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The Application Of The Una Via Principles In Tax Disputes By The Supreme Court Of The Republic Of Indonesia

Sri Nur Hari Susanto[1], Nabitatus Sa'adah[2], FC Susila Adiyanta[3], Kadek Cahya Susila Wibawa[4*]
[1,2,3,4]*Faculty of Law, Diponegoro University, Indonesia*
**Corresponding Author: Kadek Cahya Susila Wibawa*

ABSTRACT
This research aims to identify and analyze tax disputes between taxpayers and the government of the Republic of Indonesia, related to multiple claims against taxpayers for the same violation of tax regulations. This research used a normative juridical approach, especially the concept approach, laws and regulations, and court decisions. Based on the discussion, it shows the Considerations of the Supreme Court of the Republic of Indonesia in its decision, always pays attention to and agrees with the argument of the taxpayer applicant through his lawyer that in administrative law there is the principle of una via. It prohibits the prosecution of two charges against the same subject and facts that have been sentenced by the court and has permanent legal force. The government in acting in the future should act carefully by first considering the choice of settlement in administrative law or criminal law.

Keywords: Una Via Principle; Tax Disputes; Supreme Court.

I. INTRODUCTION

The Supremacy of law/rule of law is an attempt to uphold and position the law in the highest place of all, making the law the commander or commander, protecting and managing all citizens regardless of their status and position (Manan, 2005). Abdul Manan's opinion is in line with the 1945 Constitution of the Republic of Indonesia, where Article 28 letter d paragraph (1) stipulates: "Every person has the right to recognition, guaranteed protection and fair legal certainty and equal treatment before the law." Thus, the State of Indonesia should be able to guarantee certainty, benefit, and justice for the community. The provisions of Article 28 letter d paragraph (1) of the 1945 Constitution of the Republic of Indonesia, in fact, are still a written rule, but its implementation has not been realized or realized properly.

In Indonesia, tax matters are regulated in Law no. 6 of 1983 concerning General Provisions and Tax Procedures law (UU KUP), as amended by Law no. 9 of 1994 jis Law no. 16 of 2000, Law no. 28 of 2007, and finally with Law No.19 of 2009. Philosophically, the ratio legislature of the formation of this law is based on the preambles of the law stated, "that in order to provide more justice and improve services to taxpayers and to provide more legal certainty" and so on.

The self-assessment system adopted after the tax reform in 1984 is based on the KUP (General Provisions and Tax Procedures) Law. It requires public participation, especially taxpayers to actively fulfill the obligation to pay taxes following statutory provisions by determining, calculating, depositing, and reporting their taxes. However, there are quite some taxpayers who intentionally or unintentionally do not carry out their obligations to pay taxes following applicable regulations (Ilyas & Burton, 2013).

Article 44B Paragraph (1) of the KUP (General Provisions and Tax Procedures) Law stipulates that: "For the benefit of state revenue, at the request of the Minister of Finance, the Attorney General can stop criminal acts in the field of taxation within a maximum period of 6 (six) months from the date of the request letter." Furthermore, Paragraph (2) stipulates that: "The termination of the investigation of criminal acts in the field of taxation as referred to in paragraph (1) is only carried out after the Taxpayer has paid off the tax debt that has not been paid or has been underpaid or which should not have been returned and is supplemented with an administrative sanction in the form of a fine of 4 (four) times the amount of tax that is not paid or underpaid, or that should not be refunded."

The provisions of Article 44B paragraph (1) of the KUP (General Provisions and Tax Procedures) Law, if an analysis is carried out based on existing and applicable principles in administrative law, implicitly indicates

the existence of a una via principle which authorizes the Minister of Finance to consider coordinating and consulting with the Attorney General in making decisions or to be resolved in administrative law or criminal law.

A process of criminal offenses in the field of taxation, for Taxpayers essentially still has an alternative to paying underpaid taxes coupled with administrative sanctions. Thus, if the provisions of Article 44B paragraph (1) of the KUP (General Provisions and Tax Procedures) Law are not used, there will be a change in the status of the tax case from Administrative Law cases (tax administration) become Criminal Law cases (tax crimes). Furthermore, the Minister of Finance *in casu* the Director General of Taxes is no longer authorized to issue Tax Assessment Letters.

