

# RETURN OF TAX OBLIGATIONS AND TAX PENALTY IN INDONESIA THROUGH THE “PLEA BARGAINING SYSTEM” FOR THE ESTABLISHMENT OF CONTANTE JUSTITIE'S PRINCIPLE

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## ABSTRACT

*This study aims to optimize the refund of taxes payable and tax penalties payable at the prosecution stage in court through the Plea Bargaining System mechanism in order to realize the application of the contante justitie principle. Based on observations at the investigation level, there are several suspects (taxpayers) who admit their mistakes and their assets have been confiscated at the investigation stage whose nominal value is the same as the tax payable and the tax penalty payable and is used as a guarantee for payment of the fine at the prosecution stage in court, but in the implementation of the prosecution stage However, the defendant is still being prosecuted and decided by the court to serve imprisonment and a fine which should have been terminated on the grounds that it is in the interest of state revenue to realize the principle of contante justitie. This type of research is empirical legal research or non-doctrinal legal research. The results of the study show that firstly, the state obtains money from paying taxes owed and tax penalties payable without going through a litigation mechanism, secondly, the loss of the obligations of public prosecutors and judges to prove the guilt of the accused (taxpayers), thirdly, saving the trial budget and fourth, the realization of case handling, which is fast, simple and low cost.*

**Keywords:** Tax Payable, Tax Penalty Payable, Plea Bargaining System, Contante.

## INTRODUCTION

Indonesia is catching up with infrastructure development in recent years. Infrastructure projects in various parts of the country are being built massively, from toll roads, bridges, dams, to power plants. Indonesia's development progress in all fields is growing very fast. That in order to achieve the development targets that have been planned by the government, Indonesia as a developing country really needs large enough funds to be managed by the Government effectively and efficiently. One of the sources of obtaining funds for national development is through the taxation sector or in other words, taxes are a source of state revenue that is used to finance common interests and the development of people's welfare (Ali-Elhaj, 2021).

Taxes are collected from Indonesian citizens and become one of the obligations that can be forced to collect. Indonesia's national development is basically carried out by the community together with the government. So that the role of the community in financing development must continue to be grown by increasing public awareness about their obligation to pay taxes. The development of taxation contributed to the evolution of the state. Personal and corporate income taxes (PPh OP) emerged in the 19th century. Based on the provisions of Article 23A of the 1945 Constitution, it is stated that taxes and other levies of a coercive nature for the purposes of the state are regulated by law.

This is in line with the definition of tax based on Article 1 Number (1) of the Law of the Republic of Indonesia Number 6 of 1983 as amended several times, most recently by the Law of

the Republic of Indonesia Number 16 of 2009 concerning General Provisions and Tax Procedures (UU KUP). that: "Taxes are mandatory contributions to the state owed by individuals or entities that are coercive in nature based on the law without receiving direct compensation and are used for the purposes of the state for the greatest prosperity of the people" (Jaya, 2012). Tax Law is also called Fiscal Law which is the whole of the regulations that include the government's authority to take a person's wealth and hand it back to the community through the state treasury, so that it is part of public law that regulates legal relations between the state and people or Legal entities that are obliged to pay taxes hereinafter are often referred to as Taxpayers.

Based on these provisions, in order to realize the prosperity of the people, development is needed in all aspects of national life which is sourced from the State Revenue and Expenditure Budget (APBN) which is sourced from tax payments by individual taxpayers, legal entities and third parties which are the main sources of state financial revenue (Kwee & Kwee, 2020). by approximately 80% (eighty percent). Article 1 point 2 of the KUP Law stipulates: "Taxpayers are individuals or entities, including taxpayers, tax cutters, and tax collectors, who have tax rights and obligations in accordance with the provisions of tax laws and regulations".

Taxes are the main source of state revenue used to finance government spending and development. This is stated in the APBN where tax revenue is the largest domestic revenue. Recognizing the large role of taxes in driving the wheels of government and development, since 1983 efforts have been made in the form of continuous reform of the national taxation system. Based on the provisions of Article 1 point 2 of Law Number 6 of 2021 concerning the State Revenue and Expenditure Budget for Fiscal Year 2022, it is stated: "State Revenue is the right of the Central Government which is recognized as an addition to net assets consisting of Tax Revenue, Non-Tax State Revenue, and Grant Revenue". Meanwhile, what is meant by tax receipts according to the provisions of Article 1 point 3 of Law Number 6 of 2021 concerning the State Revenue and Expenditure Budget for Fiscal Year 2022 are: "All state revenues consisting of Domestic Tax Revenue and International Trade Tax Revenue".

Thus, the function of the state is focused on 4 (four) sectors, namely first, protection of the entire nation and the homeland, second, protection of health, employment opportunities, compensation for the poor, and social welfare, third, compensation for the elderly, disabled, neglected people, and minorities and fourth, the intellectual life of the nation and the prosperity of the people. Therefore, to collect funds from the tax revenue sector, the government makes a tax system with the principle of self-assessment (SA) into the provisions of the Taxation Law as referred to in Article 12 Paragraph (1) of the KUP Law which reads: "Every Taxpayer is obliged to pay taxes. owed in accordance with the provisions of the tax laws and regulations, without relying on the existence of a tax assessment letter".

