Comparative Study of Law Enforcement Against Taxation Crimes in Indonesia and Malaysia

Shereeza Mohamed Saniff 1), Isnaini 2), Beby Suryani Fithri 3)*, & S. Salini Iswari 4)

1) Centre for Islamic Development Management Studies (ISDEV), Universiti Sains Malaysia, Malaysia
2) Study Program Master of Law, Medan Area University, Indonesia
3) Study Program of Legal Studies, Faculty of Law, Medan Area University, Indonesia

*Corresponding Email: bebysuryani@staff.uma.ac.id

Abstract

This research conducts a comparative study of law enforcement strategies aimed at combatting taxation crimes in Indonesia and Malaysia. The study examines the legal frameworks, enforcement mechanisms, and institutional capacities of tax authorities in both countries. Through an analysis of relevant laws, regulations, and enforcement practices, the research evaluates similarities and differences in approaches to tackling tax evasion, fraud, and non-compliance. Additionally, the study explores the role of collaboration between tax authorities and other government agencies, as well as international cooperation in addressing cross-border tax crimes. By identifying effective strategies and areas for improvement in law enforcement against taxation crimes, the research aims to contribute to the development of more robust and coordinated efforts to combat tax evasion and ensure compliance with tax laws in Indonesia and Malaysia.

Keywords: Law Enforcement; Taxation Crimes

INTRODUCTION

Taxes serve as crucial tools for governments to generate revenue essential for funding the development and upkeep of infrastructure and public services. In Indonesia, the tax system has played a pivotal role in the nation’s economic and social progress since gaining independence. Despite being governed by a plethora of regulations and laws, the Indonesian tax system faces several challenges that impede its effectiveness and efficiency in implementation. These obstacles may stem from factors such as complexities in tax regulations, insufficient enforcement mechanisms, tax evasion, inadequate taxpayer compliance, and evolving economic landscapes. Addressing these challenges is paramount to ensuring the sustainable development and fiscal stability of Indonesia, necessitating continuous reforms and improvements in the country’s tax administration and policies.

Along with the development of information technology, economy, social, and politics, as well as to create a clean government, changes have been made to the Taxation Law. These audits aim to increase fairness, improve services provided to taxpayers, ensure legal clarity, and anticipate advances in information technology and changes in tax law. Moreover, these changes aim to enhance the professionalism of tax authorities, increase the transparency of tax administration and promote voluntary compliance by taxpayers.

The main features of the amended law include simplified systems, mechanisms, and procedures for implementing tax rights and obligations, all while maintaining the self-assessment system. The specific objectives of these changes are to establish a balance between the rights and obligations of tax officials and taxpayers, uphold tax revenue as a fundamental component of state budget income, and enhance the institutional reputation of the Directorate General of Taxes. The law under scrutiny is the Law of the Republic of Indonesia Number 6 of 1983 regarding General Provisions and Tax Procedures, which has undergone recent revisions. The most recent amendment occurred through the enactment of the Law of the Republic of Indonesia Number 26 of 2007. Subsequently, further modifications were introduced by Law Number 16 of 2009. These amendments reflect the evolving landscape of tax regulations in Indonesia, aiming to address emerging challenges, enhance effectiveness, and ensure compliance with evolving fiscal policies and international standards.

With advances in science, information technology, economy, social, and politics, the government needs to create a clean government through the reform of the Taxation Law. This reform aims to create justice and improve the quality of services for taxpayers (Achmad, 2016). In addition, progress in various fields has also led to the emergence of criminal acts in the field of taxation. In general, tax crimes are actions that violate the provisions regarding tax liability and the requirements stipulated in the tax law (Setiadi & Yulia, 2010).

The fact shows that perpetrators of tax crimes often disguise or hide the origin of assets obtained from the crime in financial institutions such as banks (Tarigan et al., 2014). This relates to criminal law policy in an effort to tackle tax crimes. Among these initiatives is Law No. 6 of 1983 regarding general provisions and tax procedures, followed by Law No. 9 of 1994, Law No. 16 of 2000, Law No. 28 of 2007, and Law No. 10 of 2007 regarding general provisions and tax procedures. Law No. 28 of 2009, amended and improved Law No. 16 of 2009, contains provisions related to criminal penalties (Ningrum et al., 2016).

The community has an important role in fulfilling tax obligations by increasing awareness, understanding, and appreciation that taxes are the main source of state financing and national
development. Every member of the community must actively carry out their tax obligations. However, in reality, not all taxpayers carry out their obligations according to the provisions. As a result, the Director General of Taxes must issue a tax assessment in the form of a Tax Collection Letter or Tax Assessment Letter. Taxpayers must pay the tax stated in these letters within one month at the latest (Sarwini, 2014).

Based on research conducted by Saleh et al., (2022) the development of society in the current era of digitalization, some people still tend to be ignorant of their tax rights and obligations. Tax is indeed something that must be forced to fulfill. However, the side of public awareness about the importance of tax in the life of the state remains an important thing. When related to criminal offenses in the field of taxation, actually there are very many taxpayers can be included in the criteria of committing a criminal offense in the field of taxation, due to negligence. Even when rendered as suspects of tax crime, taxpayers are oblivious that they have committed a crime in the field of taxation.

