**Pre-Trial as a Legal Protection for Suspects in Tax Crimes**

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Abstract

Based on Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (hereinafter abbreviated as the 1945 Constitution of the Republic of Indonesia) it is stated that: "The State of Indonesia is a state of law". This means that the Republic of Indonesia is a democratic legal state based on Pancasila and the 1945 Constitution of the Republic of Indonesia, upholds human rights and guarantees that all citizens have the same position in law and government with no exceptions. Furthermore, Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that: "Everyone has the right to recognition, guarantees, protection and fair legal certainty and equal treatment before the law".

Bearing in mind that for the sake of examining cases, it is necessary to reduce the suspect's human rights, but how should always be based on the provisions stipulated in the law, in the interest of supervision of the protection of the rights of the suspect/defendant an institution called Pre trial.

Meanwhile, in tax crimes, in addition to using the Criminal Procedure Code as a general guideline, it also has its own formal criminal law rules contained in Law no. 6 of 1983 concerning General Provisions and Tax Procedures, which has been amended several times, most recently by Law no. 7 of 2021 (hereinafter abbreviated as UU KUP),

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Introduction

Based on Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (hereinafter abbreviated as the 1945 Constitution of the Republic of Indonesia) it is stated that: "The State of Indonesia is a state of law". This means that the Republic of Indonesia is a democratic legal state based on Pancasila and the 1945 Constitution of the Republic of Indonesia, upholds human rights and guarantees that all citizens have the same position in law and government with no exceptions. Furthermore, Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that: "Everyone has the right to recognition, guarantees, protection and fair legal certainty and equal treatment before the law".

As the embodiment of a democratic rule of law, on December 31, 1981, Law Number 8 of 1981 concerning the Criminal Procedure Code (hereinafter abbreviated as KUHAP) was enacted, for the first time the Indonesian people had a law regulating the Criminal Procedure Code which was entirely the work of the Indonesian people themselves. .KUHAP was formed in about 2 (two) years as a masterpiece, in which it regulates all stages or processes of criminal case examination, starting from the level of investigation carried out by the police of the Republic of Indonesia, the level of prosecution carried out by the Prosecutor's Office, to the level of examination and investigation. court decisions by district court judges, even examination at the level of appeal and cassation

In addition to protecting the rights of suspects and defendants above, the Criminal Procedure Code introduces a new institution or institution called pretrial. The presence of pretrial institutions is a new chapter in the context of creating and realizing a better, dignified, transparent and accountable criminal justice system.

The philosophical considerations for the establishment of a pretrial institution in Indonesia as confirmed in the Guidelines for the Implementation of the Criminal Procedure Code are as follows:

Bearing in mind that for the sake of examining cases, it is necessary to reduce the suspect's human rights, but how should always be based on the provisions stipulated in the law, in the interest of supervision of the protection of the rights of the suspect/defendant an institution called Pre trial.

Through the Decision of the Constitutional Court (MK) Number 21/PUU-XII/2014, there is an expansion of the object of pretrial, in addition to the validity of arrests, detentions, termination of investigations, and termination of prosecutions, including determination of suspects, searches, confiscations, and examination of letters. Through this decision, the Constitutional Court has expanded the objects of pretrial including: "determination of suspects, searches, and confiscations". The Constitutional Court based on its legal considerations on page 104, namely: “That when the Criminal Procedure Code was enacted in 1981, the determination of suspects had not yet become a crucial and problematic issue in the lives of Indonesian people. Then the forced effort at that time was conventionally interpreted as being limited to arrest, detention, investigation, and prosecution. However, nowadays, the form of coercion has undergone various developments or modifications, one of which is the 'stipulation of a suspect by investigators' carried out by the state in the form of labeling or status of a suspect to a person without a clear time limit, so that the person is forced to do so. by the state to accept the status of a suspect without the availability of an opportunity for him to take legal efforts to test the legality and purity of the purpose of determining the suspect".

Meanwhile, in tax crimes, in addition to using the Criminal Procedure Code as a general guideline, it also has its own formal criminal law rules contained in Law no. 6 of 1983 concerning General Provisions and Tax Procedures, which has been amended several times, most recently by Law no. 7 of 2021 (hereinafter abbreviated as UU KUP), Regulation of the Minister of Finance R.I. and Circular Letter of the Director General of Taxes. Currently there are pretrial cases related to tax crimes filed by Taxpayers (WP) against Civil Servant Investigators (PPNS) of the Directorate General of Taxes (DGT). PPNS DGT has the authority to handle cases of alleged criminal acts in the taxation sector based on Article 44 paragraph (1) of the KUP Law. Due to the existence of a pretrial lawsuit on the investigation process carried out by the PPNS of the Directorate General of Taxes (DGT) resulting in the case rolling in the District Court to test the validity of the determination of the suspect, arrest or detention, confiscation and searches carried out by PPNS within the DGT environment.

