



IMPLEMENTATION OF TAX HOSTAGE (*GIJZELING*) AS AN *ULTIMUM REMEDIUM* IN TAX COLLECTION.

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Abstract: The tax collection system in Indonesia still tends to have a low tax compliance rate, so it is important for the government to enforce the law in the field of taxation. The law enforcement can be done either by applying administrative sanctions or by other coercive tools such as tax hostage (*gijzeling*). This research aims to determine the regulation and implementation, as well as the factors considered by the government in applying tax hostage (*gijzeling*) as an *ultimum remedium* in tax collection, as well as to understand the tax hostage policy reviewed from three fundamental legal values. This research is normative research using the literature study approach method, where data collection refers to previous research, journals, books, documents, and other reading sources.

From this research, it can be understood that the existence of tax hostages as an *ultimum remedium* has a positive influence on increasing tax compliance and awareness in Indonesia. This is supported by the role of tax detention, which is considered to provide psychological pressure, shame, and deterrence to taxpayers. Furthermore, when reviewed from three fundamental legal values, the tax hostage policy can be said to have met the values of legal justice, legal certainty and legal expediency.

Keywords: tax, *gijzeling*, legal values, *ultimum remedium*

INTRODUCTION

Indonesia is one of the countries that adhere to the welfare state system, which refers to the fact that the State plays a vital role in the welfare of the people. The achievement of public welfare can be done through sustainable national development. The State needs to manage and increase state revenue to

support national development with the principle of independence. One of the primary sources of state revenue comes from tax collection by the State to every community that qualifies as a taxpayer. Apart from being the primary source of income, taxes in Indonesia are also the largest source of financing for development, as well as a source of funding for public interests, such as

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health services, government financing, education, and so on (Khalimi & Iqbal, 2020), this is also the same as other countries, which make tax revenue the foundation of development (Luitel, 2014). Welfare which is the main goal of the welfare state, is not only the State's responsibility but also requires a real contribution from the community by upholding their rights and obligations as citizens. Tax awareness is an example of a balance between rights and obligations in the field of taxation, which is a manifestation of state obligations for each taxpayer to improve welfare and national development, which is his right as a citizen. Tax awareness is a phase where each taxpayer has sufficient knowledge and understanding of the provisions of national taxation and implements it correctly and voluntarily. For the government's great expectation of tax awareness, the government also gives confidence to each taxpayer to fulfill tax obligations independently, namely through a self-assessment system. The self-assessment system is a product of tax reform commonly referred to as tax reform, which aims to increase economic growth as well as maximize state revenue for the benefit of national development.

However, public tax awareness still tends to be low in practice, which can be directly seen from Indonesia's low tax ratio and the low number of taxpayers who report Surat Pemberitahuan Tahunan/ SPT (Sa'adah, 2017). Even in some cases, there are conditions where the taxpayer is actually in a state of being able to pay off his tax debt, but he is disobedient, and there is no good faith to pay off his tax debt. On this basis, it is necessary to carry out law

enforcement in the field of taxation to secure every state's revenue from the tax sector. Tax law enforcement can be carried out by increasing the intensity of tax collection persuasively and repressively, and the action must have compelling legal force. The provisions in the field of taxation provide authority for the tax authorities to collect taxes (Ispriyarso, 2015).

Tax billing can be in the form of a warning or warning carried out immediately and at once, which means without waiting for the due date of payment, which is carried out on all taxes owed, as well as all types of taxes, tax periods, and tax years. Tax collection is carried out by the Tax Bailiff against non-compliant taxpayers, with the aim that taxpayers pay in full all their tax debts (including administrative sanctions in the form of fines, interest, or increases listed in tax collection letters), along with the cost of tax collection. In addition to applying administrative sanctions to tax collection, the tax authorities are also authorized to use other coercive tools, such as hostage-taking (*gijzeling*) or body confiscation of non-compliant taxpayers.

Hostage-taking, according to Article 1 point 21 of Law Number 19/2000, is defined as a temporary restraint of the taxpayer's freedom by placing him in a particular place. Tax hostage is considered the last resort (*ultimum remedium*) in the whole process of tax collection with a tax summons. The application of tax hostage has caused controversy related to the issue of justice and law enforcement. Therefore, it is necessary to conduct a study on "The Implementation of Tax Hostage (*Gijzeling*) as an *Ultimum Remedium* in Tax Collection."

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MAIN PROBLEM

Based on the problem mentioned above, the authors then formulate the main problem discussed in this research, that is:

1. How is the regulation and implementation of tax hostage (*gijzeling*) as an *ultimum remedium* in tax collection? And what factors are considered by the government in implementing tax hostage as an *ultimum remedium*?
2. How is tax hostage policy viewed from three fundamental legal values?

