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The Urgency for the Implementation of Transition Norm "Lex Favor Reo" in the Imposition of Tax Sanction in Indonesia

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Abstract

Taxation regulations in Indonesia are very dynamic, due to frequent changes in tax laws and regulations. Taxpayers need to make extra efforts to keep abreast of the latest tax regulations. This can cause taxpayers to experience difficulties in carrying out their tax obligations. On the other hand, Indonesia adheres to the principle of legal fiction, so that for every statutory regulation that has been promulgated, the public is deemed to have known the law and understands it, so that there is no excuse for the violations to the law. Problem may arise when the tax authorities conduct tax audits on taxpayers and find the taxpayers do not carry out tax obligations in accordance with the taxation provisions in effect at the time the transaction happens, so that the tax authorities will impose tax sanctions on taxpayers in accordance with the tax regulations in force at the time when the transactions happen, not based on the latest tax regulations, which are in effect when the taxpayer's error is discovered by the tax authorities. The imposition of these sanctions raises a problem: has the imposition of tax sanctions provided justice and legal certainty? How is the imposition of tax sanctions that provide justice and legal certainty? Legal certainty is one of the main factors for investors in deciding which countries to invest in. Therefore, in our opinion, a "new model for the imposition of tax sanctions" is needed in Indonesia, namely by applying the Lex Favor Reo Transitoir (transition) principle in the imposition of tax sanctions. This research is significant to conduct, so that the imposition of tax sanctions provides better justice and legal service. The application of the "new model of imposition of tax sanctions" also has urgency, so that the imposition of tax sanctions for taxpayers provides a sense of justice and legal certainty which in turn can attract investors to invest in Indonesia as well as to avoid *capital flight*. This condition will make Indonesian economy grow rapidly and, in the end, will increase state revenue from taxes.

Keywords: tax sanction, new model, legal certainty, legal justice.

1. Introduction

In Indonesia, tax regulations are very dynamic and change very rapidly. There are times when changes come and go. This certainly makes taxpayers need extra energy to keep abreast with the latest tax regulations. During the Covid-19 pandemic, the government issued so many tax regulations to provide tax and other incentives. For the most recent amendments, on 5 October 2020 the House of Representatives has completely ratified the Job Creation Act / Omnibus Law Bill into Law, but it has not been promulgated by the government to date. In the Omnibus Law which was recently passed by the House of Representatives, it also regulates

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changes in taxation legislation, namely amendments to the Law on General Provisions and Procedures of Taxation (GPT Law), the Income Tax Law, and the Value Added Tax Law (VAT Law).

This dynamic taxation regulation in Indonesia can cause taxpayers to experience difficulties in carrying out their tax obligations. Meanwhile, on the other hand, there is a theory of legal fiction. If the taxpayer does not properly carry out tax obligations, he will be subject to sanctions. For taxpayers, especially investors, legal certainty is very important in running a business. Even potential investors place legal certainty as the main factor in determining which country to invest in.

In order to provide justice and legal certainty in the imposition of tax sanctions, in our opinion, a "new model in the imposition of tax sanctions is needed". The new model for the imposition of tax sanctions is expected to provide legal justice and legal certainty, because taxpayers are guaranteed to be treated fairly if something goes wrong.

The urgency to implement a "new model for the imposition of tax sanctions" in Indonesia is for investors to choose Indonesia as an investment destination country. If in the future investment in Indonesia increases, then undeniably Indonesian economy will also grow and develop. This absolutely will also provide a multiplier effect to other companies, to communities around the company, as well as in creating jobs. This arrangement will simultaneously improve Indonesian economy which in turn will increase state revenue from taxes.

By looking at the existing problems, then the necessity and urgency for applying "a new model in the imposition of tax sanctions in Indonesia" makes the author interested in discussing and analyzing "The Urgency of a New Model in the Imposition of Tax Sanctions – in an Indonesian Perspective".

The legal problems examined in this study are: First, whether the current tax penalties provide legal justice? Second, how to impose tax sanctions that fair and provide legal certainty? The author will discuss and analyze the imposition of tax sanctions that apply in Indonesia and diagnose the problems that occur, as well as provide solutions to overcome the problems regarding the imposition of tax sanction.