Based on the provisions of Article 44B Paragraph (1) (General Provisions and Tax Procedures) KUP Law, if analyzed the provisions of Article a quo, there are two adages contained therein. The First is *nemo debit bis vexari*, which means that no one may be bothered with being prosecuted twice for the same case, which is generally known as ne bis in idem. The second is *nihil in lege intolerabilius est (quam) eadem rem diverso jure censeri* which means the law does not allow the same case to be tried in several courts (Hiariej, 2016).

Tax criminal sanctions are tax sanctions that are given in the form of criminal penalties such as fines, imprisonment, and imprisonment. Taxpayers may be subject to criminal sanctions if they are found to have deliberately failed to submit an SPT (Annual Notification Letter) or submitted an SPT but the contents were incorrect. In addition, taxpayers show fake documents and do not pay taxes that have been withheld. Law enforcement against violations of tax regulations which are administrative law norms, the application of criminal law sanctions should be applied as auxiliary law (subsidiarity). Its application must pay attention to the principle of *ulmimum remedium* (last resort - if administrative legal sanctions are deemed ineffective).

The objective of tax administration sanctions is to protect the rights of the state treasury in order to obtain proper returns in the event of non-compliance with tax obligations. These sanctions should contribute to compliance with tax laws and income for state revenues. Tax administration has a relatively broad scope of tax administration sanctions and can be used to take action against acts that violate tax laws, especially in the domain of income tax (PPh) and value-added tax (PPn).

A court decision that has permanent legal force means that there has been an examination of the principal case. Decisions related to absolute competence or relative competence, as well as decisions related to the legality of charges, are not decisions that have permanent and definite legal force.

As a further consequence, if a case is tried again, it cannot be stated as *ne bis in idem*. The condition for *ne bis in idem* is *res judicata*, which means that a criminal act has been examined concerning the criminal responsibility of the accused, which has been terminated and has permanent legal force (Hiariej, 2016). In Administrative Law, it is important to avoid double prosecution and punishment for the same fact. Thus, government agencies must choose between criminal prosecution or administrative fines. The una via principle, in this case, is used to show that there is a relationship between the imposition/implementation of criminal sanctions and administrative fines. The principle of una via plays a role in preventing criminal sanctions from being imposed, if administrative fines have been imposed for the same violation or vice versa.

II. RESEARCH METHOD.

This research method is normative juridical (doctrinal) in the form of library research (secondary legal material). It consists of laws and regulations, court decisions, and literature. The approach used was the philosophical, statutory approach. It was carried out by examining all laws and regulations that are related to the legal issues being faced (Marzuki, 2014) and the Conceptual Approach, which departs from the views and doctrines that developed in the science of law (Marzuki, 2014).

III. RESULT AND DISCUSSION

a. The Implementation of the Una Via Principle

The Latin proverb "*Electa una via, non datur recursus ad alteram*", describes well that "once one path/way has been chosen, it is impossible to choose another path/way" (Devos, 2015; Zagheden, 2012). There is a possibility that administrative and criminal procedures are carried out simultaneously/concurrently and separately for taxpayers. This not only results in an inefficient use of government resources but also violates the non-bis in idem principle. This generally accepted legal principle is also one of the two pillars of the una via principle. The second pillar of una via is the principle of subsidiarity.

The connection between the una via principle and the ne bis in idem principle lie in "the same facts". The *ne bis in idem* principle focus on prosecution after a court decision has permanent legal force, while the una via principle focuses on choosing from the start between two law enforcement agencies (Attorney General's Office and Directorate General of Taxes) to resolve disputes on violations of tax regulations to taxpayers.

The means of law enforcement is considered the most suitable to be selected and used in proving a fact, will be determined based on which means are the most efficient and effective. The unit via principle is essentially an

extension of the ne bis in idem principle. The objective of the una via principle is to make a choice about which procedure to take if the same behavior is known that can be handled both administratively and criminally. Hence, at a definite and decisive moment, a choice must be made. The principle of una via includes the prohibition of double prosecution/*Erledigungs* and double sentences/*Erledigungs prinzip* (Rogier, 1992).
The application of the *ne bis in idem* principle in practice according to Wattel (in van Bockel – ed., 2016) depends on the way it is understood, namely as a prohibition on double punishment (*ne bis puniri*) and a prohibition on double prosecution (*ne bis vexari*). If *ne bis in idem* are understood as no second punishment (*ne bis puniri*), then its implementation can be conducted in 2 ways:
a) Credit system (*Anrechnungsprinzip*), the court that tries the second charge (usually a criminal charge), if it deems the charge proven and punishable, takes into account the previous sentence already imposed for the same offense (usually an administrative fine) when determining the second sentence for the offense;
b) Annulment system (*Erledigingsprinzip*), previous convictions are rescinded if a trial for the same offense ends in conviction or acquittal. In practice, this only applies in cases involving fines. The fine is returned immediately after the second penalty becomes final (see Desterbeck, 2019).