METHOD OF RESEARCH

This research is normative research using the literature study approach, where the data collection refers to previous research, books, newspapers, documents, and other reading sources. The selection of this literature study approach is intended to facilitate the author's exploration of problems with certain limitations. Data collection in this research is secondary data consisting of primary, secondary, and tertiary legal materials.

Primary legal materials are in the form of laws and regulations related to tax hostage-taking, which are used to answer the subject matter;

Secondary legal materials in the form of law books, legal journals, and documents related to this research; and

Tertiary legal materials such as legal and language dictionaries, to support primary and secondary legal materials.

This research focuses on the discussion of the regulation and implementation as well as the factors of consideration for the government to apply tax hostage (*gijzeling*) as an

ultimum remedium in tax collection and focuses on the tax hostage policy in terms of three fundamental legal values.

Data analysis involves several stages, such as data collection, provision, grouping, and conclusions from a study. The literature study approach method was chosen to present various theories that relevant to the problems being studied as a reference in discussing the research results.

RESEARCH RESULT

Regulation and Implementation of Tax Hostage (*gijzeling*) as an *Ultimum Remedium* in Tax Collection

Forced efforts in tax law aim to seek the fulfillment of tax obligations for non-payment of debt on taxes. The conception of tax law regarding a policy that becomes a forced tool in tax collection, namely tax hostage / *gijzeling* (Adiyanta, 2017). Tax hostage is carried out by the tax authorities, in this case, the Directorate General of Taxes, preceded by a notification of a letter of force to the taxpayer/taxpayer, with a maximum period of 14 (fourteen) days, starting from the letter of force notified to pay off the tax debt.

Tax hostages are carried out due to the fulfillment of two conditions by the taxpayer, namely, quantitative and qualitative conditions.

Quantitative requirements related to a certain amount of tax debt. Hostage-taking can only be done to taxpayers with a total tax debt above the nominal value of Rp. 100,000,000,- (one hundred million rupiah); meanwhile qualitative requirements related to the person of the legal subject in fulfilling his obligations as a taxpayer/taxpayer.

Hostage-taking is carried out on taxpayers whose good faith is doubtful about paying off their tax debts. For example, taxpayers can pay off their tax debts, but to avoid tax collection and/or confiscation, the taxpayer deliberately flees or hides his assets. This results in the assets being used as collateral for the repayment of tax debts and tax collection costs, which is needed.

Tax hostage may be carried out for six months, and extended for a maximum of six months, carried out in a particular place that meets the following requirements: (1) closed and secluded from the public; (2) limited facilities; and (3) there is an adequate security and supervision system.

The basic concept of tax hostage is as an *ultimum remedium*/last resort used by the government in tax collection, which is in the form of temporary restraint on taxpayers' freedom/freedom by being placed in a particular place (prison/state detention center). It is said to be the *ultimum remedium* because, before the hostage-taking, the government, through the Directorate General of Taxes, had taken other administrative tax collection efforts but did not respond well. The tax collection efforts are in the form of:

- (1) Persuasive passive collection efforts;
- (2) Repressive active collection efforts, with the stages of tax collection by Article 6 of Permenkeu Number 61/2023. 61/2023 (Djarmiko, 2016): (1) Letter of Reprimand, which is the initial tax collection effort issued by the government to reprimand taxpayers to immediately pay off tax debts in accordance with SKPKB and

STP, with a maximum period of 21 days; (2) Letter of Immediate and Simultaneous Collection Order, is issued in the event that the taxpayer will/intends to leave Indonesia, the taxpayer transfers the controlled objects in order to shrink/stop the business, the business entity is dissolved by the State, or the form of the business entity is changed, or there is confiscation by a third party or if there are signs of bankruptcy; (3) Force Letter, issued as an order to pay off tax debts along with tax collection costs, with a period of 2x24 hours before confiscation and has executorial legal force; (4) Warrant to Seize Assets, with a period of 14 days to pay off tax debts before the auction announcement is issued; and (5) Auction, preceded by an auction announcement, after which if 14 days pass, the tax debt is not paid, then the government has the right to use / sell / transfer confiscated goods. So that if a series of tax collection efforts do not produce results, then on this basis (14 days after the forced letter is sent), as well as the conditions in Government Regulation Number 13/2000 are met, and which are accompanied by approval from the Minister of Finance, the Directorate General of Taxes is authorized to take tax hostage efforts as a last resort in tax collection, as part of law enforcement in the field of taxation.

