

Legal Certainty of Plea Bargaining In Addressing Tax Crimes In Indonesia

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Abstract

Tax crimes are still detrimental to the state, even though there are several prevailing laws in plea bargaining in Indonesia. It is necessary to address tax crimes through the ideal concept of tax certainty of plea bargaining. This study uses legal doctrine method which is almost value-laden, where the value used in producing the ideal plea bargaining legal concept is legal certainty. It is necessary to reform plea bargaining concept in the field of tax, which is in line with Article 23A of the 1945 Indonesian Constitution and Article 1 paragraph (1) of the Indonesian Criminal Code which interpret the legality principle as the underlying principle that the *lex scripta*, *lex stricta*, and *lex certa* must be fulfilled. The concept of tax certainty refers to other suspects (such as representatives, attorneys, employees, or other parties who participated in committing or helping to commit criminal acts in the field of taxation) if the main suspect has paid off the loss of state revenue, taxpayers who carry out plea bargaining (by not repeating tax crimes and are willing to correct their tax returns that have not yet expired for prosecution), and the responsibility of the beneficiaries.

Keywords: legal certainty, tax crime, plea bargaining

Introduction

The autonomous legal doctrine, which presupposes the law as an independent institution with an objective, impartial, and genuinely autonomous system of rules and procedures, becomes a law that harms or benefits certain parties, thereby providing space for the status quo and marginalizing social justice (Tanya *et al.*, 2010). One of the areas of law that is affected by autonomous law is tax law, as so far, the calculation of accrued taxes according to the Fiskus (employees of the Directorate General of Taxes) is based on evidence as confirmed in Article 12 paragraph (3) and Elucidation of Article 29 Paragraph 3 of the Law. - Law Number 6 of 1983 concerning General Provisions and Tax Procedures as amended several times, most recently by Law Number 7 of 2021 concerning Harmonization of Tax Regulations (hereinafter referred to as the KUP Law) as a consequence of implementing the self-assessment system in tax collection in Indonesia (Sulistomo, 2022).

One of the facts can be seen from the handling of tax crimes in 2016-2020, in which many case files have been declared complete by the Prosecutor's Office (or stage P-21). The Annual Report of the Directorate General of Taxes (2016; 2017; 2018; 2019; 2020) shows that the number of case files and the amount of loss in state revenue is still significant. The number of case files that have been P-21 in each years from 2016 to 2020, respectively, 58 cases, 134 cases, 127 cases, 144 cases, and 95 cases. Meanwhile, the losses of state revenue for each year of 2016-2020, respectively, amounting to Rp. 1.52 trillion, amounting to Rp. 1.7 trillion, amounting to Rp. 1.27 trillion, amounting to Rp. 2.12 trillion, and amounting to Rp.313.57. However, there were only 8 case files that carried out plea bargaining, specifically in 2019-2020 (Bolifaar, 2022).

The occurrence of tax crimes that cause losses to state revenues and as the result of minimal use of plea bargaining in tax crimes indicates the need for handling that provides legal certainty for perpetrators involved in tax crimes and for state as the victim who requires recovery of losses on state revenue (Hermawan, 2022). Whereas, several countries have succeeded in implementing plea bargaining in dealing with tax crimes, such as the British Tax Authority (HM Revenue & Customs/HMRC) which has received tax revenue of 120 million Pounds Sterling (or the equivalent of Rp. 2.3 trillion) during the 2019-2020 (DDTC News, 2020).

Indeed, one of the provisions on tax penalties in Indonesia has adopted plea bargaining, namely the termination of the investigation as referred to Article 44B paragraph (1) and (2) of the KUP Law. However, these provisions still do not provide legal certainty for suspects/defendants and victims, such as:

- a) legal certainty regarding the status of the suspect attached to the representative, proxy, employee of the Taxpayer, or other parties who order to commit, who participate in committing, who recommends, or who helps commit tax crimes, in the event that a Taxpayer has paying off losses on state revenues along with criminal fines.
- b) legal certainty regarding the calculation of losses on state revenue according to the tax authorities that have been paid by the Taxpayers, in

the event that there are still losses on other state revenues that have not been disclosed as long as the 10-year prosecution period has not expired.

