaning that the boss (employer) is the primary person responsible for the actions of his/her employees. This theory adheres to the "*the servant's act is the master act in law*" principle (Kristian, 2016b).

Based on this substitute liability theory, someone can be held responsible for other people's actions or faults. This kind of liability is almost entirely applied to criminal acts which are strictly regulated by law . In other words, it can be said that not all offences or criminal acts can be held responsible by way of vicarious (substitution). The existence of the vicarious theory (substitute liability) certainly deviates from the principle of national criminal law that currently applies, where criminal liability can only be held responsible to those who commit the crime (individual liability).

In Indonesian KUHP today, it does not recognize substitute accountability, however this vicarious liability theory in "*ius constiduendum*" perspective has been adopted into the latest version of the RUU KUHP which is the 2013 version, that is in the draft of Article 38 paragraph (2) which states that "In case determined by law, anyone can be held responsible for criminal act committed by someone else." In the explanation of this Article 38 paragraph (2) it is stated that "this provision is an exception to the no liability without fault principle."

Tight or Absolute Liability Theory (Strict Liability Theory)

This tight or absolute liability theory supports or justifies that corporation criminal liability is strict liability or absolute liability. In several literatures, this theory is known as the *theory of liability without fault* or no fault liability or liability without fault (Kristian, 2016b). In this theory, the criminal liability can be requested *without the obligation to prove the existence of fault (men's rea)* of the criminal offender. According to Romli Atmasasmita in the theory of strict liability, liability does not have to consider the existence of fault (*men's rea*), because in corporate liability the fault principle is not valid. Someone can already be held responsible for certain criminal acts, even though the person himself/herself has no fault (*men's rea*) as long as he or she has committed a prohibited act as formulated in the UU. Therefore, there is no question about the existence of *men's rea* (fault) because the main element in strict liability is *actus reus* (action) so what must be proven is the *actus reus* (action), not the *men's rea*/fault. This strict liability theory is almost similar with the vicarious liability as both theories do not require the existence of fault (*mens rea*) from the offender. However, the difference between these two theories lies on the imposition of criminal liability, where in strict liability the criminal liability is direct in nature, whereas in vicarious liability the criminal liability is indirect in nature, where it can be "substituted" to someone else (Atmasasmita, 1995). Furthermore, in this strict liability theory, the criminal liability system establishes that the corporation is the crime offender, but the management is the one that will be held liable.

In the explanation number 126 Attachment 1 UU No. 12 Year 2011 about The Establishment of Statutory Regulation stipulates that "Criminal offence is carried out by individual person or corporation". The conviction for criminal offence committed by the corporation will be imposed on:

a) Legal entity such as, limited liability company, association, foundation or corporation; and/or
b) The one that gives order to commit criminal act or the one who acts as a leader in conducting criminal act.

From the explanations above, by associating the tax criminal liability with the criminal liability theory whether in identification, vicarious liability and strict liability theory perspectives, there are several parties who can be held liable for criminal liability, whether it is the head of corporate company (factual leader) and the instruction giver (instrumention giver). Both can be subjected to criminal sanctions simultaneously. Those sanctions are based on their job positions held in the company.

The following explains the types of tax criminal liability as stipulated in the UU KUP:
1. Criminal liability for the taxpayer (individual person and/or legal entity) who commits tax crime;
2. Criminal liability for General Director of Tax's employee/officer who commits tax crime;
3. Third party criminal liability for those who commit tax crime such as: Bank, Public Accountant, Notary, Tax Consultant, administration office, government institution and association establishment and so on.

B.2. Tax Criminal Liability for Corporation

Criminal offences in taxation fields are substantially part of the tax law because the violation is the taxation law regulation. Tax Law has a correlation with Criminal Law that is part of the Public Law, which regulates the interaction that occurs between the society with the Government relating to the criminal act issues. Criminal provisions stipulated in the KUHP are widely used in the tax crime regulations, although the provisions of tax crime stated in UU KUP are explicitly using the "*lex specialis derogate lex generalis*" principle (the special law principle that overrides the general law principle), namely the provisions of Article 38 until Article 44 UU KUP about Criminal provisions.