The activity of calculating the amount of tax owed by each taxpayer in the tax system is called assessment. The purpose of the taxation system is primarily to collect revenues to finance the provision of public goods and services as well as development for the welfare of the people. The self-assessment principle is the principle of fulfilling tax obligations which requires taxpayers to calculate, calculate, pay themselves, and report the tax payable in accordance with the provisions of tax laws and regulations, so that the determination of the amount of tax payable is entrusted to the taxpayer himself through a tax return (SPT) document which is delivered either in person, online or by post. According to the explanation of the KUP Law, self-assessment is a feature and style of the tax collection system.

Self-Assessment is a taxation system that gives taxpayers the trust and responsibility to take the initiative to register themselves to get a TIN and calculate, calculate, pay and self-report the tax payable. The tax collection system means that the determination of the amount of tax owed is entrusted to the taxpayer himself and reports regularly the amount of tax owed and paid according to regulations. Because it has been entrusted to the taxpayer, the amount of tax payable does not depend on the existence of a tax assessment. The issuance of a tax assessment

letter is only limited to certain taxpayers caused by incorrect filling of the tax return or because the tax office finds fiscal data that is not reported by the taxpayer. To ensure the compliance of taxpayers and the correctness of the reporting of Annual Tax Returns (SPT), prior to the enforcement of criminal law, the Directorate General of Taxes must first carry out administrative law enforcement stages in accordance with the *ultimum remedium* principles contained in the provisions of Article 8 Paragraph (1) of the Law. KUP which explains: "Taxpayers of their own volition can correct the tax return that has been submitted by submitting a written statement, provided that the Director General of Taxes has not taken any audit action" (Murdi, Novianto & Purwadi, 2018). If there is an administrative sanction dispute, it will be resolved through the tax court based on Law Number 14 of 2002 concerning the Tax Court which is the discretion of the Directorate General of Taxes (DGT). The tax court is only limited to handling disputes in the tax sector, both in relation to appeals and lawsuits filed by taxpayers or tax bearers against the tax authorities (tax officials).

In general, tax sanctions are divided into 2 (two) namely administrative sanctions and criminal sanctions. Administrative sanctions in the form of fines, interest and increases are imposed according to the level of violations or mistakes made by the parties concerned. Meanwhile, criminal sanctions in the form of fines, imprisonment and imprisonment are imposed according to the violations and crimes committed by the parties concerned. Enforcement of administrative law is an appeal as an early warning, then there will be calls, guidance, supervision and notification of payment of tax money, to stricter action with supervision and application of administrative sanctions. In this case, guidance and supervision are preventive measures to enforce compliance, while the application of criminal sanctions is a repressive measure to enforce compliance (last resort). If the Taxpayer has not paid the administrative sanctions in the form of fines, interest and tax increases as stated in the Tax Collection Letter (STP) and the tax principal debt stated in the Underpaid Tax Assessment Letter (SKPKB) and the Additional Underpaid Tax Assessment Letter (SKPKBT), enforcement the next law is pursued through criminal law enforcement which is the last resort to force taxpayers to pay taxes owed and tax penalties payable (fines, interest and increases).

The purpose of tax law enforcement is the restoration (restoration) of losses in state revenues that prioritizes the *ultimum remedium* principle approach. Therefore, in tax cases, a Restorative Justice theory approach can be applied in tax law enforcement in Indonesia, through tax collection efforts, tax audits, and investigations of criminal acts in the taxation sector. The main goal of restorative justice is restoration (restoration) while the second goal is redress. According to Hatta Ali, the aim of the restorative justice approach is to reach a consensus on the best solution to resolve the conflict by trying to return the situation to its original condition, the judicial process is not confined to rigid and procedural legal mechanisms.

Collection of tax payables and tax penalties payable through the Plea Bargaining System instrument gains advantages in terms of its application, namely first, the state immediately receives money from the tax payment sector and fines without going through a litigation mechanism in court which of course takes quite a long time, second, the reduced burden of the case. must be proven by the public prosecutor, third, save costs for trying tax crime cases and fourth, save the defendant's living costs while in detention and reduce over capacity in the State Detention Center (RUTAN) or Correctional Institution (LAPAS). Thus, it is very necessary to reform the legal system of the tax criminal justice system, especially in terms of collecting taxes owed and tax penalties payable as well as stopping the prosecution of tax cases on the grounds that it is in the interest of state revenue that prioritizes the approach to the principle of opportunity and the principle of *ultimum remedium* by applying the Plea Bargaining System mechanism and theory. Restorative Justice.

Seeing this phenomenon, the author considers it important to raise legal issues, namely, first, whether the application of the Plea Bargaining System instrument at the prosecution stage in court is able to realize a refund of the tax payable and the tax penalty payable and secondly,

how is the implementation of the refund of the tax payable and the tax penalty payable using the Plea Bargaining instrument. The system can realize the principles of constant justice.