Law enforcement in the field of tax law is one part of state administrative law, which includes public law. In the settlement of the dispute, it also recognizes the *ultimum remedium*. Judging from its practical-economic aspects that have to do with state administrative law, the *ultimum remedium* serves to simplify the judicial process because before applying the heaviest sanctions decided by the court, administrative officials have the authority to execute and impose administrative sanctions first (Yoserwan, 2019).

The role of tax hostages as an *ultimum remedium* for tax law enforcement can be seen from the implementation of *gijzeling*, which will only be carried out if no more uncooperative taxpayer assets can be confiscated. The last way is for the government to confiscate the taxpayer through *gijzeling*. The *ultimum remedium* aims to provide a deterrent effect to the perpetrator.

Determining the conditions of the place where the hostage is carried out, which limits the taxpayer's freedom, is part of the *ultimum remedium* objective itself. Furthermore, no permission is required from the District Court to conduct tax hostage-taking, considering that juridically, a Force Letter issued to collect tax debts has executorial legal force equivalent to a gross deed and cannot be appealed. Force Letter is often called separate execution (Hidayah & Mudawamah, 2008).

The main character of the *ultimum remedium* is that it is applied at the very last stage, preceded by the implementation of administrative sanctions; if administrative sanctions cannot achieve the expected goals (with the parameters of public

interest), then the *ultimum remedium* can be applied as an alternative. This is following the character of *gijzeling* so that it can be understood that if the collection efforts before *gijzeling* have achieved the desired results, namely the repayment of tax debts and the State does not suffer losses, then coercive tools such as *gijzeling* are no longer necessary.

Although it is considered the last means of coercion in tax collection, hostage-taking will still not erase the tax owed and will not stop the implementation of the tax collection. Taxpayers can be free from tax hostages only if they pay in full all tax debts along with the cost of tax collection, so the *ultimum remedium* nature of tax hostages can also be seen from the consistency of the government's ultimate goal in tax collection efforts, which is to continue to require taxpayers/taxpayers to pay off their tax debts, to release themselves from tax hostages.

The existence of tax hostages can be pretty effective in returning state revenue from the tax sector that was previously avoided / not paid by taxpayers. Most taxpayers fully pay their tax debts before the due date to prevent tax hostages. Applying tax hostages as a means of coercion positively increases tax compliance and awareness in Indonesia.

There are several things that become factors of consideration for the government in implementing tax hostages as an *ultimum remedium*:

- (1) Taxes belong to the field of public law, so tax debts also become an issue in this field. Public law regulates the legal relationship between the State and society, each with its own rules and regulations. Parties,

the State, and society have rights and obligations (Sujianto, 2021). The public must pay their tax debts if they are related to taxation. The government has the right and authority to make efforts to collect taxes on tax debts from taxpayers, which can be done by force, namely through forced letters, confiscation, and auction, or by taking tax hostages as a last resort for tax collection, if needed to enforce tax law.

- (2) Regarding the role of taxes as the primary source of state revenue. Suppose state revenues are reduced or not by the nominal amount that should be, or there are other problems regarding taxation. In that case, this will affect the life of the country and society, especially national development. If it is related to tax hostage-taking, it is known that one of the hostages is the non-payment of tax debts with a nominal value above Rp. 100,000,000 - (one hundred million rupiah), if the taxpayer with a nominal tax debt of that nominal value only carried out collection efforts in the form of providing collection letters only, according to the author, it will not be effective. All parties will experience the impact; state revenue derived from taxes is not optimal, and national development is also not optimal. Thus, the government applies *gijzeling* as a forced tool in tax debt collection efforts.

- (3) Tax hostage plays a role in providing psychological pressure, shame, and

deterrence and affects a person's dignity. By conducting a tax hostage, the government seizes its property so that the taxpayer/taxpayer will inevitably try to escape from the legal bondage, in this case, the tax hostage, and will automatically be encouraged to pay off the tax debt.

- (4) The tax hostage policy positively impacts increasing tax awareness and compliance.

Tax Hostage Viewed from Three Fundamental Legal Values

In legal science, there is a concept of 3 (three) fundamental values introduced by Gustav Radbruch, which consist of values (Rahardjo, 2012): (1) Legal Justice, (2) Legal Expediency, and (3) Legal Certainty. These values must be contained in the law to protect the interests of the parties, in this case, the State and society.