The systematic in writing this journal begins with an introduction, then continues with the imposition of tax sanctions in Indonesia; continued with the importance of legal certainty for investors; continued with a discussion about the imposition of tax sanctions, the implications of applying sanctions to taxpayers, the cumulation of cases in the tax court, and the counterproductive energy in dealing with tax disputes; then continued to discuss "The Urgency of a New Model in Imposing Tax Sanctions" as a solution to the problems that occur; and ends with conclusions, suggestions and expectation.

2. Imposition of tax sanction in Indonesia

The imposition of tax sanctions in Indonesia is regulated in Law Number 6 of 1983 concerning General Provisions and Tax Procedures 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 Fourth Amendments on Law Number 6 of 1983 concerning General Provisions and Tax Procedures to become Law, hereinafter referred to as the Law on General Provisions and Procedures of Taxation (GPT Law). On 5 October 2020, the House of Representatives has just passed the Job Creation Act / Omnibus Law which includes changes to the GPT Law, the Income Tax Law, and the VAT Law.

There are 2 (two) sanctions regulated in the GPT Law, consisting of administrative sanctions and criminal sanctions. Administrative sanctions consist of administrative sanctions,

fines and interest sanctions. This is an additional sanction from the basic tax penalty that is still payable by the taxpayer based on the determination of the tax auditor.

The provisions on sanctions is not only regulated at the level of the GPT Law, but also contained in the taxation regulations which form the basis for determining the amount of tax payable by taxpayers in the form of principal payable tax. Taxation regulations governing principal tax sanctions are contained in tax regulations that govern Income Tax, hereinafter referred to as IT, or Value Added Tax, hereinafter referred to as VAT. This taxation regulation that regulates IT and VAT regulates the criteria and how to calculate the tax imposed. If the tax auditor finds that the taxpayer does not carry out tax obligations based on the criteria and provisions stipulated in the statutory regulations regarding IT or VAT, the tax auditor will impose tax sanctions on the taxpayer, namely principal tax penalties and additional sanctions in the form of fines, increase, and/or interest.

Tax regulations regarding IT and VAT often change from time to time. This change is very dynamic. In this study, the authors focus on the regulations governing the imposition of tax sanctions in the form of the amount of tax subject to be paid by taxpayers, before additional sanctions which can be in the form of fines, increase, and/or interest from the GPT Law, namely tax laws that govern payable tax calculation on IT and VAT.

3. The significance of legal certainty for investor

The issue on the significance of legal certainty for investors has often been raised by various parties. Sugianto, as Managing Partner of MUC Consulting, explained that many Japanese companies investing in Indonesia prioritize legal certainty. Japanese investors in Indonesia question the uncertainty of tax law in Indonesia, where tax officials often interpret taxation regulations differently, even though the regulations are still the same and have not changed. They are also shocked and questions, why in every tax audit they experience, the tax auditor always aims to find correction and it confuses them. They also question, why tax auditors do not appreciate taxpayers who have complied with tax obligations in accordance with tax regulations. According to Yustinus Prastowo, legal certainty in taxation is a very important factor for investors in making decisions in determining where to do business and invest.

Furthermore, according to Sofyan Wanadi as Chairman of the Indonesian Employers' Association, the main factor that entrepreneurs pay attention to when they want to invest is legal certainty. The same thing was conveyed by the State Financial Law Expert from the University of Indonesia, Dian Puji Simatupang in a written statement to Hukum Online, that 89% of investors wanted guarantees for continuous investment in Indonesia in the form of better legal products. Sofyan Wanadi also states that "The number of unclear regulations makes it difficult for entrepreneurs to calculate costs." Sofyan Wanadi also said that there were actually many who wanted to invest in Indonesia, but the uncertainty of law in Indonesia made potential investors cancel their intention to invest in Indonesia.