- c) legal certainty in terms of transparency and accountability in the implementation of plea bargaining in the field of taxation.

In fact, the application of plea bargaining properly and transparently not only helps recover losses on state revenues, but also overcomes several other problems that often occur, including overloaded arrears in criminal cases (both at the stages of investigation, prosecution, court of first instance, appeal, cassation, and review), and provide opportunities for taxpayers to become compliant and provide opportunities to actively participate in recovering losses on state revenue (Sinaga, 2022).

There are still many handling of tax crimes even though there are provisions for termination of investigations in terms of taxpayers paying off losses on state revenues along with criminal fines. It is need to undertake the legal certainty study in implementing transparent and accountable plea bargaining as a manifestation of the active participation of every taxpayer in carrying out their state obligations. The problem that is needed to solve is how the ideal legal certainty of plea bargaining against suspects/defendants and victims in dealing with tax crimes in Indonesia.

Material And Method

This study is sufficient to use the juridical method or legal doctrine to answer the existing problems. Peczenik (2004; 2001) asserts that legal doctrine is a type of legal research and is almost always full of value, which occupies a central position in professional legal writing, which applies specific legal methods by systematically and analytically exposing the substance. The source of data used in this study is secondary data, namely data based on library research in the form of legal materials, both primary, secondary, and tertiary legal materials.

Results

In answering the legal problem, it is necessary to conduct a literature review. Based on Black's Law Dictionary (Gardner, 2009), plea bargaining or plea agreement or negotiated plea or sentence bargain is:

“a negotiated agreement between a prosecutor and a criminal defendant whereby the defendant pleads guilty to a lesser offense or to one of multiple charges in exchange for some concession by the prosecutor, usually a more lenient sentence or a dismissal of the other charges”.

This definition implies that plea bargaining must be based on a mutual agreement between the prosecutor and the defendant in the event that the defendant submits a guilty plea in order for the defendant to obtain certain concessions, such as a lighter sentence or termination of one or several charges. The notion of plea bargaining in line with the emergence of plea bargaining in the nineteenth century,

as Alschuler (1979) explained that the emergence of plea bargaining cannot be separated from several difficulties that often occur, such as the difficulty in "proving a negative", namely determining that something did not happen so one must take into account the amount of time during which the process occurred, and the difficulty in distinguishing the difference between law in action with law in books which gave rise to extra-legal practices in the form of payments to victims of crime to obtain their consent not to press charges.

In the case of criminal acts of taxation in Indonesia, Bolifaar (2022) concludes that plea bargaining in tax crimes in Indonesia, as referred to in Article 44B of the KUP Law, Ministry of Finance Rules (PMK) Number 55/PMK.03/2016 and PMK Number 18/PMK.03/2021 has not fulfilled the concept of access to justice, namely plea bargaining as a taxpayer's right and the right of the state. Taxpayers' rights are in the form of the right to life, the right to improve themselves, and the right to actively participate in recovering losses in state income due to the occurrence of a tax crime, while the state's rights are in the form of the right to regulate and equalize the voluntary compliance of its taxpayers. Thus, Bolifaar (2022) suggested that there should be a concept of access to justice in the renewal of plea bargaining rules, the scope of which is:

- a) the taxpayer's good faith, which must be followed by a statement and or official report not to repeat tax crimes in the future and is willing to improve the reporting of the tax return in the years before expiration and the tax return in the years after the investigation,
- b) the rules of procedure granting Taxpayers the right always to have the opportunity to apply for plea bargaining in every existing tax crime handling process, which refers to each limitation of authority in deciding plea bargaining (whether in the process of investigation, prosecution, or trial,
- c) renewal of sanctions rules criminal fines related to the authority of each institution in deciding whether or not a plea bargaining is accepted.

Then, Priyambudi, Sinaga, and Bolifaar (2020) concluded that the prevailing law of plea-bargaining in the case of corporate corruption in Indonesia currently does not exist; it is still limited to the *ius constituendum* regulated in Article 199 of the Draft Criminal Procedure Code (KUHAP).). Indeed, there is an *ius constitutum* in the form of lex specialist, namely the law in the field of taxation. Plea bargaining in Article 199 of the Draft Criminal Procedure Code involves judges and prosecutors. The settlement is still in the form of a fast-paced trial while still imposing a maximum sentence of 2/3 of that charged by the prosecutor.

