

# Corporate Criminal Liability in Taxation Crime in Indonesia

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## Corporate Criminal Liability in Taxation Crime in Indonesia

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### Abstract

The development of corporate crime is in line with the development of the role of corporations in the cross-border economy, which has both positive and negative acts, including corporate crimes, including tax crimes which in Indonesia are regulated in Law Number 6 of 1983 concerning General Provisions and Tax Procedures as Amended with Law Number 6 of 2020 concerning Job Creation. This research was conducted to know the implementation of the theory of corporate criminal responsibility in tax crimes and to find out how the regulation of corporate criminal liability in tax crimes. The study results found that implementing the theory of corporate criminal liability in tax crimes was not applied consistently, significantly if it was associated with the principle of legality, which caused problems in law enforcement.

**Keywords:** *Corporate Criminal Liability, Tax Crime.*

### INTRODUCTION

The international community pays attention to corporate crime in line with the development of corporations' role in the cross-border economy and its positive and negative impacts. The 7th United Nations Convention in 1985 in Milan, Italy, create the Milan Plan of Action which among other things stated the need to pay attention to criminal responsibility: member should consider making criminal liability not only for persons acting on behalf of institutions or corporations (Mulyana, 2018). The United Nation Convention on Transnational Organized Crimes in 2000 (UN TOC) issued regulations regarding the liability of legal persons or corporations (liability of legal persons), and then the United Nation Convention Against Corruption in 2003 (UN CAC) required states parties to determine the liability of a legal entity due to its participation in a crime

Corporate crime is a crime whose perpetrator is a corporation. In UN TOC 2000 and UN CAC 2003, the form of corporate responsibility can be criminal, civil, or administrative, without neglecting the criminal responsibility of individuals who commit criminal acts. Sutan Remy Sjahdeni explained corporate crime is a crime that is not committed by the corporation itself, since corporations do not have body and soul but are carried out by corporate controlling personnel, *actus reus* and *mens rea* from corporate controlling personnel are attributed as *actus reus* and corporate *mens rea* (Sutan Remy Sjahdeini, 2017). It becomes significant to know the characteristics of criminal acts and the implementation of criminal procedural standard in the object of administration (Nirwanto, 2015).

The above is also in line with the reform of criminal law in Indonesia, which is currently faced with the problem of criminalization as a result of the dynamics of criminal law in relation to changes that occur in a society that needs to be protected by criminal law, both in the context of general and administrative crimes. Within the scope of criminal politics, the criminalization process is a policy to overcome crime by using criminal law as an alternative; as also stated by Curzon, "The legislature to leave unexpressed some of the mental elements of crime..." (Curzon, 2013).

In a general, legal subjects support the rights and obligations stipulated by applicable law, consisting of humans or persons (*natuurlijke person*) or legal entities (*rechts person, legal persons*) (Kusumaatmadja & Sidharta, 2009). C.S.T. Kansil classifies tax law as part of public law, especially in the legal environment of state administration. Tax law is inseparable from other parts of the law and is closely related to state administrative law, civil law, and criminal law (Kansil, 1986).

The Criminal Code (KUHP), a general provision (*lex generalis*) of criminal law in Indonesia, currently only determines individual humans as subjects of criminal law. In the development of criminal law in Indonesia, criminal law outside the Criminal Code (*lex specialis*) has expanded the issue of criminal law, not only to humans but also to corporations in several criminal laws.

Based on several specific criminal laws, a corporation is defined as an organized collection of people and assets, whether they are legal entities or not. In the special criminal law above, it is also stated explicitly (in writing) that corporations are the subject of criminal acts that can be held criminally responsible. The concept of corporate criminal responsibility has also been included in the Draft Criminal Code (Panitia Kerja DPR RI. 2021), among others, in Article 48 of the Book of the First Book of the Working Committee of 25 of 2016 Paragraph 6 (Corporations). It is determined "Corporations are the subject of criminal acts." This development is in line with the development of criminal law in other countries.