According to the Deputy Chairperson of Indonesian Chamber of Commerce and Industry, Department of Industry, Johnny Darmawan, the main factor of hesitance in foreign investors to put investment in Indonesia is the lack of legal certainty in Indonesia. Investors consider legal certainty and public support for the government. After the trade war between the United States and China, 33 companies made the option to relocate their business from China and they did not choose Indonesia (Kosijungan, 2020). Indonesia lose to Vietnam, Thailand and Malaysia in attracting relocation investment from the trade war (Crystalli, 2018). The complexities of regulations in Indonesia and the disharmony of existing regulations are feared to be one of the factors for investors to discourage investment in Indonesia (Kosijungan, 2020).

The amount of tax is not the main factor for investors in making investment decisions in a country, however, the legal certainty of tax regulations is the main factor (OECD, 2020). Certainty in tax regulations is an important factor for investors in making investment decisions and can have a big impact on economic growth (OECD, 2019).

4. Discussion

4.1 *Imposition of taxation sanction*

The dynamic changes of tax regulations in Indonesia obviously have resulted in changing the criteria and/or provisions for tax imposition. If in the future the tax auditor finds the taxpayer's error and determines the remaining tax that the taxpayer has to pay, the tax auditor will generally refer to the taxation regulations in effect at the time the error occurred. The dynamic of Indonesian taxation regulations can make it difficult for taxpayers to carry out tax obligations, so that the errors that occur are also not due to the taxpayer’s deliberate factor. However, it is more due to the fact that it is difficult for taxpayers to follow changes in the applicable taxation regulations.

Another thing that may happen is that it is not easy for the taxpayer to understand well, whether the determination of the tax imposed on him is in accordance with his error or not? Besides that, are the tax regulations used for tax determination correct and provide legal certainty and justice?

As an example in the imposition of VAT on self-construct activities, there is a Minister of Finance Regulation which regulates the imposition of VAT that must be paid by the Taxpayer for self-building activities in the form of buildings for their own needs, which is known as “self-construct VAT”. In the Regulation of the Minister of Finance which regulates “self-construct VAT”, from time to time the regulations undergo changes, especially regarding the “criteria of minimum building area to be subject to Self-construct VAT”, as well as “the amount of percentage of the Tax Base”.

Since 1995 until now (October 2020) the Regulation of the Minister of Finance that regulates self-construct VAT has changed 5 (five) times, as described in the table below.

Table 1. Table of criteria for self-construct VAT according to the Regulation of the Minister of Finance

No	Number of Regulation	Execution Date	Criteria of Building Area (M^2)	TB from the Total Expenses Out of Land Price
1	595/KMK.04/1994	1 January 1995	400	40%
2	554/KMK.04/2000	1 January 2001	400	40%
3	320/KMK.03/2002 Amendment to 554/KMK.04/2000	1 July 2002	200	40%
4	39/PMK.03/2010	1 April 2010	300	40%
5	163/PMK.03/2012	20 Nov 2012	200	20%

Changes in the criteria for building area or the percentage of Tax Base (TB) in the Regulation of the Minister of Finance above will result in the imposition of sanctions for taxpayers to pay “Self-construct VAT” to be a separate problem in its implementation. This can be seen from the illustration below.

Illustration 1

For example, on 15 February 2012, Taxpayer A began constructing a building for office by using private masons. The building was completed on 10 October 2012. The building area is 305M^2 and the total cost to construct the building (excluding land price) is IDR 2,000,000,000.

On 5 April 2016, a tax officer examined taxpayer A and according to tax auditors, Taxpayer A had to pay "self-construction VAT". When the tax auditor finds that taxpayer A has not fulfilled its tax obligations in accordance with the present Regulation of the Minister of Finance, Regulation of the Minister of Finance Number 163 / PMK.03 / 2012 has been enacted, and when taxpayer A starts to build his office until the construction finished, the Regulation of the Minister of Finance in effect is Regulation Minister of Finance Number 39 / PMK.03 / 2010. In this case, there will be a question, which regulation will be used by tax auditors to impose penalties to taxpayers?

Illustration 2

For example, on 10 February 2013, taxpayer B began constructing a building for his office using private masons. The building was completed on 10 October 2013. The building area is 305M^2 with the total cost to build (excluding land price) is IDR 2,000,000,000.