In contrast, plea bargaining in tax crimes is sufficient to complete it based on the decision of the Attorney General at the request of the Minister of Finance, as long as the investigation of the tax crime has not been transferred to the court. The taxpayer has paid off the tax debt that is underpaid or should not be returned and is added with administrative sanctions in the form of fines. Efforts to manage plea bargaining risks that can overcome corporate corruption in Indonesia can be made

through public participation, transparency, and accountability while still focusing on the blameworthiness of the offender and the level of recovery of losses suffered by the victim (in terms of the occurrence of criminal acts of corruption, who are victims of corruption was the state). Furthermore, Sinaga and Bolifaar (2020) conclude that the plea bargaining arrangement is urgent and urgent to be applied for corporations that intend to plead guilty and intend to make compensation or pay criminal fines. Blockchain technology was needed that can provide adequate outputs and outcomes in dealing with the challenges of plea bargaining of corporate crime, considering a blockchain that are transparent, efficient, fast, and inexpensive, capable of presenting data, information, complaints, and reports to each block, and which were integrated on the aspects of fairness, legal certainty, and public benefit from plea bargaining.

The study of several literatures shows that legal certainty is ideal value in building plea bargaining that is capable of dealing with tax crimes in Indonesia. Plea bargaining is the first step towards rehabilitation, which was expected to minimize conflicts and costs, is oriented towards efficiency values, and provides reduced penalties only to those who deserve it because regret depends on factual mistakes and should not be punished (Liu, 2020). Then, this general understanding of plea bargaining must also reflect one of the tax functions, namely the budgetary function and the major impact of tax enforcement. The budgetary function in question is a function to fill the state treasury, while the impact of tax law enforcement is to improve compliance with the fulfilment of tax obligations of taxpayers, not vice versa; the deterrent effect function which is a characteristic of the rule of law regime hardly adds to other problems in the field of taxation, such as reduce arrears of cases, reduce prison overcapacity.

Discussion

Prevailing Tax Law Of Plea Bargaining In Indonesia

Plea bargaining in the field of taxation in Indonesia was regulated in Article 44B of the KUP Law. The full formulation of Article 44B are:

- (1) In the interest of state revenue, at the request of the Minister of Finance, the Attorney General may terminate the investigation of criminal acts in the taxation sector within six months from the date of the request letter.
- (2) The termination of the investigation of criminal acts in the taxation sector, as referred to in paragraph (1) shall only be carried out after the Taxpayer or suspect has paid:
 - a) loss on state revenue as referred to in Article 38 plus administrative sanctions in the form of a fine of 1 (one) time the amount of loss on state revenue;
 - b) loss on state revenue as referred to in Article 39 plus administrative sanctions in the form of a fine of 3 (three) times the total loss on state revenue; or

- c) the amount of tax in the tax invoice, proof of tax collection, proof of tax withholding, and or proof of tax payment as referred to in Article 39A plus administrative sanctions in the form of a fine of 4 (four) times the amount of tax in the tax invoice, proof of tax collection, proof of tax withholding, and or proof of tax payment.
- (2a) If the criminal case has been transferred to the court, the defendant can still pay off:
- a. loss in state revenue plus administrative sanctions as referred to in paragraph (2) letter a or letter b; or
 - b. the amount of tax in the tax invoice, proof of tax collection, proof of tax withholding, and or proof of tax payment plus administrative sanctions as referred to in paragraph (2) letter c.
- (2b) The settlement, as referred to in paragraph (2a), becomes a consideration for prosecution without being accompanied by an imprisonment sentence.
- (2c) If the payment made by the Taxpayer, suspect, or defendant at the stage of the investigation until the trial does not meet the amount as referred to in paragraph (2), the payment can be calculated as payment of a criminal fine imposed on the defendant.

