



## Disparity of Judges' Decisions on Perpetrators of Tax Crime (Supreme Court Decision Number: 196 PK/Pid.Sus/2017)

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<http://dx.doi.org/10.18415/ijmmu.v9i12.4394>

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### **Abstract**

Various methods have been used by the government in order to finance the implementation of the government's duties in realizing country's goals, one of which is to collect taxes. However, many people have a low level of awareness in paying taxes even though Law Number 16 of 2000 concerning General Provision and Tax Procedure has expressly regulated sanctions for perpetrators of tax crime. As in the tax crime case on behalf of the convict Dra Budiati which was decided by a judge on the basis of juridical and non-juridical considerations in the Supreme Court decision Number: 196PK/Pid.Sus/2017 which resulted in a disparity of the judge's decision. It is influenced by several causative factors, including: the existence of a novum or new evidence which has never been presented before in court, the actions committed are not entirely the fault of the convict, the condition of the convict who experienced a psychiatric disorder based on the decision of the East Jakarta District Court Number 544/Pdt.P /2016/PN.Jkt.Timur.

**Keywords:** *Disparity; Judgment; Judge's Decision; Criminal Act; Tax*

### **A. Introduction**

State revenue is state income which is used as a source of funding for state activities and needs in state development (Ibnu Syamsi, 1994:85). Various methods have been used by the government to finance the implementation of the government's duties in realizing the goals of the state, one of which is to collect taxes. Furthermore, taxes based on Article 1 point 1 of Law Number 6 of 1983 concerning General Provision and Tax Procedure as amended several times, most recently by Law Number 16 of 2009 concerning Stipulation of Government Regulations in Lieu of Law Number 5 of 2008 concerning the Fourth Amendment of Law Number 6 of 1983 concerning General Provision and Procedure for Taxation to become Law (hereinafter referred to as the Tax Law) are mandatory contributions to the state owed by individuals or entities which are coercive based on the Law, with no compensation in return directly and used for the needs of the state for the greatest prosperity of the people. It is also confirmed in the 1945 Constitution of Indonesia as a constitutional basis for taxes that taxes and other levies are coercive (Article 23A UUD, 1945). From this description, taxes are defined as contributions to the state (which can be imposed) owed by those who are obliged to pay according to the regulations, with no re-

performance, which can be directly addressed, and its purpose is to finance public expenditures related to the duties of the State which administers the government (Waluyo, 2011:2).

As Article 1 number 2 of Law Number 16 of 2009 concerning General Provision and Procedure for Taxation, emphasizes that taxpayers are individuals or entities, including paying taxes, withholding taxes, and collecting taxes, that have taxation rights and obligations in accordance with the provisions of the tax laws and regulations. However, it is not always noticed, according to data from the Director General of Taxes for 2021, the number of Indonesian people is 254.8 million people and those aged 18 years and over reach 106.6 million people. Meanwhile, the number of people above Non-Taxable Income (PTKP) reached 44.8 million. However, those who have Taxpayer Identification Number (NPWP) are only 26.8 million (Direktur Jenderal Pajak, <https://www.kompasiana.com/zakizaki123/60fe3b381525107a981afd62/kurangnyakesadaran-masyarakat-dalam-membayar-pajak>, accessed on 08 November 2022). Furthermore, based on these data, that there are around 18 million people who have not paid taxes and there are still many people who have a low level of awareness in paying taxes. In addition, various *modus operandi* are used to avoid taxes; such as, submitting an incorrect Annual Tax Return (SPT), not submitting an SPT, using an invalid tax invoice, and so on. Those will certainly cause losses to state revenues.

Even though the law has explicitly regulated sanctions for perpetrators of tax crime, it does not stop perpetrators of tax crime. Therefore, in order to make the implementation of provisions of the law effectively, it is necessary to enforce the law for perpetrators of tax crime with the final role of the judge. Furthermore, article 5 paragraph (1) of Law Number: 48 of 2009 concerning Power of Justice states that judges are the guardians of the last bastion of seekers of justice, in deciding judgments judges are not only mouthpieces of the law, but they are also obliged to dig, follow and understand the legal values and a sense of justice that live in society since law in society is like a living organism (Judicial Commission of the Republic of Indonesia, 2017: 3).

