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Welfare Criminology: Taxation and Human Nature

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Abstract

Indonesia is a country that relies profoundly on tax revenues. Nevertheless, the tax gap is outsized, which is 50%, compelling the tax ratio of Indonesia is contained within the average tax ratio of poor countries. There is a number of disobediences of the tax law conducted by citizens, not only related to administrative sanctions but also those subject to penal sanctions. Personal taxpayer becomes the major category that has low tax compliance, it is only 37% for tax return submission and accounts for only 20%-27% of total tax revenues by 2015. The purpose of this article is to provide a new perspective by elucidating a correlation between Indonesian taxation with criminology, especially in social control of tax crime. Moreover, it contributes benefits to reduce violation of tax law which further lead to increase tax revenues. This article is a prelude to ongoing research. By using literature and document study (conceptual approach), further enhanced with secondary and content analysis, in this article, I contend that there is a low willingness to comply of citizen due to the social control policies associated with tax crimes are still not effectively mitigating tax evasion. The exalted violation of tax law associates to the unconformity of the tax norms with the human nature in performing his behavior. Tax loss instigated by violating the tax law will impact all people of Indonesia, because these conducts have hampered the social welfare. Hence, it can be said that the act of violating the tax law is the crime against the community welfare. Therefore, in this study will employ the theory of welfare criminology.

Keywords: Crime, criminology, human nature, taxation, welfare criminology

Preliminary

Indonesia is a country that relies heavily on tax revenues. This can be observed from the composition of state revenues from the tax sector in Indonesia State Budget which is surpassed every year. In Indonesia State Budget year 2016, the target of state revenue from the tax sector has increased. The composition of tax revenues in the state budget shows the number Rp1.360,2 trillion or equal to 74.6% of the total state revenue. (Indonesia State Budget year 2016 information published on www.kemenkeu.go.id).

In addition to the growth of the tax revenue target, in order to meet the needs of state expenditures that are also mounting, the percentage contribution of state revenues from the tax sector each year compared to total state revenues also increased. As an illustration, the year 2005-2015 tax revenues enumerated in Indonesia State Budget ranges from 60% -80% compared to the total state revenue and demonstrates an escalation each year (Indonesia State Budget year 2016 and Strategic Plan of the Ministry of Finance year 2015-2019).

Nevertheless, the domination exposed by tax revenues in the Indonesia State Budget notwithstanding does not exhibit the optimum conditions of tax collection process in

Indonesia. To some extent, there may be many unexplored tax potentials. This can be seen from the large gap in Indonesian tax gap, which is about 50 percent (Strategic Plan of the Ministry of Finance year 2015-2019). The OECD defines that a tax gap is generally described as an estimation of the difference between the amount of tax revenues received compare to the amount that should be obtained under the perfect conditions of tax compliance (OECD Report Annex B, The Use of Tax Gap Estimation in National Tax Administration).

According to the condition of the last few years, Indonesia's tax ratio is in the range of 10% to 12%, where the figure is below the average tax ratio of ASEAN and sub-Saharan Africa countries. Thus, it is not wrong to say that the tax ratio of Indonesia is contained within the category of average tax ratio of poor countries. Tax ratio, based on OECD, is derived from the ratio of all tax revenues, both central and local taxes (including natural resource revenues) to total gross domestic product.

The large tax gap may display the large number of tax evasion efforts that occur, even though the tax laws and regulations have explicitly mentioned the sanctions or penalties. This article is a criminology research which is a newfangled research when associated with Indonesian taxation. To a certain degree, it is an introductory or preliminary part of the complete research to be conducted. Academically, this full research strives for a new perspective by showing a picture of the relationship between Indonesia's taxation with criminology, especially from the part of social control of tax crime.

From a practical point of view, the full research results are expected to contribute benefits to the state in an effort to reduce the level of violation of the tax law which then impact on increasing state revenues from the taxation sector. In addition, the research results are also expected to be such perspective of society and institutions in Indonesia in perceiving the reality of crime or deviation committed by all levels of society that adversely affect the survival of the country. As a preliminary research, this article will provide the correlation between taxation and human nature as a part of implementing welfare criminology.