## RESEARCH METHOD

The type of research used in this research is empirical legal research or non-doctrinal legal research. Legal research is conducted to generate new arguments, theories or concepts as a recipe for solving the problems at hand. Legal research is a scientific activity based on certain methods, systematics, and thoughts that aim to study one or several certain legal phenomena by analyzing them. This research is included in the type of research that examines the application of the Plea Bargaining System instrument and the Restorative Justice theory approach at the stage of prosecuting tax cases in court as well as the application of the opportunity principle to stop prosecuting tax cases with reasons for the benefit of state revenues associated with deponeering actions in Article 35 letter c Law Number 16 of 2004 as has been changed to Law Number 11 of 2021 concerning the Indonesian Attorney General's Office. This research was conducted at the Directorate General of Prosecution of the Deputy Attorney General for Special Crimes at the Attorney General's Office and the Directorate General of Taxes at the Ministry of Finance of the Republic of Indonesia.

## DISCUSSION

### **Application of the Plea Bargaining System in Court Prosecutions in Indonesia to Realize Refunds of Taxes Payable and Taxes Due**

According to Rochmat Soemitro, taxes are people's contributions to the state treasury based on the law (which can be enforced) without receiving reciprocal services (contra-achievements) that can be directly shown and which are used to pay general expenses. From this definition, it can be concluded that taxes have the following elements: a. Contributions from the people to the state, that is, only the state has the right to collect taxes. The contribution is in the form of money (not goods), b. Based on the law, namely the tax levied based on or with the provisions of the law and its implementing rules, c. Without reciprocal services or contra-achievements from the state that can be directly appointed, namely in tax payments, the government cannot show the existence of individual contra-achievements, e. Used to finance state households, namely expenditures that are beneficial to the wider community.

In tax law, the emergence of tax debt is based on two different opinions. The first opinion states that tax debt arises at the time the tax law is enacted. That is, if a tax law is promulgated by the government, then at that time a tax debt arises as long as what is regulated in the law creates an obligation for a person to become tax payable. The second opinion states that the tax debt arises when the tax assessment letter is issued by the government cq. Directorate General of Taxes (Fiskus). This means that a person is only known to have a tax debt when the tax authorities issue a Tax Assessment Letter (SKP) in his name and the amount of tax owed.

According to Wirawan B. Ilyas and Richard Burton stated that: "Tax debts arise when the tax law is promulgated which means that a person materially has (known to have) tax debt with the tax law". Meanwhile, the issue of whether or not a Tax Assessment Letter is issued is only a formal matter. Even without the issuance of a tax assessment, as long as the law regulates the existence of a tax debt for a certain condition or event, which is commonly referred to as Tatbestand, which means that the tax law has materially regulated, the taxpayer already has a tax debt. In addition, according to the self-assessment system adopted in the current law, taxpayers are required to calculate and calculate the amount of tax payable themselves, which means there is no need for a tax assessment letter calculated by the tax authorities.

In general, tax debt disputes arise when the taxpayer does not agree with the tax debt due to the audit process. For example, against PT. Elok Permai carried out a tax audit and then issued an Underpaid Tax Assessment Letter (SKPKB) amounting to Rp. 15 billion. PT. Elok Permai then filed a legal objection through the Directorate General of Taxes (DGT) and his request was partially granted so that his tax debt became Rp 5 billion. The legal construction of the emergence of tax debt by using the mechanism regulated in the tax law is a reference that needs to be understood together. Thus, it can be concluded that there are differences in the calculations made by taxpayers and tax officials, it is reasonable to have differences as long as they are based on the document that is the basis for calculating tax debt. The philosophy of the problem of tax debt needs to be understood in the context of the tax calculation process which requires its own expertise based on daily documents (business transactions). Calculating the amount of tax debt certainly requires expertise in finance and accounting, including understanding the business processes of a type of business. If the tax employee miscalculates the tax, as long as it is not based on intentional elements, the error in calculating the tax deficiency can still be billed to the taxpayer by issuing an additional underpaid tax assessment letter (SKPKBT) as long as the tax debt has not expired in the tax assessment.

As for the types of taxes that can be imposed which can be classified into 3 (three) groups according to their nature, target/object and the collection agency, namely:

a. According to its Nature

The types of taxes according to their nature can be divided into 2 (two), namely first, direct taxes are taxes whose burden must be borne by the taxpayer himself and cannot be delegated to other people and imposed repeatedly at certain times, for example PPh and second, indirect taxes, namely taxes whose burdens can be delegated to other people and are only imposed on certain things or certain events, for example Value Added Tax.

b. According to the Target/Object

According to the target, the types of taxes can be divided into 2 (two), namely first, subjective taxes are types of taxes that are imposed by first paying attention to the personal circumstances of the taxpayer (the subject). After the condition of the subject is known, then the objective condition is considered according to the style of duty, whether it can be taxed or not, for example PPh and secondly, objective tax is a type of tax that is imposed by first paying attention to/looking at the object, in the form of a state of action or event that causes an obligation to pay. tax. After knowing the object, then looking for the subject who has a legal relationship with the known object, for example Value Added Tax (VAT).

c. According to the Collector's Office

According to the collecting agency, the types of taxes can be divided into 2 (two), namely the types of taxes levied by the central government and the types of taxes levied by local governments, which are often referred to as central taxes and regional taxes. Central tax is a type of tax collected by the central government which in its implementation is carried out by the Ministry of Finance cq. Directorate General of Taxation. The results from the central tax collection are collected and included as part of APBN revenues.