Before discussing the issue of tax criminal liability for corporation, there is an essential thing that needs to be understood; it is about whether the formulation of criminal offences stipulated in the UU KUP explicitly include corporate taxpayers considering the formulation of criminal offence stated in the UU KUP which uses the term "**every person**."

The concept of criminal liability stipulated in the provisions of Article 38, Article 39 and Article 39A UU KUP uses the term "every person." In this concept, the one that can be held criminally accountable is only "individual and or private person", while corporation or Corporate Taxpayer (legal person) does not seem to be able to be held criminally accountable. This basic formula for this law is "*actus non facit reum nisi mens it rea*" which means "an act cannot make a person guilty, when his/her intent is innocent" (Farid, 2007: 42) or it is better known as the concept of accountability "*no conviction without fault*." (Kitab, 1981).

The absence of corporation or Corporate Taxpayer (legal person) terms in the provisions of Article 39 and Article 39A UU KUP and its explanations as formulated in Article 38 UU KUP which uses Taxpayer (*individual and/or corporate*) terminology, does it mean that corporation or Corporate Taxpayer (legal person) cannot be subjected to tax crime because the subject of criminal law should not be limited to human only, but must also include corporation or Corporate Taxpayer (legal person). In this case, corporation can also be used as a means to commit tax crime (crime for corporation).

Indeed, when examining the formulation of criminal offence in the UU KUP, it clearly adopts the "identification theory or the concept of no conviction without fault." This is reflected in the intentional element formulation in the formulation of Article 39 and Article 39A UU KUP and the neglectfulness/negligence in the formulation of Article 38 UU KUP. Thus, it is very clear that the strict liability theory is not being applied in the offences in taxation fields in the context of this UU KUP. In future, does tax criminal offence reflect the use of vicarious liability concept?

Whether the formulation of the tax criminal offence stated in Article 43 UU KUP stipulating that the formulation provisions of Article 39 and Article 39A UU KUP also applies to the representative, authorized person, employees of the Taxpayer, or to other party who instructs, participates, suggests, or helps doing the offences has shown the application of vicarious liability concept? According to the authors, this concept is not reflected at all in the UU KUP. Nevertheless, in order to be consistent with the notion of "vicarious liability" concept stating that the element of action (offence) committed by the accused is ignored in a sense that it is not needed, hence the formulation of Article 43 UU KUP should not use the formulation of a concept like this, because in the formulation provisions of Article 55 paragraph (1) and Article 56 KUHP have already been stipulated that they who commit, suggest, instruct and participate will be convicted as criminal offenders. While those who intentionally provide assistance and/or opportunity, will be seen as accomplices. When referring to the law principle of "*lex specialis derogate lex generalis,*" as long as it is not specifically regulated in UU KUP, the rules of the *Undang-Undang Hukum Acara Pidana*/UU KUHAP will apply. The clause of article 43 UU KUP is actually overly regulated in the articles in the said UU KUP.

It is very unfortunate that until now there have not been any regulations that govern the tax criminal liability for corporation in Indonesia, except the imposition of criminal sanctions (administrative fines sanctions and imprisonment or jail sanctions) and the tax criminal liability is only imposed on the management and/or employee of the corporation as stipulated in UU KUP. On the other hand, the Supreme Court of Republic Indonesia has issued the Supreme Court Regulation (*Perma*) No. 13 Year 2016 on 21 December 2016 which is valid from 29 Desember 2016 about Procedures for Handling Criminal Cases by Corporation (*Tata Cara Penanganan Perkara Tindak Pidana oleh Korporasi*). The meaning and purpose for issuing this Perma No. 13 in 2016 is to be able:

a. to become the guideline for law enforcers in handling criminal cases with corporation and/or management as the perpetrators;
b. to fill the legal vacuum especially the criminal procedural law in handling criminal cases with corporation and/or management as the perpetrators; and
c. to encourage the effectiveness and optimization in handling criminal cases with corporation and/or management as the perpetrators.