In this example, we equate the condition with taxpayer A, namely on 5 April 2016, the tax officer checks taxpayer B. When the tax auditor finds taxpayer B for constructing his own building, the Minister of Finance Regulation Number 163 / PMK.03 / 2012 has already been applied, and when the taxpayer B begins to build his building until it is finished, the applicable regulations are the same, namely Regulation of the Minister of Finance Number 163 / PMK.03 / 2012. Here the question that will arise, regarding the condition of taxpayer B who constructs a building with the same area and value as taxpayer A, what is the potential tax penalty for "self-construction VAT"2 that will be imposed by the tax auditor?

4.2 *Implication towards taxpayer*

From the above illustration, the authors will carry out further analysis to find out the implications towards Taxpayer A and Taxpayer B. Let's start the analysis as follows:

Analysis of implication towards Taxpayers A from Illustration 1

Known:

- The area of the building is 305m^2.
- The total cost for the construction, excluding the land price, is as much as Rp2.000.000.000,-
- Began the construction on 15 February 2012.
- Finished the construction on 10 October 2012.

Regulation of the Minister of Finance Number 39 / PMK.03 / 2010 regulates the following criteria:

- Minimum building area is **300m^2**.
- Percentage of TB is **40%** from the total cost.
- Executed on 1 April 2010.

Regulation of the Minister of Finance Number 163 / PMK.03 / 2012 stipulates the following criteria:

- Minimum building area is **200m²**.
- Percentage of TB is **20%** from the total cost.
- Executed on 20 November 2012 and abort Regulation of the Minister of Finance Number 39/PMK.03/2010.

The tax auditor examines taxpayer A on 5 April 2016.

Calculation of imposed VAT must be paid by Taxpayer A:

If the tax auditor determines the self-construction VAT which must be paid by Taxpayer A based on the Regulation of Minister of Finance Number 39 / PMK.03 / 2010, the calculation is as follows:

Since the constructed building covers an area of 305M2, according to the Regulation of Minister of Finance Number 39 / PMK.03 / 2010, taxpayer A must pay self-construction VAT, with the following calculation:

Total cost of construction Rp2.000.000.000,-

Tax Base Rp2.000.000.000 X **40%** = Rp800.000.000,-

Self-construction VAT Rp800.000.000 X 10% = **Rp80.000.000,-**

If the tax auditor determines the VAT that must be paid by Taxpayer A based on the Regulation of Minister of Finance Number 163 / PMK.03 / 2012, the calculation is as follows:

Since the constructed building covers an area of 305M2, according to the Regulation of the Minister of Finance Number 163 / PMK.03 / 2010, taxpayer A must pay Self-construction VAT with the following calculation:

Total cost of construction Rp2.000.000.000,-

Tax Base Rp2.000.000.000 X **20%** = Rp400.000.000,-

Self-construction VAT Rp400.000.000 X 10% = **Rp40.000.000,-**

Analysis of implication towards Taxpayers B from Illustration 2

Known:

- The area of the building is 305m².
- The total cost for the construction, excluding the land price, is as much as Rp2.000.000.000,-
- Began the construction on 10 February 2013.
- Finished the construction on 10 October 2013.

Regulation of the Minister of Finance Number 163 / PMK.03 / 2012 stipulates the following criteria:

- Minimum building area is **200m²**.
- Percentage of TB is **20%** from the total cost.
- Executed on 20 November 2012 and abort Regulation of the Minister of Finance Number 39/PMK.03/2010.

The tax auditor examines Taxpayer B on 5 April 2016.