The type of central tax managed by the Ministry of Finance cq. The Directorate General of Taxes is Value Added Tax (PPh), Value Added Tax (PPN), Sales Tax on Luxury Goods (PPnBM), Land and Building Tax (PBB), Land and Building Rights Acquisition Duty (BPHTB) and Stamp Duty. Regional taxes are divided into taxes managed by the provinces and

districts/cities. The types of regional taxes managed by the province are Motor Vehicle Tax (PKB), Motor Vehicle Transfer Fee (BBNKB), Motor Vehicle Fuel Tax (PBBKB), Surface Water Tax (PAP) and Cigarette Tax (PR). Meanwhile, the management of regional taxes managed by regencies/cities is Hotel Tax, Restaurant Tax, Entertainment Tax, Advertising Tax, Street Lighting Tax, Non-Metal Mineral and Rock Tax, Parking Tax, Groundwater Tax, Swallow's Nest Tax, Land and Building Tax. Rural and Urban Areas and Fees for the Acquisition of Land and Building Rights. In addition to collecting local taxes, local governments will also collect levies, namely General Service Retribution, Business Service Retribution and Certain Permits in accordance with the provisions of Article 110 of Law Number 28 of 2009 concerning Regional Taxes and Regional Levies.

That every Taxpayer who has an obligation to pay taxes must immediately report the calculation and/or payment of taxes through a notification letter in accordance with the time limit set by the laws and regulations. According to the provisions of Article 1 point 11 of the KUP Law, Tax Returns (SPT) are: "A letter which is used by the Taxpayer to report the calculation and/or payment of taxes, tax objects and/or non-tax objects, and/or assets and liabilities in accordance with the provisions of the regulations. tax laws". Law enforcement for taxpayers who have not paid administrative sanctions in the form of fines, interest and tax increases and tax principal debt as stated in the Tax Assessment Letter (SKP) is the policy of the Directorate General of Taxes. The KUP Law authorizes the Director General of Taxes to conduct audits on taxpayers with the aim of testing taxpayer compliance in the past tax year.

In brief, the administrative law enforcement stages can be explained that before the criminal law enforcement stage is passed, the administrative law enforcement stages must first be carried out, among others through the Taxpayer submitting a Special Annual Tax Return (SPT) for individuals ending March 31 and for entities ending April 30 every year. Furthermore, the DGT will record and record the number of tax returns that are deposited so that they can find out the amount. For taxpayers who have not submitted their SPT, through the system, an Appeal Letter will be issued. After the issuance of the appeal letter, the DGT will immediately send it to the Taxpayer. This appeal letter is an early warning so that taxpayers immediately submit their income tax returns (PPH). If no response, there will be another warning. If the next warning is not responded to, there will be calls, coaching, supervision and notification of payment of tax money. If this last resort is not heeded, strict action will be taken, in the form of administrative sanctions. For individual or corporate taxpayers, the value of the late penalty will be determined by the DGT in accordance with the provisions of the applicable laws and regulations in the field of taxation.

Meanwhile, criminal law enforcement is applied if there is preliminary evidence of an alleged tax crime in the examination that provides clues that a tax crime is or has occurred, then the examination is followed up with the Preliminary Evidence Examination (Rikbuper). If there is initial evidence of a tax crime, the Rikbuper report and Minutes of Submission of the Study are sent to the Directorate of Intelligence and Investigation. If the Rikbuper report is received to be escalated to an investigation, an incident report is made to be sent to the Police and a General Investigation Order (Sprint Dik Umum) is made. After the investigators of the Directorate General of Taxes have examined witnesses, experts, letters and the results of the examination obtained 2 (two) valid evidence indicating the perpetrators of a tax crime, the investigator determines the suspect by issuing a Special Investigation Order (Special Sprindik).

If during the investigation process, the suspect pays the tax payable and the tax penalty payable, then at the request of the Minister of Finance of the Republic of Indonesia, the Attorney General of the Republic of Indonesia may stop the investigation of the criminal act on the grounds that it is in the interest of state revenue as regulated in the provisions of Article 44B of the KUP Law which explains as follows: a. In the interest of state revenues, at the request of the Minister of Finance, the Attorney General may stop the investigation of criminal acts in the taxation sector at the latest within 6 (six) months from the date of the request letter, b. (2)

Termination of the investigation of criminal acts in the field of taxation as referred to in paragraph (1) shall only be carried out after the Taxpayer has paid the tax that is not or underpaid or which should not be returned, plus an administrative sanction in the form of a fine of four times the amount of tax that is not or underpaid. or which should not be returned (Prabowo, 2014).