In this connection, does Perma No. 13 in 2016 with its contents that are not only administrative in nature but even legally substantive, have any legal powers that can bind the public in a level perspective according to the UU No 12 in 2011 concerning the Establishment of Statutory Regulation (*Tata Cara Pembentukan Peraturan Perundang-Undangan*)?

According to the authors, the purpose of this Perma No. 13 in 2016 is to emphasize on how to handle corporate criminal cases that can be used as guidelines for the law enforcers (Police, Prosecutor and Judge) so the handling of corporate criminal cases can run effectively and optimally.

C. Closing
Conclusion and Recommendation
C.1. Conclusion

The conclusions are:

1. In the UU KUP, it has been distinguished that the Taxpayer's action in form of first negligence which can potentially cause losses to the state will not be subjected to criminal sanctions but will be subjected to administrative sanctions in form of paying off the principal amount of the tax payable plus administrative sanctions in form of an increase of 200% of the principal amount of the tax payable. However, if the negligence committed by the Taxpayer happens more than once and there is an intentional element which can potentially cause losses to the state, then the Taxpayer

can be subjected to criminal sanction as stipulated in Article 39 and Article 39A UU KUP.

2. Tax as part of Public Law is included in the domain of *State Administrative Law*, so if a tax dispute (administration) arises it is hoped to try to resolve it using the available administrative law (*non penal policy*) first which is in accordance with the UU No. 14 Year 2002 about Tax Court, estuary dispute (administration) being resolved through Tax Court (*Special court within the State Administrative Court*). This is in line with the criminal law politics that in case of conviction against the criminal offender in taxation field as stipulated in the UU KUP, which is for maximum state revenues, thus the prevention effort must prioritize administrative sanction (*non penal*) policy which means that administrative sanction tends to be applied first and it is "*premium remedium*" in nature, while the application of criminal policy (*penal*) is "*ultimum remedium*" in nature. Financial income to the state is prioritized rather than just imposing criminal sanctions in form of imprisonment, confinement and fines, so the state will be able to use the tax funds to finance national development.

3. The reason why the corporation that commits tax crime has not been criminally held responsible is because none of the laws in the taxation field strictly regulates the issue of corporate as criminal perpetrator, hence causing obstacles in law enforcement process.

4. The notion of state loss as a prerequisite for enforcing tax law in form of tax crime sanction is not regulated in paragraph 1 of the UU KUP, thus the applicable state loss clause is *mutatis mutandis*-ly applied according to the definition in UU No. 1 in 2014 regarding State Treasury which states that: "State loss is the lack of money, marketable securities and goods that are real and certain in number as a result of unlawful act either intentionally or not."

5. The position of the Supreme Court Regulation (*Perma*) No. 13 in 2016 in the perspective of the statutory level in Indonesia according to the UU No. 12, 2011, although this Perma is known for not being included in the hierarchical of statutory according to Article 7 paragraph (1) UU No. 12, 2011, but according to the provision of Article 8 paragraph (1) UU No. 12 in 2011, Perma can be recognized for its existence as a type of statutory regulation and has a binding legal force for as long as it is needed by higher law or it is formed based on existing authority.

C2. Recommendation

The recommendations are:

1. The importance of applying the "restorative justice" principles through peace mediation effort (*non penal*) between the taxpayer with the Government / Directorate General of Tax and/or Minister of Finance and/or Attorney General in the application of taxation laws and regulations to prevent administrative or regulatory violations in the taxation field. Disputes (administration) should be attempted to be resolved through legal efforts to the Tax Court, while for indication of crime should go through mediation first between the Taxpayer with the Government / Directorate General of Tax and/or Minister of Finance and/or Attorney General which can be done through licensed and credible a mediator/facilitator, before the actions of investigation, prosecution and trial proceedings against the suspect / defendant is carried out.