However, the object of pretrial which is often submitted by the Taxpayer regarding whether or not the determination of the suspect by the Director General of Taxes is valid often creates differences of opinion. Because there are different interpretations in the process of investigation and investigation as regulated in the Criminal Procedure Code with and as regulated in the KUP Law and the Regulation of the Minister of Finance of the Republic of Indonesia. The KUP Law and the Regulation of the Minister of Finance of the Republic of Indonesia as lex specialist have several formal criminal law norms in the field of taxation that are different from the norms regulated in the Criminal Procedure Code as lex generalis in formal criminal law. This difference in the regulation of formal criminal law norms gives rise to various views between taxpayers and the DGT, among others regarding the examination of preliminary evidence as the basis for determining suspects in tax crimes, so that this leads to a pretrial lawsuit in the District Court. When cases of differing interpretations are brought to the pretrial institution, the single judge who examines this case often has different opinions in making decisions with other judges with the same object of the case, namely the determination of the suspect.

Thus, juridically, the arrangements regarding preliminary evidence or sufficient preliminary evidence as regulated in the KUP Law as the basis for determining suspects in tax crimes and the definition of sufficient preliminary evidence in the Criminal Procedure Code are different from one another, so it can be said that there is a conflict of norms regarding the initial evidence or sufficient preliminary evidence between those stipulated in the KUP Law and the Criminal Procedure Code.

Based on the description above, keeping in mind the philosophical, theoretical, sociological and juridical problems, it is considered important and strategic to submit a dissertation research entitled "Pretrial as a Means of Legal Protection for Suspects in Tax Crimes".

Research Methods

This research uses normative juridical. (Suratman and Dillah 2015)

Results and Discussion

**The Scope of Tax Crimes**

Acts which are stated by the rules of criminal law as called "criminal acts" are also referred to by people as "delicts". According to its form or nature, this criminal act is an act that is against the law. This act is also detrimental to the community, in the sense that it is contrary to or hinders the implementation of the social order that is considered good and fair. It can also be said that a criminal act is an antisocial act (Salim 1988).

**Legal Subjects of Tax Crimes**

According to Riduan Syahrani (Nahak 2014), legal subjects are supporters of human rights and obligations, namely humans and legal entities. Those who can be held legally responsible are called "legal subjects", which in Jimly Asshidiqie's opinion, are every bearer or bearer of rights and obligations in legal relationships. Legal subjects can be individuals (natuurlijk persoon or menselijk persoon), and not people (Recht Persoon) (Nahak 2014).

**Law Enforcement in the Taxation Sector**

An act in carrying out tax obligations can be followed up with law enforcement. Law enforcement in the taxation system in Indonesia is divided into administrative law enforcement and criminal law enforcement. For example, a taxpayer submits an SPT but the contents are incorrect or incomplete. Efforts to enforce administrative law that can be carried out by the DGT are to conduct inspections and issue SKPKB as regulated in Article 13 paragraph (1) of Law no. 6 of 1983 concerning General Provisions and Tax Procedures as newer with Law No. 7 of 2021 concerning Harmonization of Tax Regulations (“KUP Law”). Meanwhile, criminal efforts for incorrect SPT submissions can be carried out with fines and imprisonment as regulated in Article 38 of the KUP Law.

The law enforcement system in taxation in Indonesia adheres to the concept of criminal law as the ultimum remedium. This means that criminal law is the last resort in law enforcement, if other law enforcement is no longer functioning. In accordance with the concept of ultimum remedium, tax law enforcement in Indonesia prioritizes administrative law enforcement. Criminal law efforts can only be carried out when administrative efforts no longer provide a way out in solving problems.

**Pre-Trial Decisions Related to the Validity Test of the Determination of Suspects in Tax Crimes**

Etymologically (the science of the origin of words), pretrial is a combination or combination of two words, namely Pre and Judiciary. According to the Indonesian Dictionary, W.J.S Poerwadarminta explained, that Pre means the introduction or before, while the judiciary is everything about court cases (Poerwadarminta 1976). Juridically the definition of pretrial is explained in Article 1 point 10 of the Criminal Procedure Code which confirms that pretrial is the authority of the District Court to examine and decide: (1) whether or not an arrest or detention is legal; (2) whether or not the termination of the investigation or the termination of the prosecution is legal; (3) a request for compensation or rehabilitation by the suspect or his family or other parties or their proxies whose cases have not been brought to court.