Calculation of imposed VAT must be paid by Taxpayer B:

When the Taxpayer B starts to build his office until the time when the tax auditor will determine the VAT to be paid by the taxpayer B, the applicable tax regulation governing Self-construct VAT is the Regulation of the Minister of Finance Number 163 / PMK.03 / 2012. Therefore, for taxpayer B, tax auditors will certainly use the Regulation of the Minister of Finance Number 163 / PMK.03 / 2012 in calculating the self-construction VAT that must be paid by Taxpayer B, the calculation is as follows:

Since the constructed building covers an area of 305M2, according to the Regulation of the Minister of Finance No. 163 / PMK.03 / 2010, Taxpayer B must pay self-construct VAT, e.g with the following calculations:

Total cost of construction Rp2.000.000.000,-

Tax Base Rp2.000.000.000 X 20% = Rp400.000.000,-

Self-Construction VAT Rp400.000.000 X 10% = **Rp40.000.000,-**

From the two analyzes above, it can be seen, that Taxpayer A and Taxpayer B made the same mistake, was discovered by the tax authorities at the same time, but from the current legal system in Indonesia, there is a tendency for Taxpayer A to be subject to be imposed with Self-construct VAT in the amount of Rp. 80,000,000 plus administrative sanctions in the form of interest for late payment of tax base according to the GPT Law. Meanwhile, Taxpayer B has the potential to be subject to the imposition of Self-construct VAT of Rp. 40,000,000 plus interest sanctions for late payment of the tax base according to the GPT Law.

From the results of the analysis above, it is illustrated that there is an injustice that will be experienced by Taxpayer A, because Taxpayer A has the potential to get more severe penalties than Taxpayer B. In fact, both Taxpayer A and Taxpayer B have made the same mistake found by the tax inspector at the same time, but Taxpayer A has the potential to bear a heavier penalty than Taxpayer B.

4.3 *Accumulation of cases in tax court*

From the two illustrations above, according to authors, this issue will encourage Taxpayer A to take legal remedies in the form of objections to the Director General of Taxes on the tax imposition against him. Generally, in this stage of legal remedies, taxpayers will be rejected by the Director General of Taxes, so that taxpayers will take further legal remedies to the tax court to seek justice. It can even reach the Supreme Court in the form of a judicial review.

Based on a research by Heru R. Hadi, tax dispute cases are piling up so high in the tax court. From year to year, the accumulation of cases tends to increase, which can be seen in the table below:

Table 2. Table of cases registered to tax court from 2005 until 2016

Year	Number of cases registered to Tax Court
2005	2,613 files
2006	3,317 files
2007	4,842 files
2008	6,428 files
2009	7,462 files
2010	6,669 files
2011	7,066 files

2012	7,352 files
2013	8,399 files
2014	10,866 files
2015	12,486 files
2016	10,153 files

Source: Hadi (2017)

Table 3. Mutation of case files in tax court

Year	Initial Cases	Registered Files	Completed Files	Remaining Cases
2011	9,448	7,066	7,818	8,696
2012	8,696	7,352	6,533	9,515
2013	9,515	8,399	7,376	10,538
2014	10,538	10,866	8,845	12,559
2015	12,559	12,486	9,032	16,013
2016	16,013	10,153	12,852	13,314

Source: Hadi (2017)

4.4 *The counter-productive of energy in finishing tax dispute*

Each of tax disputes are undoubtedly energy draining, both for the taxpayers and the tax officers. If a tax dispute which actually can be solved from the beginning and serve justice in a sense that can be agreed and enjoyed by taxpayers, certainly the taxpayer will not strive for further legal remedies. The legal remedies taken by taxpayers are in the objective to achieve justice, which according to taxpayers is worth fighting for.

For cases that can actually be minimized, even resolved if using a new model for the imposition of tax sanctions, it certainly will save energy which is counter-productive for both taxpayers and tax officers. This will provide space for tax officers to be more focused on carrying out other tasks, so that it is more effective than having to make preparations for dealing with tax disputes which can actually be minimized, even resolved in order to provide legal certainty and justice.

On the other hand, for entrepreneurs, the available energy can be used by taxpayers to think about how their business can be more efficient, more creative, more advanced, and more developed. This absolutely will also provide a multiplier effect to other companies, to communities around the company, as well as creating jobs. This will simultaneously improve Indonesian economy, which in turn will increase tax revenue for the country. Hence, both entrepreneurs and the country grow together.