2. Reformulation of the tax criminal offence rules for corporation must be specifically regulated in the RUU KUP in the future, by considering that the tax criminal offence is a special type of criminal offence and the taxation law is usually special in nature which is known as the term "*lex specialis derogate lex generalis*" meaning that law regulations that are special in nature override law regulations that are general in nature. It is hoped that the RUU KUP in the future becomes more moderate in nature, to include the regulation regarding when a corporation commits tax crime in which types of tax criminal offences can be imposed and when the corporation can be held responsible for the tax crime committed. Also, the application of sanctions for tax criminal offences is appropriate to be imposed on the corporation, not just regulates which tax fine sanctions can be imposed on the corporation and the imprisonment criminal sanction to its management and/or employee that has been applied so far, but also needs to regulate the existence of imposing tax criminal sanctions on corporations that are considered to have inflicted financial loss to the state in the form of: revocation of permit / license of the company, seizing company's assets and even permanently closing the company.

3. It is preferred that the principle of "*ultimum remedium*" can be applied selectively, so that the enforcement of the tax crime law to generate the deterrent effect can be effective, especially the deterrent effect for taxpayers who intentionally do not pay the tax amount that should be owed, thus causing losses to the state revenue.

4. Reformulation on whether the tax criminal offence is included as extraordinary criminal offences in the RUU KUP in the future which is a theoretical prerequisite in nature for the application of "strict liability and vicarious liability" theories / concepts, while at the same time also impacts the concept of tax criminal liability in the UU KUP in the future.

REFERENCES

Alfian, & Tresna, M. G. (2017). The influence of company's age and owner's/manager's education on the use of accounting information in small and medium enterprises *International Journal of Business and Administrative Studies, 3*(2): 64-71.

Anwar, Y. & Adang (2010). Kriminologi, Bandung: Refika Aditama.

Arief, B. N. (2001). Masalah Penegakan Hukum dan Kebijakan Penanggulangan Kejahatan, Bandung: Citra Aditya.

As, Y. & Purba, C. S. (2017). The urgency of pontianak local public policy in emboding legal protection against teacher. International Journal of Humanities, Arts and Social Sciences, 3(6), 241-248.

Atmasasmita, R. (1995). Kapita Selekta Hukum Pidana dan Kriminologi, Bandung: Mandar Maju.

Bahri, C., Mahsina S. E. & Poniwati, M. (2017). The influence of undervaluation, free cash flow, leverage and dispersion of ownerships toward company's stock repurchase (An empirical study of Indonesia stock exchange public listed companies). Journal of Administrative and Business Studies, 3(5), 235-247

Binawan, A.L. (2015). 'Praduga Tak Bersalah', Nasional Kompas. Available from: <https://nasional.kompas.com/read/2015/02/18/15060071/Praduga.Tak.Bersalah>. [09 Desember 2018].

Brotodihardjo, R.S. (2003) Pengantar Ilmu Hukum Pajak, Bandung: Refika Aditama.

Endang, K. & Risal. (2017). The effect of investment decision financing decision dividend payment policy and company size. Journal of Administrative and Business Studies, 3(2), 105-113.

Farid, & Abidin, H.A.Z. (2007). Hukum Pidana I, Jakarta: Sinar Grafika.

Friedman, L.M. (1975). The Legal System; A Social Science Perspective, NewYork: Russel Sage Foundation.

Gatpandan, M. P. & Ambat, S. C. (2017). Mining crime instance records of Philippine National Police District Vi Province of Cavite, Philippines: An Exploratory Study to Enhance Crime Prevention Programs, Journal of Advanced Research in Social Sciences and Humanities, 2(4), 176-187.

Hamzah, A. (1986). Sistem Pidana dan Pemidanaan di Indonesia dari Retribusi ke Reformasi, Jakarta: Pradnya Paramita.