Based on these provisions, judges as the last bastion of justice seekers in making decisions have two considerations that are juridical considerations and considerations of non-judicial judges. Juridical judges' considerations are the indictment of the Public Prosecutor, the defendant's statement, testimony of witnesses in the trial and evidence. Meanwhile, considerations which are non-judicial are the actions behind the defendant in committing this criminal act, the consequences of the defendant's actions, psychological conditions, socio-economic and religious factors. In the context of the judge's considerations in deciding the type of crime against this case, it is certainly not only based on considerations which are juridical, but it also based on non-judicial considerations so that the decision is expected to provide justice for the community (Muhammad Rusli, 2013: 109). It is known that in the penal system there is influence from the development of public legal awareness resulting in the rigid classical school in the penal system being abandoned and replaced by the neo-classical school (Edy Os Hieriej, 2016: 8).

However, some people still think that the decision handed down by a judge in a tax crime case has not fulfilled a sense of justice so that legal remedies are available, both appeal, cassation and review (Adami Chazawi, 2005: 398). This imbalance in criminal decisions will continue to bring polemic problems for law enforcement in Indonesia which will never end. The difference in sentencing on the one hand is a form of judicial discretion in making decisions. On the other hand, the difference in sentencing also causes dissatisfaction among convicts and even society in general. In addition, criminal disparities can be caused by the application of unequal penalties to the same offense or to crimes whose dangerous nature can be compared without a clear justification (Langkun, T. S., Wasef, M., & Wahyu, T, 2014).

It is based on several court decisions on tax crime cases since the judge in the *judex juris* decision only passed a decision in the form of a fine without being followed by corporal punishment, namely against the decision of the Surakarta District Court No.11/Pid.Sus/2013/PN. SKA dated 10 June

2013 in conjunction with Supreme Court Decision Number: 54 K/PID.SUS/2014 dated 9 June 2014 in conjunction with PK Decision Number: 196 PK/Pid.Sus/2017 in a tax crime case against the convict Dra Budiati. The public prosecutor accused Dra Budiati of violating the provisions of Article 39 paragraph (1) letters a, b, c of Law Number 6 of 1983 as amended by Law Number 16 of 2000 concerning General Provision and Tax Procedure. In addition, the Public Prosecutor in his lawsuit asked the Panel of Judges at the Surakarta District Court to impose a prison sentence of 1 (one) year with a probationary period of 2 (two) years and a fine of Rp.4,837,320,457; (four billion eight hundred thirty seven million three hundred twenty thousand four hundred and fifty seven rupiah).

Regards to the criminal charges of the public prosecutor, the Surakarta District Court handed down a decision that "declared the defendant Dra Budiati not legally and convincingly proven guilty of committing the crime as charged and acquitted the defendant therefore of the public prosecutor's indictment, so that finally the public prosecutor submit an appeal for cassation. The cassation decision for the a quo case was in the form of "declaring the defendant Dra Budiati legally and convincingly proven guilty of committing a crime" deliberately not registering the inauguration of taxable entrepreneurs, not submitting a notification letter and submitting a notification letter whose contents are invalid so that it can cause a loss to income state, and impose a sentence of imprisonment for 1 (one) year and a fine of 2 (two) times Rp. 4,837,320,457; 00 (four billion eight hundred thirty seven million three hundred twenty thousand four hundred and fifty seven rupiah) with a payment term of 2 (two) years from the date the decision of this case has permanent legal force. Furthermore, according to Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia that the state of Indonesia is a state of law which in accordance with the provisions of this article stipulates that the state of Indonesia runs its country based on law so that running this country uses power is not true (Irfan Ardiansyah, 2017:2). Based on the description above, the writer is interested in studying: What are the factors causing the disparity of judge's decisions in imposing criminal decisions on perpetrators of tax crimes in the Supreme Court Decision Number: 196 PK/Pid.Sus/2017?