5. The urgency of new model in the imposition of tax sanction

5.1 *Lex Favor Reo Transition (LFRT)*

Indonesian legal system has criminal law provisions regulated in the Criminal Code. The Criminal Code is a *lex generali*, especially related to legal sanctions. The Criminal Code adheres to the Lex Favor Reo Transition principle (LFRT). It is regulated in Article 1 paragraph

(2) of the Criminal Code, which is an exception to the principle of "not retroactive" (Sasmito, 2017). The provisions in Article 1 paragraph (2) of the Criminal Code are as follows:

> Article 1 Paragraph (2) of the Criminal Code
>
> "If after the act has been committed there are changes in legislation, the lightest rules for the Defendant will apply."

The provisions in Article 1 Paragraph (2) of the Criminal Code provide a guarantee that no person may be punished more severe than the existing provisions. In the case of state administration, it can be interpreted as the imposition of sanctions imposed by the state on its citizens for mistakes that have been committed in the past based on lighter laws in the event of a change in legislation. Therefore, the LFRT principle applies, where the sanction given is the lightest (Hiariej, 2018);

Furthermore, Wirjono Prodjodikoro gave an opinion regarding Article 1 Paragraph (2) of the Criminal Code, which according to Wirjono, that the application of Article 1 Paragraph (2) of the Criminal Code is the application of the law of exemption to the principle of non-retroactivity and may only be applied in passing lighter penalties to a suspect whose case has not been decided by the judge in a final legally binding decision and a new law has been issued with a lighter penalties than the previous law (Prodjodikoro, 2012).

According to Eddy O. S. Hiariej (2018), it is implicitly regulated in Article 11 Paragraph (2) of the Declaration of Human Rights to impose the lightest punishment in the event of a change in regulations. The provisions of Article 11 of the Human Rights Declaration are as follows:

> (1) "*Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial which he has had all the guarantees necessary for his defense.*
>
> (2) *No one shall be had guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.*"

Remmelink (2003) argues, that the provisions in Article 7 of the ECHR explicitly stipulate a lighter penalties if after the crime has been committed there is a new criminal code with a lighter penalties. The provision of Article 7 of the European Convention (European Convention for the Protection of Human Rights / ECHR) is as follows:

> (1) "*No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.*
>
> (2) *This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time it was committed, was criminal according to the general principle of law recognized by civilized nations.*"

5.2 *The meaning of legislation change*

Wirjono Prodjodikoro (2012) conveyed that the meaning of a change in law is if an article in the law is changed in such a way or the article is completely revoked, or the penalty is reduced, or the imprisonment penalties is replaced by a temporary detention or a fine.

Wirjono further explained that this would be different if a prohibition applied only for a certain period. In this condition, then the person who committed the offense during a certain

period and just tried after the past period, then the suspect is still punished (*temporaire strafbepalingen*), even though the act was an old act, because in this case there is actually no change in the laws and regulations.

5.3 *What is meant by favorable (Gunstigste)?*

It is not easy to determine which one is more favorable for a suspect, whether with the old law or the new law.

For example, in the new law the threat of imprisonment is reduced, but added with a new sentence of revocation to the right to perform certain jobs. Or the imprisonment sentence is replaced by a close supervision to the convicted person by the government for his actions.

Therefore, what is meant by favorable is the sentence imposed on the defendant with the lightest penalties between the old law and the new law. If the new law has lighter penalties, then the new law is used. However, if the lighter penalty is in the old law, then the old law applies.

5.4 *The urgency of Lex Favor Reo Transition (LFRT) as the new model in the imposition of tax sanction*

Based on the results of the analysis above and related to the LFRT principle, as well as seeing that two taxpayers who make the same mistake have the potential to be subject to different tax sanctions, it is necessary to provide justice and legal certainty. Therefore, according to authors, the two taxpayers in the illustrations above should be subject to the same penalty. This will also make it easier for tax officials to impose tax penalties with more legal certainty. Therefore, authors argue, Indonesian tax laws and regulations must strictly adhere to LFRT principle in order to provide justice and legal certainty. The urgency of strictly applying LFRT principle in Indonesian tax regulations is to provide a sense of justice regarding to the imposition of tax sanctions, so that the application of the principle of justice in taxation can in turn attract investors to choose Indonesia to be the country of investment destination.