Roeslan Saleh said that the law is part of a certain policy, it is not only a tool to carry out wisdom, but also determines, outlines or devises a policy (Saleh, 1984). Therefore, errors (weaknesses) at the stage of legislation policy (formulation) is a strategic error that can hamper law enforcement efforts 'in concreto'. (Saleh, 1984)

Meanwhile, Satjipto Raharjo, as quoted by Nyoman Sarikat Putra Jaya, (Jaya, 2005). said that the law enforcement process reaches to the stage of law/law making. The formulation of the law makers ideas set forth in the legislation will also determine as the law enforcement will be carried out.

Thus, the formulation of criminal provisions (the legislation/formulation stage) is a very strategic beginning planning stage of the law enforcement process "in abstracto", while the second and third stages (the judicial and executive stages) are the "in concreto" law enforcement stages (Arief, 2012). The same thing is also said by M. Cherif Bassiouni as quoted Bara Nawawi Arief, mentions the 3 (three) stages with terms: the formulation stage (legislative process), the application stage (judicial process/judicial) and the execution stage (administrative process). (Bassiouni, 1978)

Based on the descriptions above, the research question is; what about tax crimes in Indonesia, are corporations became subject of criminal acts that can be held criminally responsible based on the criminal provisions in the current tax laws?

## METHOD

The research was conducted using a qualitative research design, by comparing several laws and regulations related to tax crimes. The data analysis technique uses secondary data and primary data as in descriptive analytical research, then the data analysis is carried out qualitatively, meaning that the data that has been obtained is compiled systematically and completely and then analyzed qualitatively, so it does not use mathematical formulas.

## RESULTS AND DISCUSSION

In the context of criminal liability in criminal law, Moeljatno clearly separates between criminal acts and criminal liability. The basis of a criminal act is legality principle and the basis of criminal liability is that there is no crime without fault (Hiariej, 2016). The principle of legality in criminal law in Indonesia as stated in Article 1 paragraph (1) of the Criminal Code (KUHP). The concept of mistake is often described as *geen straf zonder schuld*; there is no crime without fault as a basis for holding someone accountable. In line with Moeljatno's view, according to Roeslan Saleh, (Saleh, 1983) committing a crime does not necessarily mean that the maker is guilty of it. To account for a person in criminal law, conditions are needed to impose a criminal against him, for committing the crime. Thus, in addition to committing a crime, criminal liability can only be prosecuted when the crime was committed with a 'fault'. In interpreting 'fault', Roeslan Saleh stated, (Saleh, 1983). 'fault' is those who can be blamed for criminal acts. From society's perspective, they can do something else if they do not want to do that.

Fault is an essential element in determining criminal liability. In this concept, there are 2 conditions to be able to convict someone, namely there is a forbidden outward act or a criminal act (*actus reus*) and there is an evil/despicable mental attitude (*mens rea*) (Ali, 2015). Fault in the theory of criminal responsibility can be determined from 2 (two) sides, namely psychological fault and normative fault:

1. Psychological fault is a certain mental or psychological state of criminal and the relationship between mental state and his actions in such a way that the criminal can be held accountable for his actions.
2. Normative fault is that the criminal can be reproached from the community's perspective that the criminal can do something else if he does not want to do the act or should avoid the act. (Ali, 2015).

Basically, the Criminal Code as a general provision (*lex generalis*) of criminal law in Indonesia only determines individual humans as subjects of criminal law. In the development of criminal law in Indonesia, there have been many special criminal laws outside the Criminal Code that expand the subject of criminal law not only to humans but also to corporations. However, until 2010 there was only one case with the defendant, namely the PT Newmont Minahasa Raya corporation, namely the case tried by the Manado District Court Number Case 284/Pid.B/2005/PN. Mndo. One of the difficulties is that law enforcers are still fixated on the principle of no crime without mistakes to prove corporate responsibility so that the elements of the offense violated are fulfilled. According to Yusuf Shofie (Hiariej, 2016) quoted by Edie OS Hiarej, the obstacles faced were:

1. Corporate crime is often a white-collar crime, the determination of whether there is a crime by a corporation cannot be seen from general point of view of a crime.
2. Determination of legal subjects who are criminally responsible for corporate mistakes.
3. Determining corporate mistake (*mens rea*) is difficult.