However, if the defendant does not pay the tax payable and the tax penalty is due, the case will be forwarded to the prosecution stage through the Prosecutor's Office. After the case was transferred and it turned out that from the results of the research it was found that there was a lack of formal and material requirements, the public prosecutor returned the case file to the investigators of the Directorate General of Taxes (DGT) through Polri investigators. Furthermore, the DGT investigator completes the conditions referred to and after the complete case file is sent back to the public prosecutor and if the results of the investigation by the public prosecutor state that the case file is complete then it is followed up with the submission of the suspect and evidence, then the public prosecutor delegates the case file along with the indictment to the court. . If according to the Chairman of the District Court that the case is the relative authority of the court, the Chairman of the Court shall appoint a panel of judges who will examine and hear the case. Then the presiding judge of the panel ordered the public prosecutor to summon witnesses and the defendant at a predetermined time and place.

During the first trial, the public prosecutor read out the indictment and the panel of judges asked the defendant if he understood the public prosecutor's indictment. If they understand, then proceed with the examination of the witness, but if they do not understand, the judge, the chairperson of the panel, orders the public prosecutor to provide an explanation of the material in the indictment to the defendant (Mareta, 2018). Furthermore, in order to speed up the process of handling tax cases and optimize the refund of taxes owed and tax penalties payable for the realization of the principle of fast, simple and low-cost justice (contante justitie principle), in the author's opinion, it is better to collect taxes owed and tax penalties payable which have resulted in losses. on state revenues, the public prosecutor can use the Plea Bargaining System mechanism which is a negotiation process in which the public prosecutor offers the defendant to admit his guilt (guilty plea) with his own conviction and awareness. In the negotiation process, in addition to the public prosecutor offering an admission of guilt, according to the author, the public prosecutor can offer to terminate the prosecution of tax cases in the interest of state revenues based on the principle of opportunity if the defendant immediately pays the tax payable and the tax penalty payable by depositing it through the state treasury so that justice and certainty The law is not only realized at the investigation stage but can be applied at the prosecution stage after the case has been transferred to the court.

In the opinion of Febby Mutiara Nelson that the criminal acts that can be negotiated in the Plea Bargaining System which focuses on returning state financial losses are mostly economic crimes, corruption crimes, money laundering crimes, crimes in the field of taxation, forestry, export crimes. and imports and banking crimes. Besides the type of crime, another most important factor to be used as a guide in determining a case to be examined using the Plea Bargaining System mechanism is the value of state financial losses caused by the crime, which is worth more than 1 billion. According to the author, to collect taxes owed and tax fines owed against defendants who have been delegated to the court can be reached through non-litigation by carrying out a criminal procedural law breakthrough where the public prosecutor applies the Plea Bargaining System method and the approach to the concept of Restorative Justice because tax criminal law enforcement is more oriented towards recovery (restoration) of losses in state revenues while the criminal policy (penal policy) is a last resort that adheres to the *ultimum remedium* principle.

The Public Prosecutor using the Plea Bargaining System method prioritizes conversation with the defendant (voice), neutrality (neutrality), trust (trustworthiness), and generates a hope to achieve a goal by respecting the rights of the accused (respect). In addition, the public

prosecutor has an obligation to think about whether actions to assist the defendant's sentence commutation are able to provide restoration of public services to the community with the ultimate goal of a fairness in the implementation of the negotiation process with the defendant. Romli Atmasasmita provides limitations on Plea Bargaining as follows: a. Plea Bargaining is essentially a negotiation between the public prosecutor and the accused or his defense; b. The main motivation for these negotiations is to speed up the process of handling criminal cases; c. The nature of the negotiation must be based on the willingness of the accused to admit his guilt and the willingness of the public prosecutor to threaten the punishment desired by the accused or his defense; d. The participation of judges as impartial referees in the said negotiations is not permitted.

Whereas in addition to the application of the Plea Bargaining System mentioned above, to return the tax payable and the tax penalty payable, the public prosecutor can perform Restorative Justice (RJ). The concept of the Restorative Justice theory approach in terms of billing taxes owed and tax penalties payable where the victim in a tax crime case is the state and an institution that has the authority to represent the state in terms of recovering or refunding losses on state income due to tax crimes is the Prosecutor's Office which is included in the family executive (government) in accordance with the provisions of Article 2 Paragraph (1) of Law Number 16 of 2004 as amended to Law Number 11 of 2021 concerning the Attorney General's Office of the Republic of Indonesia which states: "The Attorney General of the Republic of Indonesia, hereinafter referred to as the Attorney General's Office is a government institution that exercises state power in the field of prosecution and other authorities based on the law (Zhang, 2016).

Therefore, in the author's opinion, the application of the Plea Bargaining System method and the Restorative Justice Concept approach is able to optimize the return of taxes owed and tax penalties payable because the tax debt is immediately entered into the state treasury without going through a litigation mechanism in court which requires a long trial process. and furthermore the public prosecutor can stop prosecuting tax cases on the grounds that in the interest of state revenues the defendant does not get a stamp as a person who has been guilty or has been convicted in court so that this mechanism greatly stimulates the defendant to return the tax payable and the tax penalty payable which in the end will handle the tax case. This is not protracted because it applies the principles of fast, simple and low cost justice (contante justitie principle).