However, LFRT principle should still apply as a *lex generali* in tax regulations, because the Criminal Code is a *lex generali* and tax regulations are *lex speciali*. In the principles of laws, if the *lex speciali* does not specifically provide a rule, then the *lex generali* applies. In the context of taxation legislation, since the GPT Law does not regulate the rejection of LFRT principle, then what applies is the LFRT principle contained in the Criminal Code as a *lex generali*. However, as a tax practitioner, we do not see the application of LFRT principle in the current taxation sanctions. Therefore, for legal certainty and preventing multiple interpretations, there is an urgent need to strictly adhere to LFRT principle in Indonesian taxation legislation, which is regulated in the GPT Law.

The LFRT principle will provide justice by providing the lightest punishment to taxpayers if there are changes in Indonesian tax laws. It certainly gives more sense of justice to taxpayers, because of the same mistakes, which when the tax auditors find them after a change in legislation will be punished with the lightest penalty. This of course will be very helpful in providing legal certainty, so as to reduce tax dispute cases and reduce the accumulation of case files in the Tax Court and the Supreme Court.

This solution is similar to the background of the birth of the Omnibus Law, which is to harmonize existing laws and regulations in Indonesia in order to improve investment climate in Indonesia. Where one of the most fundamental changes in the Omnibus Law for the taxation cluster is the imposition of tax sanctions on taxpayers who have clearly met the criteria as “Taxable Entrepreneurs”, hereinafter referred to as TE, but have not yet carried out VAT collection, so that

the tax auditors will billed through tax determination on the VAT that the TE must collect from the sales value.

In the VAT Law which is currently still in effect (before the Omnibus Law), for this error, TE must deposit VAT that should have been collected from its sales of "Turnover x 10%", and cannot credit Input VAT that has been paid, or in other words, there is no "deemed VAT Input". It certainly will be very burdensome and can ruin the TE, because TE's profits are often below 10%. However, in the Omnibus Law Bill, for this error, TE may credit Input VAT which considered as "deemed", as much as 80% of the Output VAT, so that the VAT that must be paid to the State is "Turnover x 10% x 20%". The method regulated in the Job Creation Act / Omnibus Law provides more legal justice and does not threat entrepreneurs, especially those who are growing MSMEs. This is in accordance with the tax collection philosophy that is to take the eggs instead of slaughtering the chickens.

If later the Omnibus Law Bill is promulgated by the government, and it is true that it is allowed for Input VAT to be credited by "deemed" as much as 80% of the Output VAT, then the tax officer finds the taxpayer / TE error that must be subject to tax sanctions because they have not collected VAT. For example, since the Tax Period of January 2020, with LFRT principle, it will provide legal certainty that provides more legal justice. Whereas with LFRT principle, tax officials may only impose lighter sanctions, namely in accordance with the provisions of the Omnibus Law.

The LFRT principle can also be useful as a bulwark to protect taxpayers in obtaining legal certainty, legal protection and legal justice, if one day a taxation law is enacted, the material of which contains heavier penalties and is enforced accordingly. Either the retroactive arrangements are regulated explicitly or implicitly in tax laws, with the LFRT principle which strictly adhered to in the GPT Law, it will automatically fortify and abort the implementation of an arrangement in a taxation law whose materials retroactively imposing a heavier legal sanction. Therefore, according to authors, in this scientific research, it is very important that the GPT Law strictly adheres to the LFRT principle in order to provide legal certainty, legal protection and legal justice for taxpayers.

6. Conclusion, suggestion, and expectation

From the discussion and analysis above, the authors conclude as follows:

(1) Indonesia's dynamic tax regulations have caused taxpayers to experience difficulties in carrying out their tax obligations appropriately. The tax sanctions that currently implemented have the potential to cause legal injustice for taxpayers who make the same mistake, but can be punished with different penalties. This also creates legal uncertainty because the LFRT principle has not yet got a place in the practice of imposing tax sanctions in the field.