Research Question

According to the contextual problem, there is a notable question that needs to be answered in this research. It is about the optimum policy of social control of tax crime that should be applied in Indonesia. Furthermore, a more specific question that related to the main problem is why there is an indication of the high rate of tax crime in Indonesia that impacts the high level of tax gap in individual or personal taxpayers, even though the tax law already stated the penalties for such wrongdoers.

Research Methodology

As an introductory or preliminary research, this article employs literature and document study, further enhanced with secondary and content analysis. The literature review was conducted to understand the theories and opinions of criminology, welfare criminology, and taxation which is also called as a conceptual approach to support the purpose of this research.

Furthermore, in order to complete the discussion, this article conducted a secondary analysis and content analysis by utilizing the results of research and other secondary data, such as tax regulation, report of Ministry of Finance of the Republic of Indonesia, and other related research.

Taxation in Indonesia: An Overview

It is widely discussed about taxes, not only in Indonesia but also for almost the entire world. Taxes has many terms. Some may call it contributions, donations, levies, contributions or other terms. To some extent, there are a lot of comprehending of taxes, ranging from the opinions of experts, international organizations, up until the definitions given by law. Paul Leroy Beaulieu (1906) in his book *Traite de la Science des Finances* in Suandy (2011: 8) explicates that taxes are either direct or indirect support imposed by the public power of the population or of goods to overlay government spending. Meanwhile, the OECD explains the taxes with a short sentence that is a compulsory unrequited payment to the government (www.oecd.org/ctp/glossaryoftaxterms). The OECD utilizes the mandatory payment terms to the government without any reciprocity to the people.

When Leroy employs the term “support” to refer to the notion of taxes, Rochmat Soemitro (1988) elucidates that the definition of tax is the contribution of the people to the state based on the law (which can be enforced) with no services that can be directly demonstrated and the contribution will be used to pay general expenses.

To a certain degree, conferring about taxes means discussing the obligations that citizens must engage. The party who subject to the obligation is called the taxpayer. Indonesian Taxation Law acknowledges that the taxpayer is an individual or entity, including taxpayers, tax withholders, and tax collectors, who have the rights and obligations of taxation in accordance with the provisions of the tax laws and regulations. In accomplishing its obligations, the taxpayers employ a tax administration system known as self-assessment, in which citizens are authorized to carry out their tax obligations independently. Starting from getting tax identification number, calculating the amount of tax up until submitting the tax calculation in the form of tax return.

Criminology and Welfare Criminology

Discussion of taxes, from benefits to violations of tax laws and regulations, will result in an elaboration of several disciplines. It takes not only the science of tax administration, law, economics, sociology, psychology until conclusively criminology takes place in tax discussion which has been the backbone of state revenue. Initially, the discussion of all things related to social discussed thoroughly in sociology. Subsequently, criminology arises as a discipline to complement and unveil the reality of social product violations in the community, ranging from the smallest form of the family to the wider scope of country society.

Studying criminology signifies learning everything that has to do with malicious or crime. Starting from the crime itself, the perpetrator of the crime and its etiology, the victim of the crime until the social reaction that appears to the criminal act (Darmawan, 2014: 1.20).

To some extent, generally, discussion of violations of the tax law is more often associated with the discipline of law and also administration. With the existence of criminology, it is deemed necessary to discuss the violation of tax rules from the perspective of criminology, therefore it can construct the social control dimension of tax crime that is effective in embarking upon tax evasion efforts in Indonesia.