Lu Sudirman and Feronica in Edie OS Hiarej suggested three parameters to be able to convict corporations: (Hiariej, 2016)

1. The law has clearly stipulated that the subject of a criminal act includes a corporation, the embodiment of the principle of legality.
2. Corporations can be included if investigators find that the suspect is the director or manager <sup>18</sup> who is the directing mind and will of the corporation.
3. Corporations cannot be subject to criminal liability if <sup>18</sup> the directing mind and will of the corporation committed a crime against their corporation. The corporation in question has prosecuted the directing mind and will.

Moreover, Edie OS Hiarej outlines the conclusions of S.R. Sianturi : (Hiariej, 2016)

1. In principle, punishment is not directed at corporations but rather at a group of people who work together for a purpose or have joint assets for something incorporated in the corporation.
2. several provisions deviate from applying general criminal law to corporations in terms of which corporations can be punished, for example, it is impossible to impose a crime of deprivation of liberty, a fine to be replaced by imprisonment, and so on.

Tax criminal provisions are regulated in <sup>5</sup> Law of the Republic of Indonesia Number 6 of 1983 concerning General Provisions and Tax Procedures as Amended by Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation (hereinafter referred to as the Taxation Law), namely in CHAPTER VIII Article 38 to Article 43 paragraph (1). The Taxation Law does not explicitly and clearly state the term "corporation" nor explicitly states that corporations are subjects of criminal tax law <sup>13</sup> that can be held criminally liable.

In the context of tax crimes, parties' attention to criminal law enforcement against corporations can be seen from several efforts, including at the 2018 National Coordination Meeting (Rakornas) for Tax Criminal Law Enforcement, Jakarta, 26 June 2018. matters relating to corporate crimes in the taxation sector, as implied in the following views:

1. Adi Togarisman, <sup>8</sup> Deputy Attorney General for Special Crimes at the Attorney General's Office of the Republic of Indonesia, stated that there were technical problems in handling tax cases, including the absence of investigations against corporate actors. Tax Civil Servant Investigators (PPNS) should prioritize handling tax crime cases with corporate actors as users of fictitious tax invoices so that if criminal penalties are not paid, they can confiscate company assets to maximize state revenue.
2. Heffinur, Director of Prosecution, <sup>8</sup> Deputy Attorney General for Special Crimes at the Attorney General's Office of the Republic of Indonesia, in his presentation, stated that law enforcement officers in handling criminal cases in the field of taxation could apply penalties against corporations for corporate taxpayers.

In further developments, there is a court decision as to the only court decision on tax crime cases that punish corporations <sup>6</sup> perpetrators of criminal acts on tax crimes cases punish corporations as criminal acts. The decision was <sup>48</sup> issued by the West Jakarta District Court Number: 334/Pid.Sus/2020/PN.Jkt BR <sup>17</sup> on July 8, 2020 with the Defendant PT GEMILANG SUKSES GARMINDO/NPWP 01,799,927.7-033,000. In the decision, <sup>51</sup> the panel of judges stated that:

1. <sup>51</sup> The corporate defendant PT GEMILANG SUKSES GARMINDO has been legally and convincingly proven guilty of committing a tax crime using tax invoices, tax collection evidence, tax withholding evidence, and tax payment evidence that is not based on actual transactions, as regulated and threatened in Article 39 A letter a Law Number 28 of 2007.
2. Imposing a criminal fine against the defendant PT GEMILANG SUKSES GARMINDO Corporation in the amount of 3 x Rp. 9,981,505,876,- = 29,944,517,628,-, if the defendant Corporation PT GEMILANG SUKSES GARMINDO does not pay a fine.

The tax crime in the above case is regulated in Article 39 A letter a of the Taxation Law. Based on the formulation of the offense in the article as well as the formulation of other criminal norms/stipulations in the currently valid Taxation Law, are:

1. The word/phrase "Everyone", "Someone", "Representative, proxy, or employee of the Taxpayer", and "Other Party", refers to the legal subject of tax crime;
2. The word "as well as" in the formulation of criminal sanctions refers to the imposition of cumulative criminal sanctions, namely imprisonment and fines.

Meanwhile, the <sup>6</sup> West Jakarta District Court Decision Number: 334/Pid.Sus/2020/PN.Jkt BRT dated July 8, 2020 above states that:

1. The defendant (legal subject) in this case is the corporation PT GEMILANG SUKSES GARMINDO;
2. The criminal sanction imposed is a fine.