(2) The need for Indonesia to strictly adhere to the GPT Law in the form of LFRT principle as a new model for the imposition of tax sanctions in Indonesia that provides more legal justice, legal certainty, and legal guarantees. The advantages of adhering strictly to LFRT principle in the GPT Law are as follows:

a. Providing justice, legal certainty, and legal guarantee for taxpayers;

b. The improved tax law certainty will attract investors to choose Indonesia as an investment destination country and prevent capital flight;

c. Reducing tax disputes due to injustice in the imposition of tax sanctions, so that entrepreneurs' energy can be focused more on thinking about business progress;

d. As a fortress that automatically rejects the imposition of taxation regulation that imposes burdensome sanctions that imposed retroactively. This principle is a guarantee of tax law certainty in Indonesia;

e. This principle will support the philosophy in tax collection, which says taking chicken eggs instead of slaughtering the chickens. Because if the chicken has been slaughtered, the state will no longer be able to take eggs.

Based on the above conclusions, the authors provide suggestions to Indonesian government as follows:

(1) A new model is needed in the imposition of tax sanctions in Indonesia that provides more justice, legal certainty and legal guarantees.

(2) The new model clearly stipulates and applies the LFRT principle in the GPT Law, so that taxpayers who make the same mistake will be punished with the same penalty. The LFRT principle will provide more legal certainty, legal protection and legal justice. In the event of a change in taxation laws, the taxpayer is only subject to the lightest sanctions from the old and the new laws.

Based on the above conclusions and suggestions, through strict application of the LFRT principle in taxation regulations in Indonesia, authors have the following expectations:

(1) Taxpayers will get more legal certainty, legal protection and legal justice. Legal certainty in Indonesian tax law is needed by investors. It is hoped that the LFRT principle will become a capital and comparative advantage for Indonesia in attracting investors to choose Indonesia as their investment destination.

(2) Increased investment in Indonesia will provide a multiplier effect to: other companies in Indonesia, to the communities surrounding where the companies are located, as well as creating jobs. This will simultaneously improve Indonesian economy and provide mutual growth, both to entrepreneurs and the state, which in turn will increase tax revenue for the state and provide progress for Indonesia and can be used to improve the welfare of the Indonesian people.

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References

Crystallin, M. (2018). *Indonesia: Worsening current account still manageable*. DBS Group Research. DBS Flash.

Hadi, H. R. (2017). *Reformulasi pengaturan penyelesaian sengketa pajak di Indonesia* [Reformulation of tax dispute resolution arrangements in Indonesia]. Malang: Brawijaya University.

Hiariej, E. O. S. (2018). *Prinsip-prinsip hukum pidana* [Principles of criminal law]. Yogyakarta: Cahaya Atma Pustaka.

Kosijungan, P. A. (2020). Center for Indonesian Policy Studies, *Press conferenc*e – Kepastian hukum diperlukan untuk memastikan iklim investasi Indonesia kondusif [Legal certainty is needed to ensure a conducive investment climate in Indonesia], 28 April 2020, accessed from https://www.cips-indonesia.org/post/siaran-pers-kepastian-hukum-diperlukan-untuk-memastikan-iklim-investasi-indonesia-kondusif, on 8 October 2020.

OECD (2020). *Tax morale in businesses*. Available at https://www.oecd-ilibrary.org/sites/f3d8ea10-en/index.html?itemId=/content/publication/f3d8ea10-en, accessed on 12 October 2020

OECD (2019). 2019 Progress Report on Tax Certainty, *IMF/OECD Report for the G20 Finance Ministers and Central Bank Governors*. June 2019. Available at https://www.oecd.org/tax/tax-policy/imf-oecd-2019-progress-report-on-tax-certainty.pdf, accessed on 12 October 2020.

Prodjodikoro, W. (2012). *Asas-asas hukum pidana di Indonesia* [Fundamentals of criminal law in Indonesia]. Bandung: Refika Aditama.

Remmelink, J. (2003). *Hukum pidana* [Criminal law]. Jakarta: PT. Gramedia Pustaka Utama.

Sasmito, J. (2017). *Konsep asas retroaktif dalam pidana* [The concept of retroactive principle in criminal law]. Malang: Setara Press.

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