Then, the explanation of Article 44B of the KUP Law applies a proportional calculation in the case of an investigation process that has determined more than 1 (one) person or entity suspect. In this case, each suspect has the right to apply for a termination of the investigation or the defendant in the event that it reaches the trial stage for himself, considering that the handling of criminal cases in the taxation sector prioritizes recovery of losses on state income. However, the application for termination of the investigation can only be made by the suspect or defendant after paying off the amount of loss in state income and or the equivalent, under the proportion that is the burden plus administrative sanctions in the form of fines. As for what is meant by "to be sued without being accompanied by an imprisonment sentence," as referred to in Article 44B paragraph (2c) of the KUP Law, it is a criminal case that is legally and convincingly proven to be still prosecuted for being guilty but without being accompanied by a prison sentence for the accused person.

Furthermore, further rules regarding the termination of the investigation of criminal acts in the taxation sector are regulated in the Regulation of the Minister of Finance (PMK) Number 55/PMK.03/2016 concerning Procedures for Requesting the Termination of Investigation of Criminal Acts in the Taxation Sector for the Interest of State Revenue, as last amended by PMK Number 18 / PMK.03/2021 concerning the Implementation of Law Number 11 of 2020 concerning Job Creation in the Field of Income Tax, Value Added Tax and Sales Tax on Luxury Goods, as well as General Provisions and Tax Procedures. Some crucial provisions in Number 55/PMK.03/2016 are:

- a) The application for termination of the tax crime investigation is submitted in writing and must be signed by the Taxpayer.
- b) Attach a statement of guilt.
- c) Attached with a tax payment letter (SSP) and or facilities equated with the SSP as proof of payment of the amount of tax that is underpaid or that should not be returned and administrative sanctions.
- d) The amount of taxes that are not paid or not returned and administrative sanctions are calculated based on the minutes of expert examination at the time of the Investigation.
- e) The Minister of Finance may decide to approve or reject a Taxpayer's application on the Taxpayer's application and by considering the results of research and written opinion from the Director-General of Taxes.
- f) The results of the research and written opinion of the Director-General of Taxes must at least contain matters such as the name of the Taxpayer, the Taxpayer Identification Number (NPWP), the name and position/position of the suspect, the Tax Period/Fiscal Year, the suspect article, the stages of investigation development, the amount of unpaid or underpaid tax and administrative sanctions, the correctness of the payment of taxes, and the opinion of the Director-General of Taxes.
- g) The Attorney General's decision can be in the form of accepting or rejecting the request for termination of the investigation or being returned by the Attorney General to be completed and or corrected.

Plea Bargaining of Tax Crime In Several Countries

Plea bargaining in criminal acts, which allows criminal suspects or defendants to avoid more serious charges, has been implemented in several countries, including the United States and China.

In the United States, every taxpayer can apply for a plea agreement with the government at any stage of a tax investigation, as stipulated in Section 9 of the United States Internal Revenue Manual (IRM). The Department of Justice (DoJ) is the Department of Justice (DoJ), not the Criminal Investigation Division (CID) of Internal Revenue Services (IRS). However, the one who is authorized to carry out tax investigations is the CID (IRS, 2021). Even though the tax investigation procedure must be expedited and would not be tried in the case of plea bargaining, tax investigators are required to obtain sufficient evidence as stipulated in Article 11 (b)(3) Federal Rules of Criminal Procedure Rule. Overall, Article 11(b) of the Federal Rules of Criminal Procedure Rule provides three requirements for plea bargaining: advising and questioning the defendant, ensuring that a plea is voluntary, and determining the factual basis for a plea. Article 11(b)(1) of the Federal Rules of Criminal Procedure Rule provides that in advising and interrogating the accused, the accused may be placed under oath before the court receives a guilty plea or with the court's approval. Article 11 (b)(2) Federal Rules of Criminal Procedure Rule regarding ensuring that the application was made voluntarily relates to the court's obligation to directly ask the defendant in an open

trial whether the application was submitted voluntarily or not based on coercion, threats, or promises. Then in terms of determining the factual basis for a plea, Article 11 (b)(3) Federal Rules of Criminal Procedure Rule asserts that before giving a decision on an admission of guilt, the court must determine the factual basis of the plea (IRS, 2021; Bolifaar, 2022).