Criminology discusses crime, transgression, or deviation as an act that causes harm (Mustofa, 2010: 23). Such harms or losses are suffered by parties, not only the losses on the part of the victim, but also the loss undergone by the perpetrator himself. Similarly, this also applies to acts of violation committed against the tax regulations. The losses arising from the violation of the tax law will have an effect on the state, namely the impact on the ability of the state to finance all the needs of the state as

quantified in the state budget. Referring to the definition of tax in the Indonesian Tax Law, taxes will be utilized as much as possible for the prosperity or welfare of the people. Accordingly, the losses incurred due to violations of the tax laws or regulations will be suffered by all people of Indonesia, because the action has hampered the implementation of social welfare. Thus, it can be disclosed that the violation of the tax laws or tax regulations is an act of violation or crime against the welfare of the society (Darmawan, 2014: 2.13).

This research will apply the criminology approach to social welfare or it can be pronounced also as welfare criminology. Welfare criminology nomenclature is not widely found in international publications. Nonetheless, not a few studies that constitute a crime against social welfare as an important phenomenon that must be reviewed thoroughly. Crime against the environment (Eman, 2012), crime that produces poverty due to welfare fraud (Castner, 2012), and tax evasion measures that constitute welfare fraud (Marriott, 2013; Hillyard and Tomb, 2007) are some forms of criminal action that encroaches on the reduction of social welfare in society. There are a number of terms to describe actions that adversely affect social welfare, including welfare deform (National Review, 2005), economic warfare (Abdelnour, Whittaker, and Cain, 2011), the end of welfare (Dyck and Hussey, 2008; Minow, 1999), the death of welfare (Fleurbay and Mongin, 2005; Erlich, 1969), or crimes against humanity (Castner, 2012: 60).

To a certain degree, it has some approaches to assess social welfare in a country. In Indonesia, one of the means to measure social welfare is by using the understanding of gini coefficient or gini ratio. Gini ratios are often used to assess inequality or equity in aggregate, where a value of 0 (zero) will demonstrate perfect equality, while a value of 1 (one) denotes perfect inequality. In 2016, the gini ratio of Indonesia is at 0.39 (www.bps.go.id).

Social welfare has become the goal of the Indonesian nation as specified in the Constitutional Law year 1945. Social welfare as the objective of national independence cannot be detached from the concept of crime. In general, the concept of crime can be associated to the lack of ability of the state to accomplish the social welfare at the individual level, group, and nations level (Mustofa, 2010: 217).

The Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Japan in 1970 was the first United Nations Congress to declare the government's obligation to take effective measures to intensify crime prevention efforts in economic and social development contexts. Crime in any form will weaken the state because crime prevents the creation of a better environment and life for all its people. Thenceforward, at The Sixth United Nations Congress held in Venezuela in 1980, it was declared that crime prevention should be based on the social, cultural and economic conditions of the country.

Related to the delivering of social welfare, all acts that may impede or decelerate the achievement of the aims of the state can be regarded as a crime against social welfare, including the act of diminishing the right of the state in the form of taxes (Darmawan, 2014: 2.13).

One of the articles that employed the term welfare criminology is Stephen J. Morse's *A Twilight of Welfare Criminology: A Final Word* published in Penn Law: Legal Scholarship Repository in 1976. This paper is a reaction or opinion on the essay of David L. Bazelon 1976 on the morality of criminal law in America published in the *Journal of Criminal Law and Criminology*.

When it comes to welfare criminology, it can be connected to the welfare state, where a welfare state will correlate to the moral understanding of state

controllers of human rights (Moon 1988: 4). Recently, there is the use of a new term that substantially has the same meaning as welfare criminology. It is known as public criminology, which generally describes the relationship between policy and politics (Christie, 2011) and the determination of the criminologist's role in public policy (Loader and Sparks, 2010).

Taxation versus Human Nature: Conclusion and a Subsequent Hypothesis

The amount of tax gap as described before can be exposed to the composition of citizens who have registered as taxpayers. At the end of 2015, the administration system of Indonesian Tax Authority recorded a total of 30,044,103 taxpayers, of whom 91% are individual taxpayers. Measured up to the Central Bureau of Statistics data at the end of 2013, where the number of Indonesian working population reached 93.72 million people (www.pajak.go.id). Thus, it can be seen that there are still a number of people who are not obedient in registering as a taxpayer.