The mechanism for collecting taxes owed and tax penalties payable can be carried out by the public prosecutor against the defendant in tax cases using the Plea Bargaining System method (the public prosecutor negotiates with the defendant and legal counsel on the condition that the defendant admits his guilt and returns the loss to state income) while through the approach of Restorative Justice theory ( in this case the victim is a state that can be represented by the public prosecutor to collect state financial losses to taxpayers in order to recover state financial losses into the state treasury). If the defendant admits his actions and is willing to pay off the tax payable and the tax penalty payable by attaching evidence of the Tax Payment Letter (SSP) to the state treasury, the public prosecutor will take deponing legal action by stopping the prosecution of tax cases in the interest of state revenue based on the opportunity principle approach and the ultimum remedium principle (Sonny, 2009).

### **Implementation of Tax Payable Refunds and Tax Penalties Payable Using the Plea Bargaining System Instrument Can Realize the Contante Justitie Principles**

Tax collection which is a necessity in people's lives is one thing that is certain to happen. Therefore, according to Bruno Peeters as quoted by Wirawan B. Ilyas and Richard Burton, it is stated that all public interests cannot be fulfilled without taxes. Tax collection by the state through law is part of how to control individual behavior for the common interest (collectively) and is a method or policy of collecting funds for the common interest which is carried out fairly



for welfare. Tax philosophy has always stated how to seek tax collection by taking "the egg" and not "cut the chicken". This means that tax collection must be done by giving the chicken "vitamins" so that it continues to lay eggs, then take the "eggs" to be used. Another philosophy of taxation is often said to be an art of how to pluck a lot of goose feathers without the goose feeling pain when it is plucked. That is, tax collection is always pursued in a wise way even though it is difficult to do because taxes are never fun (Saputra & Luthviati, 2020).

Taxpayers who have been given the authority to calculate the amount of tax debt in accordance with the provisions of the tax laws and regulations as well as the principle of Self Assessment make tax payments using a Tax Payment Letter (SSP) at a Bank appointed by the Minister of Finance or the Post Office. According to the provisions of Article 1 point 14 of the KUP Law, it states that: "Tax Payment Letter is proof of payment or tax deposit that has been made using a form or has been made in other ways to the state treasury through a place of payment appointed by the Minister of Finance". The function of the Tax Payment Letter is as proof of tax payment if it has been ratified by the authorized office of the recipient of the payment or if it has been validated (Sarwirini, 2014). Therefore, to test taxpayer compliance, the tax officer (Fiskus) conducts an audit which according to the provisions of Article 1 point 25 of the KUP Law explains that: "An audit is a series of activities to collect and process data, information, and/or evidence carried out objectively and professionally based on an audit standard to test compliance with the fulfillment of tax obligations and/or for other purposes in the context of implementing the provisions of the tax laws and regulations".

If, from the results of the tax audit, it is found that there is a lack of payment from the taxpayer, the tax office will issue an underpaid tax assessment letter (SKPKB) and an additional underpaid tax assessment letter (SKPKBT) while the taxpayer who has made an overpayment will issue an overpaid tax assessment letter (SKPLB) but if the tax paid by the taxpayer is in accordance with the tax provisions, the tax authorities will issue a Zero Tax Assessment Letter (SKPN). Therefore, to force taxpayers to pay administrative sanctions in the form of interest and or fines, the tax authorities issue a tax collection letter (STP). Then for taxpayers who have paid off the tax payable and the tax penalty payable at the stage of investigating a tax crime case, the payment of which is proven by the existence of a Tax Payment Letter (SSP) in accordance with the nominal value of the money stated in the Tax Assessment Letter (SKP) issued by the Fiskus then In accordance with the provisions of Article 44B of the KUP Law, the investigation of the case was stopped by the Attorney General of the Republic of Indonesia at the request of the Minister of Finance of the Republic of Indonesia on the grounds that it was in the interest of state revenue provided that the case had not been transferred to court (Saputra, et al., 2021).

If the case file has been transferred to the court, then to collect the tax payable and the tax penalty payable, the public prosecutor can use the Plea Bargaining System method which has been designed by the author as follows:

- a. After reading the indictment, the Public Prosecutor negotiated with the defendant and his legal advisor to find out that the defendant admitted and regretted his actions (Plea Bargaining System).
- b. If the defendant admits his guilt, the Public Prosecutor offers the defendant and the Legal Counsel to stop prosecuting the case on the grounds that it is in the interest of state revenue if the defendant pays the taxes and fines owed or the defendant entrusts assets to the Public Prosecutor whose value is equal to the tax and fines owed to be auctioned by the Public Prosecutor or Other actions the defendant is willing to take is that the assets confiscated in the investigation stage with a value equal to the taxes and fines payable are to be auctioned by the public prosecutor (Saputra, 2020).
- c. If the defendant carries out the requirements of point b above accompanied by proof of tax payment (Tax Payment Letter), then the Public Prosecutor submits a request to

terminate the prosecution of tax cases to the Attorney General of the Republic of Indonesia in stages through Kajari, Kajati and Jampidsus.