In practice, the preliminary evidence examination which ends with the determination of the suspect and the taxpayer file a challenge, by submitting a pretrial application for the following reasons:

1. Examination of preliminary evidence is considered not an investigation, so it is considered that an investigation is carried out without being preceded by an investigation. This can be known through the decision of the pretrial case number 15/Pid.Pra/2018/PN.Mnd,. Reason for Application: The determination of the suspect is formally flawed because an investigation was not preceded.
2. The Preliminary Evidence Examination is not preceded by the Compliance Testing Examination. The determination of the suspect is invalid because the preliminary evidence examination was not preceded by the actions of the Compliance Testing Examination. This can be seen from the verdict of the pretrial case number 19/Pid.Pra/2018/PN.DPS. Reason for the Application: the determination as a suspect against the Petitioner is invalid because the preliminary evidence examination was not preceded by an examination of the taxpayer.
3. Article 13 Paragraph (4) of the Tax Assessment Expiration eliminates the authority of the DGT to conduct preliminary evidence examinations. This is known from the verdict of the Pretrial Case number 117/PID.PRAP/2018/PN.JKT.SEL., The reason for the application to determine the status of a suspect is invalid because it is based on a Preliminary Evidence Examination Order (SP2BP) which has expired because it has passed 5 (five) years. five) years from the applicant's tax obligations.
4. Searching and Confiscation of Evidence at the time of Preliminary Evidence Examination without the permission of the District Court. This is known from the verdict of the Pretrial Case Number: 03/PRA/PID/2014/PN.JBI Reason for the Application: when examining the initial evidence, the Respondent dismantled the employee desk drawers, cupboards and document storage cartons in the Warehouse. The Petitioner is of the opinion that the Respondent has conducted a search without heeding the proper methods regulated in the Criminal Procedure Code, concerning searches of Articles 32, 33 and 34 of the Criminal Procedure Code. The borrowing of document evidence from the Applicant by making a Document Loan Receipt which is carried out at the preliminary evidence examination stage according to the applicant is confiscation.
5. The period of completion of the initial proof of 12 months, the extension must be notified to the Taxpayer (WP). This can be seen from the verdict in the pretrial case number 170/Pid.Prap/2018/PN.Jkt.Sel. Reason for the Application: That the Petitioner has never received notification of the extension of the Preliminary Evidence Examination Order Number PRIN.BP-Q/WPJ.21/2016 dated 15 June 2016. So that on 7 August 2017, the Preliminary Evidence Examination has expired, is invalid and becomes invalid. .

**Pre-Trial as a Means of Legal Protection for Suspects in the Perspective of the Theory of Rule of Law**

The concept of the rule of law in Indonesia is the ideal of the Indonesian nation and has also been regulated in every constitution and constitution, but the concept of the rule of law itself is not native to the Indonesian nation. The concept of the rule of law is an imported product or a building imposed from outside (imposed from outside) which was adopted and transplanted through the Dutch colonial concordance politics (Rahardjo, 2009: vii). Although the concept of the rule of law in Indonesia is adoption and transplantation from other countries, the concept of the rule of law in Indonesia is different from the concept of the rule of law of other nations. The Indonesian legal state was born not as a reaction from liberals to absolute government, but because of the desire of the Indonesian people to build a better life for the state and society in order to achieve the goals that have been set, according to agreed methods (Aramunadi and Sunarto, 1990: 106). ). The Indonesian nation in establishing its legal state is based on the legal ideals (rechtsidee) of Pancasila. According to Mochtar Kusumaatmadja, the legal objectives based on Pancasila are:

To provide protection to humans, namely to protect humans passively (negatively) by preventing arbitrary actions, and actively (positively) by creating social conditions that take place fairly so that fairly every human being gets broad and equal opportunities to develop all of his human potential. in full. (Sidharta, 2000:190).