<sup>6</sup> Thus, there is a gap between positive legal norms as stipulated in the Taxation Law and the law in practice as stated in the West Jakarta District Court Decision Number: 334/Pid.Sus/2020/PN.Jkt BRT. "Everyone" as defined in the Law on General Provisions and Tax Procedures, in a Court Decision has been applied to a legal person, namely the corporation PT GEMILANG SUKSES GARMINDO. The criminal sanctions of "imprisonment and fines" formulated cumulatively in the Law on General Provisions and Tax Procedures, only fines have been applied in the Court's Decision.

In practice, the article that is often used against corporations that commit tax crimes is Article 39 paragraph (1) of the Taxation Law which reads: "Anyone who intentionally does not deposit taxes that have been withheld or collected so as to cause losses to state income, shall be sentenced to imprisonment for a minimum of 6 (six) months and a maximum of 6 (six) years and a fine of at least 2 (two) times the amount of tax payable which is not or underpaid and a maximum of 4 (four) times the amount of tax payable which is not or is not paid, underpaid". In this context, to ensnare corporations, all 4 (four) elements of this article must be proven. The explanation is:

#### 1. The "everyone" element

The idiom "everyone" or "whoever" refers to the address<sup>50</sup> of a criminal act, namely who is actually addressed by a legal norm regarding a criminal act. Because this idiom is part of the legal norm of a criminal act of the Taxation Law which is an administrative law, the determination of "everyone" in this article must be interpreted in terms of the purpose of carrying out protected interests in the taxation system by the government by prohibiting and threatening an act. with criminal.

Thus, in addition to the *addressat* of the idiom "everyone" is anyone as a legal subject who supports rights and obligations who are able to be responsible for their actions, this idiom also applies to management in a corporation which is regulated in the taxation system by the government.

Suppose the subject of a criminal act is determined in general terms such as "everyone" or "anyone". In that case, the Judge examines further whether the defendant is an autonomous individual who can make a choice of norms and values. Suppose the subject of a criminal act is explicitly formulated by certain capacities and functions such as management in a corporation. In that case, legal considerations will present administrative evidence or that the person is a manager in a corporation. This is as contained in:

- a. Article 1 point 1 of the Taxation Law;
- b. Article 1 number 2 of the Taxation Law;
- c. Article 1 point 3 of the Taxation Law.

Therefore, administrative, criminal law does not criminalize autonomous individual legal subjects against their actions contrary to the law as criminal acts but instead criminalizes specific activities committed by particular individuals who are not autonomous, which are contrary to state policy (in this case, the tax system). In short, administrative, criminal law is not aimed at autonomous individuals but against individuals with specific capacities or roles. This is in line with Roeslan Saleh's (1981) opinion: "Administrative criminal law is not aimed at free individuals, nor is it legal in terms of social and psychological views, but is aimed at humans as players of certain roles, who are required to confirm themselves with the forms of action that are expected in accordance with their roles."

In the context of the application of criminal law in the taxation law which is an administrative law, the management in a corporation is also the address at norm referred to in Article 39 paragraph (1), where the provisions regarding the representative of the Taxpayer in the provisions of the tax legislation are regulated in Article 32 of the Taxation Law.

The provisions in Article 32 paragraph (1) stipulate "In exercising the rights and obligations by the provisions of the tax laws and regulations, the Taxpayer is represented if:

- a. Agency by management;
- b. Entities declared bankrupt by the curator;
- c. The agency is being disbanded by a person or entity assigned to make settlements;
- d. Entity under liquidation by the liquidator;
- e. An inheritance that has not been divided by one of his heirs, executor of his will or who manages his inheritance; or
- f. Children who are not yet adults or people who are under guardianship by their guardians.

Furthermore, Article 32 paragraph (4) states that what is included in the definition of management<sup>21</sup> as referred to in paragraph (1) letter a is a person who has the authority to participate in determining policies and or making decisions in running the company. In the Elucidation of Article 32 paragraph (4), it is explained<sup>4</sup> that what is meant by management is a person who has the authority to determine policies and or make decisions in the context of carrying out company<sup>20</sup> activities, for example having the authority to sign contracts with third parties, sign checks, etc. the name is not listed in the composition of the board of directors listed in the deed of establishment or deed of change, including in the definition of management. The provisions in this paragraph also apply to commissioners and majority or controlling shareholders.