Taxpayers who apply for the plea bargaining program procedure must cooperate with the IRS in determining and fulfilling tax administration obligations and their criminal aspects, including the Taxpayer's plea agreement which must involve a legal source of income, errors for violations of the regulated tax criminal provisions, taking into account the totality fraud that the Taxpayer has committed, and does not reduce the amount of loss in state income for tax crimes to be a tax administration violation. Taxpayers submit plea bargaining in writing to the CID of the IRS, and then the IRS makes references and sufficient evidence to the DoJ by submitting a written proposal for plea bargaining on tax crimes being handled and strengthens the elements of violations or confessions made by the Taxpayer. The assessment submitted by the IRS to the DoJ must contain an examination of all records/bookkeeping in detail to ensure that there are no significant issues that have not been covered or ensure that there are no losses in state income that have not been taken into account, including should secure and review the Taxpayer's tax reporting for all years, both after the years the investigation was carried out and the years before the investigation was carried out. The DoJ has the authority to refuse plea bargaining; however, the prosecution process for taxpayers whose plea bargaining is accepted may include restitution and costs of prosecution (IRS, 2021).

A plea bargaining system has also been adopted in the Chinese Criminal Procedure Law (CCPL) with the issuance of two Criminal Procedure Codes in 2010 and 2020 to ensure fair and consistent sentencing procedures further and promote transparency (Soge, 2022), by giving powers to prosecutors. To provide recommendations regarding the sentence to be decided by the judge (Shi, 2021). In the arrest and detention stage, the suspect can apply for plea bargaining with the investigator, and then the investigator will inform the local Prosecutor. The application was legally guaranteed, where the application has been written into a formal procedure, which will officially begin when the Prosecutor takes over the case, where the agreement to be reached must be precise, based on the free will of the accused, and under the supervision of a certified lawyer (Lu, 2021).). Furthermore, Article 173 II of the CCPL stipulates that the Prosecutor can discuss with the suspect and his representative the facts charged, the crime and application of the law, recommendations for punishment, procedures applicable to trial after plea bargaining, and other relevant matters. Indeed, the Prosecutor was prohibited from negotiating the criminal norm indicted. However, considering the Prosecutor's obligation to make recommendations for punishment in plea bargaining cases, the Prosecutor has comprehensive discretion over the contents of the plea bargaining agreement with the suspect (Liu, 2020).

Comparative studies of plea bargaining law in the United States and China show several similarities and differences with Indonesia. Several similarities between plea bargaining between Indonesia, the United States and China are:

- a) must be contained in statutory regulations,
- b) constitutes a guilty plea filed by a suspect or defendant,
- c) the one who determines the rejection or acceptance of a plea bargaining is the Prosecutor.

Meanwhile, some differences in plea bargaining (in the field of taxation) between Indonesia, the United States and China can be seen in Table 1 below.

Table 1
Differences in plea bargaining of tax between Indonesia,
the United States and China

No.	Descriptions	Indonesia	Amerika Serikat	China
1	Legal basis	Article 44B of KUP Law	Part 9 of Internal Revenue Manual and Federal Rules of Criminal Procedure Rule	Chinese Criminal Procedure Law
2	Plea bargaining negotiations with taxpayers	Directorate General of Taxes	Department of Justice	Prosecutors
3	Requirements	Taxpayers or suspects that pay off losses on state revenue plus criminal fines, as regulated in Article 44B paragraph (2) of KUP Law.	Advising and questioning the defendant, ensuring that a plea is voluntary, and determining the factual basis for a plea	Suspect's application written in a formal procedure.
4	Punishment Verdict	Attorney General based on the request of the Minister of Finance.	Department of Justice based on referrals of the Criminal Investigation Division of Internal Revenue Services.	The judge through the recommendation of the Prosecutor.
5	Procedures	Loss on revenue state determined by	The tax investigation must	Fair and consistent sentencing

		tax investigator and will not be tried.	be expedited and will not be tried.	procedures that promote transparency through trials that must be decided by a judge.
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Based on the comparison laws between the United States with China, it can be concluded that plea bargaining in the field of taxation is a manifestation of the active participation of the State and taxpayers or suspects or defendants in maintaining and improving the economic welfare of the community on an ongoing basis and maintaining the sustainability of the social life of the community (Oktavia *et al.*, 2022). Such active participation must fulfill the availability of access to justice and effective, accountable and inclusive institutions at all levels in granting certain concessions to taxpayers or suspects or defendants who in good faith and without coercion have admitted guilt and are willing to recover losses in state revenues plus fines.