In the field of taxation, tax law is made to fulfill these three values by regulating the rights and obligations of the parties, in this case, the State through the tax authorities as the party authorized to collect taxes and the community as taxpayers (Suparnyo, 2012). Because tax law is public law, it is necessary to supervise the government in conducting tax collection to tax collection so that it is not arbitrary.

Tax hostage efforts, which have become the *ultimum remedium* in the tax collection system, have triggered pros and cons related to the issue of human rights violations, so the following is a discussion of how tax hostages are viewed in terms of three fundamental legal values:

- (1) Legal Justice. The value of justice for tax hostages can be

seen from the balanced rights and obligations between the government and the community in tax collection. Tax is one of the means of fulfilling human rights because this is related to the philosophy of tax collection, which is carried out for national development. If state revenue from the tax sector runs optimally, then national development will also run optimally to fulfill every community right. Then, still related to tax hostages, the value of justice can also be seen from the hostage taken against the taxpayer. However, there is a narrative that carrying out tax hostages means that there are human rights that are limited and even violated by the government. However, from this value of justice, it can be seen that each taxpayer is still given their rights, which are regulated and guaranteed in the laws and regulations, and even the freedom to take legal remedies related to tax hostages. It should also be remembered that in the State's life, community rights must be obeyed and respected by every citizen as part of human rights. This means that in terms of tax law, every citizen has the right to enjoy national development from tax revenue. So, a citizen as a taxpayer does not comply with / violate the community's rights by hindering national development. In that case, it can be considered appropriate to be subject to restrictions on his human rights (Rochmat, 2005).

- (2) Expediency. In terms of the value of practicality, every enforced law needs to provide practical value. A tax hostage policy helps punish uncooperative taxpayers (Shyafril & Bima, 2021). Tax hostages also provide psychological encouragement for each taxpayer to have awareness and compliance related to paying off their tax debts (Adiyanta, 2017). This will affect and deliver maximum benefits for state treasury revenues, namely optimizing state revenues from taxes, the ultimate goal of which is the benefit of national development.
- (3) Legal Certainty. As a party to tax collection, the government always faces problems related to the awareness and compliance of taxpayers because, in practice, not all taxpayers have a level of awareness and compliance with their obligations to pay taxes. So, it is necessary to regulate a policy that can provide limits and legal certainty related to the rights and obligations of the State and society; one example is applying the tax hostage policy as a forced tool in tax collection (Adiyanta, 2017). Implementation of *gijzeling* policy. As an act of reducing or limiting human rights, it raises pros and cons. When viewed from the value of legal certainty, because it is considered related to human rights, it is appropriate that tax hostages be regulated to guarantee the

value of legal certainty, as well as to provide limits to the tax authorities in exercising their authority in the context of tax collection and conducting tax hostages with the principle of prudence. The legal umbrella of *gijzeling* in Indonesia is found in Law Number 19/2000 and other laws and regulations.

CONCLUSION

In Indonesia's tax collection system, the government uses *gijzeling* as a forced tool / *ultimum remedium*. The existence of tax hostages as an *ultimum remedium* can be said to be compelling enough to restore and optimize revenue and increase state coffers from taxes. It also positively influences increasing tax compliance and awareness in Indonesia.

The government applies tax hostage as an *ultimum remedium* based on (1) considering the scope of tax law is in the field of public law, it is necessary to balance the rights and obligations of the State and society in the field of taxes and uphold justice with the parameters of public interests; (2) taxes as the primary source of state revenue to carry out development; (3) the role of tax hostages to provide psychological pressure, shame, and deterrence to taxpayers.

From the value of justice, it is necessary to understand that the State and society have a balanced portion of their respective rights and obligations in the tax sector. The focus of tax hostages is not to harm human rights but rather to uphold justice in the field of tax law, with the aim of common interests. Individuals held hostage are also given the rights and options of legal remedies. From the value of practicality, *gijzeling* is carried out to

maximize and optimize state revenue from taxes, focusing more on *gijzeling* as an *ultimum remedium* that has psychological pressure and force. From the value of legal certainty, tax hostage-taking already has particular arrangements to limit each party's authority.

Suggestions (1) Tax authorities, to achieve the three fundamental values of law, namely legal justice, legal expediency, and legal certainty, tax authorities in conducting tax hostages should not discriminate or be indiscriminate because all taxpayers are equal, and the only difference is their compliance and awareness of taxes. Prioritize the principle of prudence in carrying out every effort to collect and collect taxes in accordance with applicable regulations. As well as continuing to make *gijzeling* as an *ultimum remedium* in tax collection; (2) for the community, it is necessary to increase the value of tax awareness so that as much as possible to fulfill tax obligations before maturity and before collection by the government.

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