- d. If the Attorney General of the Republic of Indonesia agrees with the request for termination of prosecution of tax cases in the interest of state revenues, then Kajari issues a Letter of Decision on Termination of Prosecution of Tax Cases in the Interest of State Revenue (SKP4 DKPN) with a copy to the Minister of Finance of the Republic of Indonesia, Investigators, Judges, Defendants and Legal Advisors.

That the law has given the authority to the prosecutor's office to fill the legal void at the prosecution stage by creating a legal norm regarding the termination of the prosecution of tax cases in the interest of state revenues by exploring and upholding human values that live in society in accordance with the provisions of Article 8 Paragraph (4) Law Number 16 of 2004 as amended to Law Number 11 of 2021 concerning the Indonesian Prosecutor's Office which reads: "In carrying out their duties and authorities, prosecutors always act according to the law by taking into account religious norms, decency, decency, and must explore and uphold human values that live in society, and always maintain the honor and dignity of the profession". Therefore, to create a system of legal norms for stopping the prosecution of tax cases for reasons of state revenue, one can use the theoretical analysis knife of the workings of Lawrence M. Friedman, which explains that in essence the law is a system, so to understand it, it is necessary to use a systems approach. The system in a simple sense can be interpreted as an arrangement, the unity of the parts that depend on each other. Law as a system, Lawrence M. Friedman suggests the existence of components contained in the law. The legal system in Friedman's view consists of three components, namely the legal structure, legal substance and interacting legal culture (Nur, 2018).

The legal structure is the entire existing legal institutions and their apparatus, including the police and their police officers, the Attorney General's Office with their prosecutors, and the courts with their judges. Legal substance is the entire rule of law, legal norms, legal principles, both written and unwritten, including court decisions. Legal culture is opinions, beliefs (beliefs), habits, ways of thinking, and ways of acting both from law enforcers and from citizens about the law and various phenomena related to law.

Legal substance is a substantial part that determines whether or not the law can be implemented. Substance also means the product produced by people who are in the legal system that includes the decisions they make, or the new rules they make. Substance also includes living law, not just the rules contained in the law. The legal structure is referred to as a structural system that determines whether or not the law can be implemented. Legal culture is the human attitude towards the law and the legal system, values, thoughts, and expectations. Legal culture is closely related to public legal awareness (Pradityo, 2016). The higher the level of legal awareness of the community, a good legal culture will be created that can change people's mindsets about law. Both legal substance, legal structure, and legal culture are related to each other. So, the operation of the law is not only a mere function of legislation, but also the activities of the implementing bureaucracy. In the author's opinion, the authority to terminate the prosecution of tax cases in the interest of the state needs to be substantially regulated in the KUP Law, the Indonesian Prosecutor's Law or the Attorney General's Regulation which regulates the authority and mechanism for stopping prosecutions that prioritize the approach to the principle of opportunity, the principle of *ultimum remedium* and the principle of *contante justitie* (the principle of fast, simple and low-cost justice) in tax law enforcement (Traina, 2009).

That in addition to the changes in the legal substance mentioned above, it is necessary to change the legal structure, especially structural officials who carry out the authority to terminate the prosecution of tax cases in the interest of state revenues with the delegation of authority from the Attorney General of the Republic of Indonesia to prosecutors or public prosecutors who are handling tax cases throughout Indonesia so that can exercise the authority to terminate

the prosecution of tax cases in the interest of state revenues without any doubt in the application of the law as long as the defendant has paid off the tax payable and the tax penalty payable or the defendant has entrusted assets to the public prosecutor whose value is equal to the tax payable and the tax penalty payable to be auctioned and used as evidence. settlement of tax payable and tax penalty payable or other actions in the form of the defendant's willingness to agree that his assets that have been confiscated at the investigation stage can be auctioned off by the public prosecutor and used as evidence of payment of the tax payable and tax penalties payable.

If the substance and legal structure have been updated, the next step is the government together with law enforcement officials through the socialization of tax law, instilling legal awareness in the community to pay taxes honestly, on time for payment and reporting so that tax payments made by the community can be used to finance development. and all state expenditures for the interest and welfare of the Indonesian people. Thus, the termination of the prosecution of tax cases in the interest of state revenues can realize the principles of *contante justitie* as mandated by Article 2 Paragraph (4) of Law Number 48 of 2009 concerning Judicial Power which reads: "Judgments are carried out in a simple, fast and low cost". Then in the provisions of Article 4 Paragraph (2) of Law Number 48 of 2009 concerning Judicial Powers, it reaffirms that: "The court helps justice seekers and tries to overcome all obstacles and obstacles to achieve a simple, fast and low cost trial".