The optimum tax revenue can be managed under conditions of high tax compliance, both formal compliance and material compliance. James and Alley define the meaning of compliance as follows:

“The definition of tax compliance in its simplest form of the taxpayers comply with the tax law. However, like many such concepts, the meaning of compliance can be seen almost as a continuum of definitions. This ranges from the narrow law enforcement approach, through wider economic definitions and on more comprehensive versions relating to taxpayer decisions to conform to the wider objectives of society as reflected in tax policy”. (James and Alley, 2002: 29).

James and Alley explained that tax compliance is related to the taxpayer's decision to comply with the tax rules. To further clarify the notion of tax compliance, Nasucha (2014, 134) elucidates that the theory of taxpayer compliance is classified in compulsory compliance and consensus theory (voluntary compliance). In compulsory compliance, people are willing to obey the rule of law because of the coercive element of the legal power of the supreme, in this case, the government. The existence of the element of coercion relates to the consequences if the rules are not implemented. The consequence is the existence of elements of sanctions which is a factor that causes people to obey the law. Meanwhile, in voluntary compliance, the public can accept a rule of law due to acceptance of itself on the basis of rules legality.

Furthermore, in accordance with the understanding of tax compliance advocated by Nasucha, Kirchler and Wahl (2010, 333) construe tax compliance as paying taxes properly, which is also influenced by the intentions underlying the taxpayer either in voluntary compliance or being forced by the tax authority.

The nature of the force imposed by the state is elucidated in the law. Indonesia Tax Law demarcates not only the obligations that must be carried out by the taxpayers but also the consequences or sanctions in case of violation of the tax law, whether committed intentionally or due to the negligence of citizens. There are two implications that stipulated in the law, those that have administrative implications and those which have criminal allegations. Violation of tax obligation concerning tax administration action shall be subject to administrative sanction, whereas concerning criminal offenses in the field of taxation shall be subject to criminal sanction (Elucidation of Article 38 of Indonesian Taxation Law).

The assessment of tax compliance in tax return submission is a form of supervision of the implementation of tax laws in which remark the rights and obligations of taxpayers. In case the obligations are not met, consecutively, in other words, it indicates a violation of the regulation. The dimensions of violations of tax regulation may include not registering as a taxpayer, not paying taxes, not reporting the tax return, and reporting tax return with untrue, incorrect, or unclear data.

In addition to the number of registered taxpayers, the compliance rate of registered taxpayer can also be used as a reference assessment of the effectiveness of tax collection. One of the indicators is the level of compliance of tax return submission, which is also known as the formal compliance of the taxpayer. According to Indonesia Tax Authority data, since 2010, the average level of taxpayer reporting compliance from taxpayers (both corporate and individual taxpayers) is approximately 50% annually. Meanwhile, by 2015, the non-employee individual taxpayer compliance level is only 41% (formal compliance) and 63% for employee taxpayers. Those numbers displayed the comparison between the tax return submission and the number of personal taxpayers that obliged to submit the tax return in that time. It is the discretion of Indonesia Tax Authority after considering many aspects. Disappointingly, for all categories of individual taxpayers, the formal compliance is only 37% as a result of the comparison to all registered personal taxpayers (www.pajak.go.id).

The compliance level is also in line with the contribution of tax money received. In 2014-2015, individual taxpayers contribute to state revenues totaling about 20% - 27% of total income tax revenue (Ministry of Finance Performance Report Year 2016).

Moreover, the noncompliance condition in Indonesia taxation can also be glimpsed in such tax evasion cases. It indicates that there are still many violations of tax law by citizens, not only those who get administrative sanctions but also those subject to criminal sanctions. For example, the confinement or forced execution of bodies, which commonly known as *gijzeling* is an effort imposed on a taxpayer who has previously committed a violation of the taxation provisions and is subject to administrative sanctions.