On the other hand, if *ne bis in idem* is understood as there are no second demands (*ne bis vexari*), the implementation can also be conducted in 2 ways:
a) Una via the system is the administrative process to impose fines that must be stopped immediately. After a criminal indictment has been issued for the same offense. vice versa, the criminal process must be stopped if a definitive administrative sanction has been imposed.
b) In finality systems, criminal or administrative proceedings must be terminated once the previous sentencing process for the same behavior has become final (Desterbeck, Ibid).

In order to avoid misunderstanding among law enforcers, referring to the Criminal Procedure Code (KUHAP), there is a principle of differentiation, where each agency has its authority or there is a division of tasks. Even though the division of authority has been determined institutionally, the Criminal Procedure Code contains provisions that establish law enforcement agencies in a cooperative relationship. This is to clarify the duties of authority and work efficiency, as well as being directed to develop a team of law enforcement officers so that there is a checking system (Harahap, 1986).

b. Taxpayer Data in Indonesia
Taxpayer data in Indonesia based on the submission of annual tax return (SPT) reports up to May 2023, can be displayed in the following table:

Table 1. Submission of Annual Income Tax Return

SPT type	Mandatory SPT	Number of SPT Submitted			Growth	
		2021	2022	2023	2022	2023
Agency/institution	1.927.254	854.167	908.860	975.194	6,40 %	7,30 %
individual	17.516.695	11.394.969	12.090.251	12.393.466	6,10 %	2,51 %
TOTAL	19.443.949	12.249.136	12.999.111	13.368.660	6,12 %	2,84 %

(Source: Ministry of Finance, May 2023; Theodora, 2023).

Based on the table above, the number of taxpayers, both corporate/agency and individual taxpayers reporting, has increased from 2021 to 2023. On the other hand, the growth rate in 2023 has a relatively smaller increase, namely 2.84 percent compared to 2022 which was 6.12 percent. Annual Notification Letter (SPT) is a tax report submitted to the Indonesian government through the Directorate General of Taxes. Provisions regarding SPT are regulated in the KUP (General Provisions and Tax Procedures) Law. The annual SPT has a function as a means to report and account for the calculation of the actual tax amount. Every year the taxpayer reports the annual SPT regularly to report the following matters:
a. Payment or settlement of taxes that have been made alone or through withholding or collection by other parties in 1 tax year or part of a tax year.
b. The total income becomes a tax object and/or non-tax object.
c. Assets and obligations owned by taxpayers.
d. Payments from withholding or collecting regarding withholding or collection of individual or other entity taxes in 1 tax period in accordance with the provisions of the tax laws.
c. Application of the Una Via Principle by the Supreme Court
Settlement of cases of tax violations, both committed by corporate taxpayers and individual taxpayers in practice, begins with criminal law settlements, with demands made by the prosecutor's office and criminal court

decisions in the form of imprisonment, confinement, and fines (permanent legal force). Taxpayers who have received and undergone court decisions, later receive a second claim made by the Director General of Taxes for the same violation as the issuance of an Underpaid Tax Assessment Letter (SKPKB).
With the issuance of the SKPKB (Underpaid Tax Assessment Letter) by the Director General of Taxes, the taxpayer feels that he is being treated unfairly and there is no legal certainty. Thus, he files a lawsuit with the Tax Court and asks the Judge to cancel the SKPKB issued by the Director General of Taxes. However, in the Tax Court, the taxpayer's lawsuit against the Director General of Taxes was always defeated and stated that the Director General of Taxes has the authority to issue SKPKB (Underpaid Tax Assessment Letter). Tax Court Decision based on Law no. 14 of 2002 concerning the Tax Court in Article 80 paragraph (2) is final. Hence, no further litigation, appeal, or cassation can be filed. This is not in line to establish the KUP (General Provisions and Tax Procedures) Law as contained in its preamble: "to provide more justice and improve services to taxpayers and to provide more legal certainty.”.