Tax Certainty Of Plea Bargaining For Suspects/Defendants And Victims

Plea bargaining regulations in the taxation field in Indonesia must provide legal certainty to the perpetrators of tax crimes and the state as a victim. Legal certainty in taxes should be guided by Article 23A of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) and refers to the ideas put forward by the Organization for Economic Co-operation and Development (OECD), Utrecht (1989), Gunadi (2020), and Article 10 paragraph (1) of Law Number 30 of 2014 concerning Government Administration and the Legal System in the 2020-2024 National Mid-Term Development Plan.

Article 23A of the 1945 Constitution of the Republic of Indonesia has formulated that tax collection in Indonesia must be based on the law, as in its implementation, there are material tax laws, such as the Income Tax Law (PPH Law) and the Value Added Tax Law/Sales Tax on Luxury Goods (VAT Law), and the formal tax law, namely the KUP Law (Hidayat and Sinaga, 2022). Then, the OECD (2003) formulates certainty and simplicity as one principle, namely the principle that emphasizes that "the tax rules should be clear and simple to understand so that taxpayers can anticipate the tax consequences in advance of a transaction, including knowing when, where and how the tax is to be accounted for." Furthermore, Utrecht (1989) asserts legal certainty as a certainty because of the law and certainty in or from the law. Certainty because of the law is achieved if there are two legal tasks to ensure legal certainty, namely, the law that must guarantee justice and the law that must remain useful (Utrecht, 1989). As for certainty in or from the law, it is achieved if the law is as much as possible in the order of the law, i.e., the provisions of the law do not contradict each other, the law is logical and certain, the law is made based on legal reality, and in the law, there are no terms that could be used interpreted differently. Meanwhile, Gunadi (2020) initiated certainty as all tax laws

and regulations must be understood and should not create doubts or interpretations for taxpayers and tax authorities. Then, Article 10 paragraph (1) of Law Number 30 of 2014 defines the principle of legal certainty as a principle in a legal state that prioritizes the basis of legislation, propriety, and justice in every policy of State Administrators and the National Medium-Term Development Plan. 2020-2024, which confirms that one of the improvements to the justice system will be implemented through the application of restorative justice (including prioritizing efforts to provide rehabilitation, compensation, and restitution for victims), implies that law enforcement in the field of taxation must remain transparent and accountable in seeking restoration of losses to state revenue (Barus, 2022).

The existence of the mandate of Article 23A of the 1945 Constitution and the idea of legal certainty as put forward by the OECD (2003), Utrecht (1989), and Gunadi (2020) show that the legal certainty of plea bargaining in handling tax crimes in Indonesia will only be achieved if the law in the legal order regulates and certainly regarding the implementation of the rights and fulfillment of the obligations of taxpayers who violate tax criminal offenses as well as the restoration of tax rights that the state must obtain as a victim through its obligation to enforce the law. Of course, taxpayers who commit violations must still obtain the right to carry out business on an ongoing basis, the right to improve themselves, and the right to consciously seek to recover losses to state income due to tax crimes that have been committed through clear, easy, and clear plea bargaining provisions, definitely under the law. However, the plea bargaining provisions against taxpayers who were still suspected of violating tax criminal offenses have not provided legal certainty, as some of the explanations are:

- a. The termination of tax investigation as referred to in Article 44B paragraph (1) of the KUP Law can only be carried out by the Attorney General, through a request from the Minister of Finance for a written request by a taxpayer (Irawan, 2022). Even though the meaning of termination of the investigation is different from termination of the prosecution. Investigations of criminal acts in the field of taxation can only be carried out by Civil Servant Investigators (PPNS) of the Directorate General of Taxes (DGT) in order to seek and collect evidence with which evidence makes clear the criminal acts in the field of taxation that occurred and find the suspects (Rajagukguk and Kuntonegoro, 2020). Meanwhile, the termination of prosecution or override cases or *dominus litis* and the use of fines in economic crimes is the authority of the Prosecutor (Sinaga, 2022 b) as referred to in Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 regarding the Prosecutor's Office (Prosecutor Law).
- b. Termination of the investigation of criminal acts in the field of taxation as referred to in Article 44B of the KUP Law only against suspects or taxpayers who have paid off losses to the state's opinion along with their fines, has not provided legal certainty to other suspects or defendants in connection with the crime in the taxation sector which is subject to Article