## ***B. Research Methods***

The research method is a way of thinking to achieve research goals. Research may not be able to formulate, find, analyze, or solve problems without research methods (Soerjono Soekanto, 2014:43). The legal research compiled by the author is a study of doctrinal legal research, and uses two approach methods, namely: the statute approach and the case approach. A statutory approach is an approach using legislation and regulation. (Peter Mahmud Marzuki, 2022). The statute approach is carried out by examining various laws and regulations related to taxes. Meanwhile, the case approach is carried out by reviewing cases related to the issue at hand that has become a court decision that has permanent legal force with the main study: ratio decidende or reasoning, namely court considerations (legal reasons used) of judges to arrive at a decision.

## ***C. Discussion***

Factors causing the disparity of judge's decisions in imposing criminal decisions on perpetrators of tax crimes (Study of Supreme Court Decision Number: 196 PK/Pid.Sus/2017).

The provisions of Article 39 paragraph (1) letters a, b, c of Law Number 6 of 1983 as amended by Law Number 16 of 2000 concerning General Provision and Tax Procedure emphasize the following: Everyone who on purpose.

1. Not registering or misusing or using without rights the Taxpayer Identification Number as referred to in Article 2

2. Did not submit notification letter

3. Submit a notification letter and/or statement whose contents are invalid or incomplete

These can cause losses to the state and can be punished with 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 unpaid or underpaid taxes and a maximum of 4 (four) times the amount of tax payable which is not paid or underpaid, (2) The crime referred to in paragraph (1) is added 1 (one) time to 2 (two) times the criminal sanction if someone commits another crime in the field of taxation before passing 1 (one) months, starting from the completion of serving the prison sentence imposed. However, in fact, in the a quo case, the request for review should always be related to the provisions stipulated in the Tax General Provisions Law, but in this case the panel of judges only passed a criminal decision in the form of a fine in the amount of tax owed to the convict Dra Budiati without being followed by the imposition of corporal punishment.

As it is known that the legal basis that the cassation applicant/convict violated by the Supreme Court decision Number 196 PK/Pid.Sus/2017 is Article 39 paragraph (1) letter c. Criminal sanctions for this case are contained in the provisions of Article 39 of Law Number 6 of 1983 as amended by Law Number 16 of 2000 concerning General Provision and Tax Procedure which have a cumulative characteristic that is they should be imposed simultaneously, namely sanctions in the form of imprisonment and also fines (cannot be separated). Moreover, disparities or criminal gaps in sentencing cases (sentencing or *strafmaat*) are an important part of criminal law since all criminal law regulations ultimately culminate in punishment (H. Eddy Djunaedi Karnasudirja, 1983:1). Changes in the Philosophy of Punishment which were previously oriented towards retaliation, are now shifting along with rehabilitation efforts by taking into account several factors inherent in the circumstances of the perpetrators which in fact often lead to problems of criminal disparity for violations where the standard or scope of punishment has not been determined regarding the seriousness of the crime. In addition, the disparity in the decision of the panel of judges in this case certainly is influenced by several causal factors so that this is not in accordance with the formal provisions which became the legal basis for the actions committed by the convict.

The factors causing the disparity of judges in imposing sentencing decisions in cases of judicial review Decision Number: 196PK/Pid.Sus/2017 are as follows:

- a. There is a *novum* or new evidence which has never been used as a basis for consideration from *Judex Facti* and *judex juris* (Hadari Djenawi Tahir, 1982:37). *Novum* in this case is in the form of evidence of letters marked PK-1a to PK-39a as evidence of the existence of another company with a similar name that is PT Muncul Lestari Makmur domiciles in Jakarta with Director Rudi Tri Santoso (the convict's ex-husband) and this company which conducts business not a convict company.
- b. Even though the convict is the director of PT Muncul Lestari Makmur Mandiri, Rudi Tri Santoso, the ex-husband of the convict, is mostly running the company's operations so that the mistakes/conflicts are not entirely the convict's fault, but Rudi Tri Santoso's actions are more dominant.
- c. The convict's condition suffers from a mental disorder and she is undergoing treatment at the Dharmawangsa Mental Hospital (RSJ) Jakarta with the results of the patient's examination still requiring continuous and intensive management for an undetermined time where this condition can result in permanent mental disability. It can causes her cannot take care of herself and other affairs including matters regarding rights and obligations related to law so that she must be represented by another person; besides, in order to protect her rights and interests the person concerned should be declared under guardianship and all interests must be represented by the guardian so that the petitioner for review/the convict is under guardianship of his mother named Himawati.