In line with the above, several provisions make corporations a legal subject that can be held criminally responsible, namely:

- a. Regulation of the Supreme Court of the Republic of Indonesia Number 13 of 2016 dated December 21, 2016,<sup>31</sup> concerning Procedures for Handling Criminal Cases by Corporations, in Article 23 it is regulated on Criminal Imposition, that a criminal can be imposed on a corporation or its Management, or a Corporation and its Management. It is<sup>36</sup>

explained that "Corporations are organized collections of people and/or assets, both legal entities and non-legal entities."

- b. Regulation of the Attorney General of the Republic of Indonesia Number PER-028/A/JA/10/2014 dated October 1, 2014, concerning Guidelines for Handling Criminal Cases with Corporate Law Subjects, Chapter II Criteria for Actions in Handling Criminal Cases with Corporate Law Subjects Letter B "Actions of Management Corporations that can be held criminally liable: a. Everyone who commits participates in committing, orders to do, recommends doing, or assists in committing a crime; b. Everyone who has the control and authority to prevent the crime but does not take the appropriate steps and is aware that he will accept a large enough risk if the crime occurs; c. Everyone who knows of the existence of a sufficiently large risk is sufficient if he knows that the crime was committed by a corporation; and/or d. All other forms of action that can be requested.

Thus, the management of the corporation or the corporation becomes a legal subject who can be held criminally responsible if, among other things, there is a working relationship between the perpetrator and the corporation, there is an order from the management of the corporation, the corporation facilitates, the corporation obtains benefits or advantages.

Furthermore, the representative of Corporate Taxpayers in the form of PT (Limited Liability Company) who exercises tax rights and obligations according to the applicable tax laws must also be linked to Law Number 40 of 2007 concerning Limited Liability Companies. The Board of Directors is a company organ that is authorized and entirely responsible for managing the company for the benefit of the company, by the aims and objectives of the company and representing the company, both inside and outside the court by the provisions of the articles of association (Article 1 point 5 of Law Number 40 of 2007 concerning Limited company).

Thus, the idiom "everyone" in Article 39 paragraph (1) of the Taxation Law, in addition to referring to individuals, also refers to the representative of a Corporate Taxpayer in the form of a Limited Liability Company in exercising his tax rights and obligations, which is based on the provisions of the law. -the above tax laws are:

- a. Board of Directors of the company, and/or;
- b. A person who has the authority to determine policies and or make decisions in the context of carrying out company activities even though that person is not listed by name in the composition of the management listed in the deed of establishment or deed of amendment, and/or;
- c. Commissioners and majority or controlling shareholders.

Furthermore, in the field of evidence to determine the "criminal act" of the idiom "everyone" in this article (Administrative Law) basically causes the Public Prosecutor not to be obliged to prove that the administrative norms have been fulfilled, but instead lead to proof that the orders contained in the administrative provisions have been complied with. be a burden on the defendant. As long as the defendant cannot prove that the orders included in the administrative provisions have been fulfilled, then his material actions against a prohibition have been fulfilled. This is in line with the opinion of Chairul Huda: (Candra, 2016)

"If the formulation of a criminal offense is intended to secure an order contained in an administrative provision, then the administrative provision is only needed to give meaning to the core part (*bestanddeel*) of the crime, which in fact both the act and the sanction are already in the criminal provision. In the field of procedural law, the legal norms contained in the administrative provisions do not constitute the act that is being charged".

## 2. The element "intentionally"

This article requires the existence of an element of 'intentional', in which an intentionality is a form of mistake, which is one of the elements that determine criminal liability. The element of "deliberately" (*opzettelijk*) is a subjective element relating to perpetrator inner attitude or mistake (*schuld*) (Huda & Hakim, 2006). The aspect of "deliberately" in this article indicates that this crime is a deliberate offense (*delict*).