The principle of simple justice is that the examination and settlement of cases is carried out in an efficient and effective manner. The principle of low cost is the cost of the case that can be reached by the community. Meanwhile, what is meant by fast according to Andi Hamzah explains that the content of this principle which is essentially in the Criminal Procedure Code is expected not to include the use of speculative and ambiguous information about time, such as "immediately", "in the shortest possible time", but must use more definite terms, such as "one time twenty four hours", "seven days", and so on. That the purpose of the application of the *contante justitie* principle is especially for taxpayers who have paid the tax payable and the tax penalty payable at the stage of prosecuting tax cases in court is so that state money is immediately executed or realized into the state treasury without going through a formal judicial process in the Court so that the money can be used as soon as possible for the benefit of financing the state and society

## CONCLUSION

The application of the Plea Bargaining System method and the approach of the Restorative Justice concept is able to optimize the return of taxes payable and tax penalties payable because the tax debt is immediately entered into the state treasury without going through a litigation mechanism in court which requires a long trial process and the public prosecutor can stop prosecuting tax cases on the grounds that in the interest of state revenue which resulted in the defendant not getting a stamp as a person who had been guilty or convicted in court so that this mechanism greatly stimulated the defendant to return the tax payable and the tax penalty payable which in the end the handling of the tax case did not drag on because it applied the principles of the principle of fast, simple and low-cost justice (*contante justitie* principle). The public prosecutor can use the Plea Bargaining System method to return the tax payable and the tax penalty payable with the following design model: a. After reading the indictment, the Public Prosecutor negotiates with the defendant and his legal advisor to find out that the defendant admits and regrets his actions (Plea Bargaining System), b. If the defendant admits his guilt, the Public Prosecutor offers the defendant and the Legal Counsel to stop prosecuting the case on the grounds that it is in the interest of state revenue if the defendant pays the taxes and fines owed or the defendant entrusts assets to the Public Prosecutor whose value is equal to the tax and fines owed to be auctioned by the Public Prosecutor or other actions the defendant is willing to put the

assets confiscated at the investigation stage whose value is equal to the tax and fine payable to be auctioned off by the public prosecutor, c. If the defendant carries out the requirements of point b above accompanied by proof of tax payment (Tax Payment Letter), then the Public Prosecutor submits a request to terminate the prosecution of tax cases to the Attorney General of the Republic of Indonesia in stages through Kajari, Kajati and Jampidsus, d. If the Attorney General of the Republic of Indonesia agrees with the request for termination of prosecution in the interest of state revenues, then Kajari issues a Letter of Determination on the Termination of Prosecution of Tax Cases for the Interest of State Revenue (SKP4 DKPN) with a copy to the Minister of Finance of the Republic of Indonesia, Investigators, Judges, Defendants and Legal Advisors.

## REFERENCES

- Ali-Elhaj, T.M. (2021). Patient negligence in healthcare systems: Accountability model formulation. *Health Policy Open*, 2.
- Jaya, P.H.I. (2012). The effectiveness of prisons in solving social problems. *Journal of Accounts*, 9(1).
- Kwee, R.B., & Kwee, T.C. (2020). Medical disciplinary jurisprudence in alleged malpractice in radiology: 10-year Dutch experience. *Eur Radiol*, 30(6).
- Murdi, P.B., Novianto, W.T., & Purwadi, H. (2018). The application of the res ipsa loquitur doctrine in the settlement of medical malpractice cases (Analysis of Judges' Considerations in Medical Malpractice Cases). *Journal of Law and Economic Development*, 6(2).
- Mareta, J. (2018). Implementation of restorative justice through fulfillment of restitutions on child criminal victims. *Indonesian Legislation Journal*, 15(4).
- Nur, I.T. (2018). Establishing the formal legal basis as a tool of synchronization and harmonization of legislation regulations. *Yuriska: Legal Scientific Journal*, 10(2).
- Prabowo, H.Y. (2014). To be corrupt or not to be corrupt understanding the behavioral side of corruption in Indonesia. *Journal of Money Laundering Control*, 17(3).
- Pradityo, R. (2016). Restorative justice in the child criminal system. *Journal of Law and Justice*, 5(3).
- Saputra, R. (2020). Development of Creative industries as regional leaders in National Tourism efforts based on geographical indications. *Journal Management*, 8(2).
- Sarwirini. (2014). Implementation of restorative justice in enforcement of tax law, *Yuridika*, 29(3).
- Sonny, B.B. (2009). An introduction to medical malpractice in the United States. *Clin Orthop Relat Res*, 467(2).
- Saputra, R., Ardi, M.K., Pujiyono, P., & Firdaus, S.U. (2021). Reform regulation of novum in criminal judges in an effort to provide legal certainty. *Journal of Indonesian Legal Studies*, 6(2).
- Saputra, R., Luthviati, R.D. (2020). Institutionalization of the approval principle of majority creditors for bankruptcy decisions in bankruptcy act reform efforts. *Journal of morality and legal culture*, 1(2).
- Traina, F. (2009). Medical malpractice: The experience in Italy. *Clin Orthop Relat Res*, 467(2).
- Zhang, W. (2016). The evolution of the law of torts in china: the growth of a liability system. In Y. Chang, W. Shen, & W. Wang (Eds.), *Private Law in China and Taiwan: Legal and Economic Analyses*, 126-155. Cambridge: Cambridge University Press.

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