Pretrial as an integral part of the Criminal Procedure Code has the same purpose as the establishment of the Criminal Procedure Code. The objective of the Pretrial is to carry out horizontal supervision of the coercive measures carried out by investigators and public prosecutors against suspects/defendant so that these actions do not conflict with the provisions of the law and the law. In this case, the purpose of this Pretrial Institution is to control or supervise the course of criminal procedural law in order to protect the rights of suspects. The control is carried out horizontally (Harahap, 2012: 4), namely control between investigators, mutual public prosecutors and suspects, their families or third parties. The Pretrial Institution was originally intended as a legal tool that could be used to file claims either by suspects, victims, investigators, public prosecutors or interested third parties. In essence, the authority of the Pretrial Institution is "locked" for five reasons, namely: whether or not the coercive effort is legal, whether or not it is legal to terminate an investigation or terminate a prosecution, examine claims for compensation (in the form of wrongful arrest, detention, search and confiscation), examine requests for rehabilitation, and whether or not the confiscation action is legal (Harahap, 2012:5).

Pretrial As a Means of Legal Protection for Suspects in the Perspective of Criminal Justice System Theory. The term criminal justice system has now become a term that indicates a working mechanism in crime prevention using a basic system approach (Atmasasmita 2011). According to Remington and Ohlin, "criminal justice system" can be interpreted as the use of a systems approach to the administrative mechanism of criminal justice, and criminal justice as a system is the result of the interaction between laws and regulations, administrative practices and social attitudes or behaviour. The understanding of the system itself implies an interaction process that is prepared rationally and in an efficient manner to provide certain results with all its limitations” (Nugroho 2011).

Pretrial As a Means of Legal Protection for Suspects in the Perspective of Legal Protection Theory As stated in the Background of the Problem, that the philosophical considerations for the formation of a pretrial institution in Indonesia as confirmed in the Guidelines for the Implementation of the Criminal Procedure Code are as follows:

Bearing in mind that for the sake of examining cases, it is necessary to reduce the suspect's human rights, but how should always be based on the provisions stipulated in the law, for the sake of supervision of the protection of the rights of the suspect/defendant an institution called Pretrial.

Furthermore, according to Abdul Hakim Garuda Nusantara, pretrial institutions have the following functions:

Pre-trial institutions are not only intended to protect the human rights of citizens, but also to checks and balances (mutual control) between fellow state apparatus. So that abuse of power or negligence can be avoided which can actually hinder the criminal justice process as outlined by the law. (Nusantara 1991)

The opinion of Abdul Hakim Garuda Nusantara above illustrates the dual function of the pretrial institution, namely the first is to provide protection for the rights of the suspect/defendant, the second as an instrument to control each other (checks and balances) among fellow law enforcement officers; police and prosecutors, so that a clean, quality, and responsible criminal justice process can be realized.

Furthermore, regarding the function of the pretrial institution, S. Tanusubroto asserted: With the birth of the pretrial institution, the suspect is protected in the preliminary examination of the actions of the police and/or the prosecutor's office that violate the law and harm the suspect. In addition, pretrial as a new institution functions as a control tool for investigators against abuse of authority given to them. (Tanusubroto 1983).

Conclusion

1. Legislative Ratio of Preliminary Evidence Examination as the basis for determining suspects in tax crimes that are jumpy, because Preliminary Evidence Examination according to the Elucidation of Article 60 paragraph (2) PP No. 74 of 2011 is still in the investigation stage, so it is not intended to find or determine the suspect. However, based on several pretrial decisions of the Sidoarjo District Court Number 5/Pid.Pra/2017/PN.Sda. jo Decision of the Sidoarjo District Court No. 1/Pid.Pre/2018/PN.Sda, Jo. Sidoarjo District Court Decision No. 5/Pid.Pra/2019/PN.Sda, the re-stipulation of the status of a suspect in a tax crime is given with evidence that is still old, namely evidence found during the Preliminary Evidence Examination stage. This is contrary to the mandate of the Constitutional Court's decision Number 21/PUU-XII/2014, namely the condition for determining a suspect is that at least 2 (two) valid evidences have been found in accordance with Article 184 of the Criminal Procedure Code and have examined prospective suspects and carried out at the stage of the investigation process.
2. Pre-trial can be used as a means of legal protection for suspects in tax crimes, because it is an institution authorized to test the validity of acts of coercion carried out by investigators, namely arrests, detentions, searches, confiscations, examination of bodies or documents, including the determination of suspects. in a tax crime that is detrimental to the suspect before the main case is tried. In addition, pretrial functions as an instrument or means of control (checks and balances) among fellow law enforcement officers, namely investigators and public prosecutors, courts and third parties with interests (suspects), so that a clean, quality, and responsible criminal justice process can be realized

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