The definition of intentional (*opzet; dolus*), according to the explanatory treatise (*memorie van toelichting*) of the Dutch Criminal Code of 1881, is that intentionally is the same as *willens en wetens* (desired and known). (Hamzah, 2010)

Furthermore, regarding the 'intentional' element, it can be explained that the condition for a criminal act to be carried out intentionally is the principle of "*willens en wetens veroorzaken van een gevolg*", which is to want and know the occurrence of an action and its consequences (Lemaire, 1997). This means that there must be a will (*oogmerk*) and knowledge that the action taken will result in specific laws, where the element of intentionality has three gradations, including:

- a. Intentional as intent (*opzet als oogmerk*);  
It is the simplest form of intentionality, that is, it is intentional by the perpetrator to achieve his primary goal, the actor has wanted the consequences of his actions and these consequences are the goals of his actions.

- b. Deliberation as certainty or necessity (*opzet bij zekerheids-bewustzijn*);  
It is a deliberate act by the perpetrator who realizes that his actions will have consequences. The perpetrator knows for sure that the results will follow his actions.
- c. Deliberate with possibility (*dolus eventualis*) (*opzet bij mogelijkheids-bewustzijn*).  
It is a deliberate act by the perpetrator who is aware of his actions but is not sure of the consequences. The perpetrator continues to do what he wants even though there are other possible consequences that he does not want to happen.

Although there is no obligation for the Public Prosecutor in his indictment to determine which of the three gradations of intent can be applied to the defendant, to complete his charge carefully and clearly by the mandate of the Criminal Procedure Code (KUHP), the Public Prosecutor may take one of the three gradations of intent depending on the case in the indictment.

Determining the element "deliberately" associated with an administrative law is more straightforward than determining the part "deliberately" in a criminal act not regulated in administrative law. Because, in general, law enforcement in administrative regulations is always preceded by administrative sanctions, so criminal sanctions become the "*ultimum remedium*" for the perpetrators. As the example in Article 13 of the Taxation Law states:

"A taxpayer who due to negligence does not submit a tax return or submit a tax return, but the contents are incorrect or incomplete or attach information whose contents are incorrect so as to cause loss to state income, are not subject to criminal sanctions if the taxpayer first commits the negligence and The Taxpayer is obliged to pay off the underpayment of the amount of tax payable along with administrative sanctions in the form of an increase of 200% (two hundred percent) of the amount of underpaid tax determined through the issuance of an Underpaid Tax Assessment Letter."

<sup>41</sup> Based on the provisions of Article 13 of the Taxation Law above which contains the idiom "because of negligence", it can be concluded that as long as the taxpayer has been notified by the tax authorities (including tax investigators) to carry out his obligations and administrative sanctions therein due to negligence, however, the taxpayer still does not carry out his obligations, then the logical consequence of this is that the taxpayer is deemed to have *willens en wetens* (desire and knows) that his actions are intended to avoid the obligation to pay taxes.

In practice, directors who are often one of the company's organs in corporations argue that they do not know about tax payments because this has been delegated<sup>47</sup> to their subordinates. Therefore, can the director be qualified to fulfill the "everyone" and "deliberate" elements as contained in Article 39 paragraph (1) of the Taxation Law.

In order to answer the question above by relating the elements of "everyone" and the element of "deliberately" as previously explained, there is no reason for the director to state that he does not know. Because the management in a corporation (Limited Liability Company) is also the addressee referred to in Article 39 paragraph (1) of this and the director of this PT cannot act autonomously by the peculiarities of the Taxation Law, which is administrative. Provisions regarding Taxpayer Representatives in the conditions of tax laws are regulated in Article 32 of the Taxation Law. Article 32 paragraph (1) stipulates "In exercising the rights and obligations by the provisions of the tax laws and regulations, the Taxpayer is represented if:

- Agency by management;
- Entities declared bankrupt by the curator;
- The agency is being disbanded by a person or entity assigned to make settlements;
- Entity under liquidation by the liquidator;
- An inheritance that has not been divided by one of his heirs, executor of his will or who manages his inheritance; or minors or people under guardianship by their guardians.