In essence, the rights of taxpayers are human rights. This is an innate human right (Olson, 2013), so if ordinary legal remedies are not provided (again, appeal, or cassation), the taxpayer can take extraordinary legal remedies through judicial review (PK) to the Supreme Court based on on criminal court decisions that have been executed. Several lawsuits by taxpayers through extraordinary legal remedies for judicial review to the Supreme Court can be seen in the following table:

Table 2. Review Case Review by the Supreme Court

Judicial Review Case Supreme Court	Judgment
Pts. MA No. 1089/B/PK/PJK/2014 **Pts. MA No. 1090/B/PK/PJK/2014** **Pts. MA No. 1091/B/PK/PJK/2014** **Pts. MA No. 1092/B/PK/PJK/2014**	Regarding all examinations of cases through extraordinary judicial review (PK) by the Supreme Court, in essence, the Supreme Court in its decision stated: 1. Granted the plaintiff's lawsuit (taxpayer) as the petitioner for judicial review (PK); 2. Cancel the Decree of the Director General of Taxes; 3. Punish the Director General of Taxes to pay court fees.
Pts. MA No. 387/B/PK/PJK/2015 **Pts. MA No. 388/B/PK/PJK/2015** **Pts. MA No.389/B/PK/PJK/2015 Pts. MA No. 390/B/PK/PJK/2015**	
Pts. MA No. 1781/B/PK/PJK/2016 **Pts. MA No. 1836/B/PK/PJK/2016** **Pts. MA No. 1837/B/PK/PJK/2016**	
Pts. MA No. 92/B/PK/PJK/2017	
Pts. MA No. 2631/B/PK/PJK/ 2018	
Pts. MA No.1437/B/PK/PJK/2020	

The Supreme Court of the Republic of Indonesia has also issued Supreme Court Circular No. 1 of 2017 concerning the Implementation of the Results of the 2017 Plenary Session of the Supreme Court Chamber as a Guideline for the Implementation of Tasks for the Court, in letter E concerning the Legal Formulation of the State Administrative Chamber in number 1 letter c is formulated: "Considering the legal principle of Una Via, Judges must choose one branch law that favors justice.” Furthermore, in 2019, through the Supreme Court Circular No. 2 of 2019 concerning the Enforcement of the Results of the 2019 Plenary Meeting of the Supreme Court Chamber as Guidelines for the Implementation of Tasks for the Court, in letter E concerning the Legal Formulation of the State Administrative Chamber in number 5 letter b is formulated: "Issuance of Additional Underpaid Tax Assessment Letters (SKPKBT) after tax criminal verdict. Law enforcement efforts outside the court or litigation efforts for tax law enforcement in the context of resolving a tax dispute, including in the administrative court or tax court environment, should be carried out before taking criminal tax law actions *(primum remedium).* If a taxation issue has been heard and decided by a criminal judge's decision that has permanent legal force, then it is no longer justified to take other law enforcement actions either outside or before the court because the criminal judge's decision in a tax crime is ending a law enforcement effort (*litis finiri oportet*), and the applicable principle is *the ultimum remedium* principle.

IV. CONCLUSION

a. To realize the purpose of formation and the legal spirit as contained in the preamble to the KUP (General Provisions and Tax Procedures) Law, it is to provide justice and improve services to taxpayers and to provide more legal certainty, the Supreme Court of the Republic of Indonesia has made decisions proportionally by taking into account the development of legal principles, especially administrative law. namely the principle of una via.

b. The government through the Attorney General and the Minister of Finance c.q. The Director General of Taxes needs to carry out careful coordination and consultation on the provisions of Article 44B paragraph (1) of

the KUP Law. Hence, at the outset, it is necessary to choose what procedures will be followed for violations of tax provisions. The initial choice can be made by determining the settlement in a tax administration or tax criminal manner. This option will be an efficient settlement process and reduce the burden of examining cases by the Supreme Court.

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Corresponding Author: Kadek Cahya Susila Wibawa
[1,2,3,4]*Faculty of Law, Diponegoro University, Indonesia*