43 paragraph (1) of the KUP Law, as its formulation states that criminal provisions that intentionally cause losses to state income "also apply to representatives, proxies, employees of the Taxpayer, or other parties who order to do, who participate in doing, who recommend, or which helps to commit criminal acts in the field of taxation." This means that the provisions of Article 44B of the KUP Law, which implies material offenses, should also regulate the termination of investigations against suspects or termination of prosecution of other defendants concerning suspects or taxpayers who have fully recovered the losses in state income that occurred.

- c. It is appropriate that every provision in plea bargaining must regulate good faith, the scope of which can be in the form of a statement not to repeat a crime in the taxation sector and being willing to improve the tax returns for the years before and after the tax investigation was carried out.
- d. Considering that the applicable tax criminal offenses still regulate liability based on errors, including in the case of Article 44B of the KUP Law. It is necessary to regulate the accountability of the beneficiaries. Considering current technological advances, it is possible for shareholders of a company domiciled in Indonesia to be corporations abroad or in tax haven countries, and even bookkeeping, recording, and document storage systems use iCloud. So that most of those who were ensnared are only employees (managers, head of bookkeeping, or finance directors) who are limited to carrying out their duties from the corporation to report and sign tax returns suspected to be incorrect.

The legal certainty related to the rights and obligations of the state in terms of Article 44B of the KUP Law is the right of the state to obtain a recovery for losses in state revenues that have occurred and the state's obligation to regulate, equalize, and increase voluntary compliance with all its taxpayers. Of course, the uncertainty that occurs for taxpayers who do plea bargaining, as referred to in Article 44B of the KUP Law, will cause legal uncertainty in controlling, equalizing, and increasing the compliance of all taxpayers. The tax authorities must be aware that the tax philosophy referred to in Article 1 point (1) of the KUP Law is the mandatory contribution of an individual or entity to the state. The existence of the word "compulsory contribution" indicates that there is a legal obligation in the field of taxation regarding taxpayers and tax authorities having to behave in a certain way based on the tax laws and regulations in the context of implementing the tax system effectively and efficiently (Barus, 2022), so that tax crimes are appropriate must be stopped for the sake of legal certainty when there are no more violations of the taxpayer's contribution.

Conclusion

The plea bargaining provisions in the tax laws and regulations that apply in Indonesia have not provided legal certainty, both to the perpetrators

(suspects/defenders) and the state as victims. It is recommended to renew the provisions of plea bargaining in the field of taxation in the framework of the Act, considering that Article 23A of the 1945 Constitution of the Republic of Indonesia has mandated that all handling of tax collection be carried out based on the Act and Article 1 paragraph (1) of the Criminal Code which emphasizes the application of the principle of legality in criminal acts including criminal acts in the field of taxation. The legality principle must be interpreted as the fulfillment of *lex scripta*, *lex stricta*, and *lex certa*.

Suggestion

It is recommended that the renewal of the plea bargaining provisions in the future include, among others:

- a. Legal certainty for other suspects (such as in the case of representatives, attorneys, employees of the Taxpayer, or other parties who ordered them to do so, who participated in committing, who recommended, or who assisted in committing criminal acts in the taxation sector) other than the main suspect (ex suspect who signed the SPT whose contents were not accurate) which had paid off the loss in state revenue as referred to in Article 44B of the KUP Law.
- b. Article stipulates that every Taxpayer who performs plea bargaining must be in good faith, including not repeating a crime in the taxation sector, and willing to correct his tax return which has not yet expired for prosecution as referred to in Article 40 of the KUP Law.
- c. Article that regulates accountability to beneficiaries in the event of a crime in the taxation sector.***

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