

Pertanggungjawaban pidana perusahaan multinasional (multinational enterprises) dalam tindak pidana penghindaran pajak (tax evasion) = Criminal liability of multinational enterprises in (tax evasion)

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Abstrak

Perusahaan multinasional yang melakukan tindak pidana penghindaran pajak termasuk dalam ruanglingkup hukum pidana administrasi atau administrative penal law dimana perundang-undangan pajak yang berkategori peraturan administratif selain memuat sanksi administrasi juga memuat sanksi pidana. Beberapa bentuk tindak pidana penghindaran pajak yang dilakukan oleh perusahaan multinasional sebagai wajib pajak antara lain : tindak pidana surat pemberitahuan (SPT), tindak pidana nomor pokok wajib pajak (NPWP), tindak pidana pembukuan dan tindak pidana penghindaran pajak berupa tidak menyetorkan pajak yang telah dipungut. Perusahaan multinasional menggunakan teknik penghindaran seperti controlled foreign corporation, thin capitalization, transfer pricing dan thin capitalization serta merger perusahaan dimana bertujuan untuk meminimalisir atau menghilangkan kewajiban membayar pajak. Terdapat beberapa ketentuan pidana pajak di Indonesia yang diberlakukan seperti UU Ketentuan Umum dan Tata Cara Perpajakan, UU Bea Materai, UU Penagihan Pajak Dengan Surat Paksa, UU Pajak Daerah dan Retribusi Daerah. Ketentuan pidana dalam administrasi pajak diterapkan pula di Malaysia, Vietnam, Afrika Selatan dan Jerman serta Nigeria melalui Companies Tax Act 2007 yang telah secara tegas korporasi atau perusahaan multinasional sebagai pelaku tindak pidana penghindaran pajak. Konsep pertanggungjawaban pidana wajib pajak badan dalam undang-undang pajak Malaysia dan Nigeria perlu diadopsi ke dalam undang-undang pajak Indonesia agar mampu mempertanggungjawabkan pidana perusahaan multinasional dalam tindak pidana penghindaran pajak. Sarana nonpenal yaitu perlunya dibangun good corporate governance, perlunya ekstentifikasi pajak dan diadakannya perjanjian perpajakan atau tax treaty. Upaya pembebanan pertanggungjawaban pidana bagi perusahaan multinasional terdapat beberapa variasi atau sistem yang dianut di beberapa negara. Di Indonesia pembebanan pertanggungjawaban pidana masih kepada pengurus perusahaan multinasional yang beroperasi di Indonesia. Berbeda dengan kasus-kasus penghindaran pajak yang terjadi di beberapa negara lainnya yang telah membebankan pidana kepada perusahaan multinasional sebagai pelaku tindak pidana penghindaran pajak. Pembebanan pertanggungjawaban pidana perlu memperhatikan cakupan yurisdiksi hukum pidana dan masih lebih diutamakan penyelesaian secara administratif dibandingkan jalur pidana dalam perkara pajak oleh pemeriksa pajak.

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Multinational companies who commit the crime of tax evasion is included in the scope of the administration of criminal law or administrative penal law where tax legislation is categorized administrative regulations in addition to the administrative sanctions load also contains criminal sanctions. Some forms of criminal acts committed tax evasion by multinational companies as a taxpayer, among others: the crime of a notice (SPT), the crime of tax identification number (TIN), the crime of bookkeeping and tax evasion a criminal offense in the form of not depositing tax has been levied , Multinational companies use avoidance techniques such as controlled foreign corporation, thin capitalization, transfer pricing and thin capitalization and mergers of companies which aim to minimize or eliminate the obligation to pay taxes. There are several criminal

provisions imposed tax in Indonesia such as the Law on General Provisions and Tax Procedures, the Law on Stamp Duty, Tax Billing Act With Forced Letters, Law on Regional Tax and Retribution. Criminal provisions in tax administration applied also in Malaysia, Vietnam, South Africa and Germany and Nigeria through the Companies Tax Act 2007, which has been explicitly corporation or multinational companies as criminal tax evasion. The concept of criminal responsibility of corporate taxpayers in tax laws Malaysia and Nigeria need to be adopted into Indonesian tax laws to be able to account for the criminal multinationals in the criminal offense of tax evasion. Non-penal means that the need to build good corporate governance, the need for and the holding of ekstentifikasi tax treaties or tax treaty perpajakan. Efforts imposition of criminal liability for multinational companies there are a few variations or system adopted in some countries. In Indonesia, the imposition of criminal liability is to the management of multinational companies operating in Indonesia. Unlike the cases of tax evasion that occurs in some other countries which already imposes criminal to multinationals as criminal tax evasion. Imposition of criminal responsibility needs to pay attention to the jurisdiction of the scope of criminal law and is still more than the administrative settlement Placed criminal path in the case of taxes by tax inspectors.