Huda, C. (2006). Dan Tiada Pidana Tanpa Kesalahan Menuju Kepada Tiada Pertanggungjawaban Pidana Tanpa Kesalahan, 2nd edn, Jakarta: Kencana.

Huisman, R.J.H.M., Bestuursrecht, A. & Inleiding, E., Amsterdam: Kobra, tt.

Joonlaoun, P. (2017). Remitting behaviors and intention to return home of Thai migrant workers in Australia: A study of income, employment and legal satisfaction. Journal of Advances in Humanities and Social Sciences, 3(1): 29-41.

Kitab, (1981). Undang-Undang Hukum Pidana, Undang-Undang No. 8 Year 1981.

Kristian, (2016a). Kejahatan Korporasi di Era Moderen & Sistem Pertanggungjawaban Pidana Korporasi, 1st edn, Bandung: Refika Aditama.

Kristian, (2016b). Sistem Pertanggungjawaban Pidana Korporasi (Tinjauan Teoritis dan Perbandingan di berbagai Negara), 2nd edn, Bandung: Refika Aditama.

Mangkoesoebroto, G. (2001). Ekonomi Publik, 3rd edn, Yogyakarta: BPFE.

Mardiasmo, (2011). Perpajakan Indonesia, rev. edn,Yogyakarta: Andi.

Mardiasmo, (2016). ada 3 (tiga) sistem pemungutan pajak di Indonesia, buku Perpajakan, rev edn.

Mertokusumo, S. (2009). Penemuan Hukum Sebuah Pengantar, Yogyakarta: Liberty.

Muladi, & Priyatno, D. (2010). Pertanggungjawaban Pidana Korporasi, Jakarta: Kencana Prenada Media Group.

Narbuko, C. & Achmadi, A. (2001). Metodologi Penelitian, Jakarta: BumiAksara.

Nuriansyah, S., Juniar, A. and Redawati, (2017). Factors affecting dividend payout ratio of food and beverage manufacturing companies in Indonesia. International Journal of Business and Administrative Studies, 3(6): 229-238

Purwanto, and Purba, C. S. (2017). Legal aid compliance for poor local community. Journal of Advanced Research in Social Sciences and Humanities, 2(6): 363-370.

Soekanto, S. & Mamudji, S. (2011). Penelitian Hukum Normatif, 13th edn, Jakarta: Raja Grafindo Persada.

Soemitro, R. (1988). Penghantar Singkat Hukum Pajak, Bandung: Eresco.

Soesilo, R. (1990). Kitab Undang-Undang Hukum Pidana (KUHP), Bogor: Politea.

Suandy, E. (2005). Hukum Pajak, Jakarta: Salemba Empat.

Suhartono, R. & Ilyas, W.B. (2010). Panduan Komprehensif dan Praktis Ketentuan Umum dan Tata Cara Perpajakan (KUP), Jakarta: Salemba Empat.

Sundar, C. S. & Al Harthi, F. N. S. (2015). Impact of capital structure on firm's profitability with reference to companies listed on MSM (Muscat Securities Market). International Journal of Business and Administrative Studies, 1(1): 23- 28.

Undang-Undang Dasar Negara Republik Indonesia Tahun, (1945). As amended by the first, second, third and forth changes.

Undang-Undang Nomor 12 Tahun, (2011). Tentang Pembentukan Peraturan Perundang-Undangan.

Undang-Undang Nomor 14 Tahun, (1985). Tentang Mahkamah Agung as amended by Undang-Undang Nomor 5 Tahun 2004.

Undang-Undang Nomor 4 Tahun, (2004). tentang Kekuasaan Kehakiman.

Undang-Undang Nomor 6 Tahun, (1983). tentang Ketentuan Umum dan Tata Cara Perpajakan as amended several times with the latest by Undang-Undang Nomor 28 Tahun 2007.

Young, K. R (1989). ‘Lecture 5: corporate crime transpersonal ways to steal’, The Red Feather Institute. Available from: <http://www.critcim.org/redfeather/crime/005corporate.html>. [27 November 2015].