In addition to violations of administrative provisions, cases of tax crime are also common in various regions in Indonesia. As with the case of the tax invoices publisher that are not based on actual transactions that occurred in Jakarta in 2014, the case did not deposit the collected tax and make an unauthorized tax payment slip in 2015 by the Palembang City Government Treasurer, the case about deliberately did not deposit the withholding tax the state coffers that occurred in South Sulawesi in 2015, and many other cases (Press Release DJP published on www.pajak.go.id).

Taking into account the substantial benefits of taxes on the ability of the state to finance all its needs and activities, anything that contributes to hampering tax collection efforts becomes important to scrutinize. One of the aspects is from the society or public side as taxpayers who are also called as taxpayers. To some extent, in implementing tax obligations, there is a tendency to reduce the tax value to be paid to the state account. This is in line with the country's difficulties in achieving voluntary tax compliance conditions for taxpayers.

Under the lack of tax compliance and other circumstances described, there are problems that important to be analyzed which provide a research preliminary conclusion. The comparison between the taxation phenomenon and the ideal condition shows that there is a low willingness to comply from the citizen. Furthermore, this modest tax compliance is important to be examined comprehensively due to the resulting hypothesis that the social control policy relating to tax crimes, especially

those relating to personal income taxes, has not been effectively mitigated tax evasion measures, which may be described as follows:

1. Tax collection process is a complex issue related to taxpayer data, human nature, enablement or ease of paying taxes, tax official integrity, as well as sanctions policy. This is not just a relationship between compliance, sanction, and deterrence;
2. Taxpayer in a confrontation with the obligation to pay taxes will make a "definition of the situation" to decide whether to pay taxes or not. The final decision is influenced by the learning process and the consideration of whether paying taxes or not paying taxes as profitable or unprofitable to him. It relates to how the values and norms of taxation are formulated. When to become a taxpayer, a tax subject must register, this situation becomes one of the aspects that affect the definition of the situation. Therefore, the high level of violation of tax regulations is related to unconformity the taxation norms with the nature of the behavior of tax subjects (human nature);
3. The policy of social control over tax crimes has not been considered the following:
 - a. Socialization of tax laws that converge the beliefs of the people;
 - b. Simple tax administration system to make it easier for people to carry out their tax obligations;
 - c. A proportional sanction policy contained in the tax law so as to provide a deterrent effect for the community; and
 - d. Social controls related to individual income taxes are empowering the taxpayer's ability to pay taxes.

Future Discussion

According to a number of studies that have been conducted, it indicates that the cause of the inhibition of voluntary tax compliance is due to various factors. The number of obstacles and problems encountered in the process of collecting the state revenue from the tax sector is related to the optimization of social control in tax crime. Furthermore, the problems encountered not only caused by one factor, but also covering all aspects of the problem, starting from the upstream in the form of discussion of the sociology of tax law, the self-assessment system as the tax administration system which is the process of tax collection/payment, up until to the sanctions that did not diminish the number of violations including the existence of the Tax Court which is deemed to have not performed effectively (Indonesian Task Force on Eradication of Law Mafia, 2010). This whole issue is important to be comprehensively reviewed, as not many people voluntarily pay taxes.

Furthermore, in order to improve assurance of the preliminary conclusion, it is important to conduct more comprehensive research by connecting with control theory, rationalization theory, and neutralization technique theory to discover the judgments of not performing the tax obligations respectably. In other words, it is to find out the reason of obedience or disobedience of the citizen in carrying out its tax obligations. This subsequent research is suggested to be done by a mixed methodology of research (combination of quantitative and qualitative research), therefore, not only can comprehend the rationale of human non-compliance but also ascertain how the social control of tax crime that should be done in Indonesia.

The social control of tax crime should be comprehensive, integrated, and amalgamated with other elements of government since social control is a set of ways or methods used by society in an effort to influence human behavior in order to behave in

accordance with the values and norms of society (Mannheim, 1940). To some extent, the policy of social control of tax crimes related to individual taxpayers is very important, for the reason that income tax conducted by the individual is expected to give utmost contribution for the increase of state revenue from the tax sector.

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