The decision handed down by the Supreme Court Panel of Judges in the a quo case is a casuistry case. The judge hands a sentencing decision which is different from the formal provisions which become the legal basis for the crime that is violated by the petitioner for review/the convict due to several casuistic considerations or reasons and solely providing justice and benefit to society without leaving certainty as a legal goal. The judge saw that there is a legal action taken by the petitioner for review/the convict, and for this legal action there is a consequence, namely a loss for state revenue. However, not all of these actions are conducted by the applicant for review/the convict since those who run the company's operations are mostly conducted by the ex-husband of the convict named Rudi Tri Santoso. Therefore, the panel of judges believes that if the mistake/confusions which are solely borne by the convict are felt to be unfair.

Furthermore, the judge sees that when the request for review is filed by the cassation applicant/convict at that time the cassation applicant/convict is being treated at the Dharmawangsa Mental Hospital in Jakarta for an undetermined period of time where this condition can result in permanent mental disability. In the a quo case the judge is no longer the mouthpiece of the law, but how can the sentencing decision handed down by the judge besides having a certainty value also provide justice and benefits. The purpose of sentencing in the a quo case is not only as deterrence, but it can also provide justice for the parties since the applicant for review/the convict is in a state of psychological inadequacy. In this regard, there is a legal doctrine "Res Judicate Pro Veritate Hebetur". This doctrine emphasizes that what is decided by the Judge is correct even though it is not true, so that it is binding until it is not canceled by another court (Theo Krishnanda, 2015:6). This places the Court chaired by a judge as the central point of the rule of law concept. Moreover, in Article 12 paragraph (2) of the Criminal Code it is also emphasized that: "Judges have the freedom to choose the severity of the sentence (Strafmaat) to be imposed since what is determined by law is only the maximum and minimum". In Indonesian legislation there are also provisions which are indicative of considering the severity of the crime (Angraini Putri, Fauzan Muzakki, Muhammad Qadar Ramadhan, Siti Rachma 2021: 249).

It is in line with the relevant sentencing objectives according to Cesare beccaria is preventing someone from committing a crime, and not being a means of revenge for society (the purpose of punishment is to deter persons from the commission of crime and not to provide social revenge) (Cesare Beccaria, 1995:31). Moreover, this paradigm shift changes the philosophy of punishment which is originally oriented towards retributive goals, which make punishment a means of retaliation for a crime committed by someone. The slowly shifting to punishment prioritizes the correction and rehabilitation of perpetrators so that they can improve their behavior so that they can be prepared to socialize properly in society again. Therefore, consequently the judge has a very central role in assessing and deciding the appropriate criminal sanctions to be received by the perpetrators of crimes. In addition, several biological, sociological, psychological considerations attached to the circumstances of the perpetrator may be put forward as mitigating reasons for the criminal verdict. On the other hand, it can become an opening for disparities in criminal decisions to arise (Angraini Putri, Fauzan Muzakki, Muhammad Qadar Ramadhan, Siti Rachma, 2021: 249).

## **Conclusion**

The basis for the judge's considerations in imposing a sentencing decision on the perpetrators of tax crimes in the Supreme Court Decision Number 196PK/Pid.Sus/2017 is based on juridical considerations and non-juridical considerations which have an impact on the disparity of judge's decisions against perpetrators of criminal tax cases. As it is known, the disparity in the decisions of the panel of judges in this case certainly is influenced by several causal factors so that it is not in accordance with the formal provisions which become the legal basis for the actions committed by the convicted person. The factors causing the disparity of judges in imposing sentencing decisions on

perpetrators of tax crimes in the Supreme Court Decision Number 196PK/Pid.Sus/2017 are as follows:

1. The existence of a novum or new evidence which has never been presented before in court.
2. The actions committed are not entirely the fault of the convict
3. The condition of the convict who has a psychiatric disorder is based on the determination of the East Jakarta District Court Number 544/Pdt.P/2016/PN.Jkt.Timur dated 19 December 2016.

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Undang-undang Dasar Republik Indonesia 1945

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