Furthermore, Article 32 paragraph (4) states that what is included in the definition of management<sup>21</sup> as referred to in paragraph (1) letter a is a person who has the authority to participate in determining policies and or making decisions in running the company. In the Elucidation of Article 32 paragraph (4), it is explained<sup>4</sup> that what is meant by management is a person who has the authority to determine policies and or make decisions in the context of carrying out company<sup>20</sup> activities, for example, having the authority to sign contracts with third parties, sign checks, etc. the name is not listed in the composition of the board of directors listed in the deed of establishment or deed of change, including in the definition of management. The provisions in this paragraph also apply to commissioners and majority or controlling shareholders.

Moreover, the representative of Corporate Taxpayers in the form of PT (Limited<sup>14</sup> liability Company) who exercises tax rights and obligations according<sup>2</sup> to the applicable tax laws must also be linked to Law Number 40 of 2007 concerning Limited Liability Companies. The Board of Directors is a company organ that is authorized and entirely responsible for managing the company for the benefit of the company, by the aims and objectives of the company and representing<sup>43</sup> the company, both inside and outside the court by the provisions of the articles of association (Article 1 point 5 of Law Number 40 of 2007 concerning Limited company).

In addition, if the element "deliberately" is associated with the provisions in Article 3A paragraph (1) of the Taxation Law, which stipulates that entrepreneurs who have been confirmed as Taxable Entrepreneurs (PKP) are required to collect, deposit, and report Value Added Tax (PPN) and Sales Tax on Luxury Goods (PPn BM) which is owed, then simply if the PKP does not implement the provisions in Article 3A paragraph (1) of the Taxation Law on the element "intentionally" in Article 39 paragraph (1) it has been proven.

Based on those description above, it can be understood that the director by his responsibilities in carrying out the company's operations by the existing laws and regulations, has *willens en wetens* (willing and knowing) that the money received from transactions with clients/consumers, which includes VAT and PPn BM is not a right but is a buyer's tax paid through the collection by the seller to be deposited into the state treasury. The logical consequence of this is that it is impossible for the seller's PKP (director) to reason that he does not know that in the receipt of money for the sale of which a Tax Invoice has been issued, there is an amount of VAT that should be deposited into the State Treasury. Thus, the director of the PT not depositing the tax that has been withheld or collected is a deliberate act, either actively (omission) or passively (commission), as is the nature of a criminal act.

3. The element of "not depositing taxes that have been withheld or collected"

As previously explained in the "everyone" element regarding "If the formulation of a criminal offense is intended to secure orders contained in administrative provisions, then the administrative requirements are only needed to give meaning to the core part (*bestanddeel*) of the crime, which is actually both an act and an act. the sanctions already exist in the criminal provisions. Based on this, the Public Prosecutor is basically not obliged to prove the fulfillment of the administrative norms, but instead causes the evidence that the orders contained in the administrative provisions have been complied with become the defendant's burden. As long as the defendant cannot prove that the charges contained in the administrative requirements have been fulfilled, then his material actions against a prohibition have been fulfilled.

4. The element "cause losses to state revenues"

The effect element in the provisions of Article 39 paragraph (1) of the Taxation Law is a material offense, namely an offense whose formulation is focused on unwanted (prohibited) consequences, namely the occurrence of losses in state revenues. The word 'can' in the phrase 'can cause losses to state revenues,' implies that there is no need for actual losses but enough that the potential for losses can already be charged with this article.

The phrase "may cause loss to state revenue" implies that there is a condition/condition, whether it has occurred or is still potential to appear as a result of an act that can cause state revenue, in this case, tax revenue is not or is not received in amount by the State. or the tax received by the State is less than it should be.

## CONCLUSION

Basically, the regulation regarding corporate criminal liability in tax crimes is not regulated in an *expressive verbis* manner in the Law of the Republic of Indonesia Number 6 of 1983 concerning General Provisions and Tax Procedures as Amended by Law of the Republic of Indonesia Number 11 of 2020 concerning Copyright Work (Taxation Law). This law also does not formulate specific criminal threats for corporations since the system of criminal penalties is cumulative between imprisonment and fines. This deficiency raises legality problems in criminal law enforcement. Even though the regulation regarding corporate criminal liability in tax crimes is not regulated in an *expressive verbis* manner in the provisions of several laws. However, if it is related to the implementation of criminal liability theory and is associated with several regulations issued by the Attorney General's Office and the Supreme Court, basically a corporation and its administrators can be charged with other things, using the provisions contained in the Taxation Law.

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