The awareness of taxpayers about the taxation rules is certainly not only affects not only the compliance in fulfilling obligations, but also the law enforcement of criminal acts in the field of taxation. This is because taxation crime is still considered as something new in society. Performing or not performing an action in the field of taxation, which the Taxpayer does not realize as a form of crime, may lead to a reaction against tax criminal law enforcement activities.

Tax crimes do not only involve taxpayers, but can also involve tax officials. Tax officials who commit misappropriation of tax funds may be subject to criminal sanctions in accordance with the Corruption Crime Law and the Taxation Law (Adyan, 2017).

In Malaysia, the Inland Revenue Board (IRBM) and Royal Malaysian Customs (RMC) are tasked with overseeing the tax system and customs regime, playing vital roles in revenue collection for the government. Over the past five years, there has been a consistent increase in federal revenue derived from tax revenue. Data from the IRBM indicates notable growth in tax revenue collected, with a substantial increase observed from 2010 to 2011, reaching RM 109.6 billion. This upward trend has continued in subsequent years, with the tax collection in 2013 showing a significant 0.36% increase from previous years, contributing RM 129 billion out of the total RM 213 billion of Federal Revenue.

Malaysia transitioned from the official assessment system (SOA) to the self-assessment system for corporate taxpayers in 2001. Under this new system, taxpayers are responsible for registering, calculating, and paying their tax liabilities. However, the effectiveness of tax revenue collection from self-employed individuals largely depends on taxpayer compliance. Tax evasion remains a challenge, necessitating ongoing efforts by tax authorities to ensure the efficacy of the current tax system. Tax non-compliance is a persistent issue faced by tax administrations worldwide, presenting challenges for revenue collection in both developed and developing countries.

Although tax law is included in state administrative law, it is strengthened by the presence of criminal provisions in the tax law. The placement of this criminal provision gives rise to a criminalization process in the tax sector, which is closely related to the politics of criminal law that determines the choice, direction, and implementation of criminal law (Yoserwan, 2020).

According to Barda Nawawi Arief (2014), there are two basic things in the policy of using criminal means: first, determining what actions should be
considered as criminal acts and what sanctions are appropriate for violators; second, criminalization requires law enforcement through the Criminal Justice System (CJS) mechanism.

The urgency of criminal law enforcement in the field of taxation arises from the potential loss of state revenue due to various violations of tax laws, which result in tax crimes. The Financial Transaction Reports and Analysis Center (PPATK), Indonesia reported that until June 2019, there were 738 suspicious financial reports related to alleged tax crimes, an increase of 47.3% from 501 reports in the same period the previous year. This puts tax crime indications in fourth position after fraud (3,998 reports), corruption (2,165 reports), and gambling (1,767 reports) (Yoserwan, 2020).

With the potential of state losses in the taxation sector, special handling is required in the application of criminal sanctions to handle alleged tax crimes proportionally. Considering that tax crimes are often organized crimes committed through corporations (corporate crime) and can involve tax officers, different handling is required from other general crimes given the dualism in the settlement of alleged tax criminal offenses (Meagher, 2013). Clarity and legal certainty are required in its application, which is related to the consistency of tax regulation enforcement.

Taxation crimes pose significant challenges to the fiscal integrity of nations, encompassing a wide range of illicit activities such as tax evasion, fraud, and money laundering. Understanding the approaches taken by Indonesia and Malaysia is crucial for policymakers, law enforcement agencies, and practitioners to identify best practices, regulatory gaps, and opportunities for collaboration. This comparative analysis aims to shed light on similarities, differences, and effective strategies, ultimately contributing to the development of more robust and harmonized measures to combat taxation crimes in Southeast Asia.

RESEARCH METHODS

Data collection was carried out using a qualitative method in the form of library research. According to Amin (2012), literature study research is a method used for research based on an in-depth study of the theme being studied, with data sourced from written works including the results of previous research.

Nazir (2003) argues that library research does not only involve reading and recording literature or books, but is also a series of activities that include collecting library data, reading, recording, and processing research materials.

The authors collected data and information from various literatures, including criminal tax laws and regulations in Indonesia and Malaysia. Data were also obtained from the internet regarding the law enforcement policies of tax crimes in Indonesia and Malaysia, which are found on the official websites of the relevant ministries or institutions authorized in tax management in each country. Furthermore, content analysis was conducted on each data source to obtain the required data.

RESULTS AND DISCUSSION

Types of Indonesian Taxation Crimes

There are several terms to refer to actions prohibited by criminal law, such as criminal offense, criminal act, delict, or strafbaarfeit. Of these four terms, the term “criminal offense” is most commonly used in Indonesian legislation, such as in Law No. 7 provisional 55 on Economic Crimes, Law No. 15 of 2002 on Money Laundering Crimes, and Law No. 31 of 1999 on Corruption Crimes. A criminal offense is an act for which criminal punishment can be imposed on the perpetrator, who is a legal subject. Therefore, the elements of a criminal offense involve the actions of a person. Basically, the one who can commit a criminal offense is an individual.
(natuurlijke person), although now corporations can also be considered as subjects of criminal offenses.

Various laws in Indonesia have established corporations as subjects of criminal offenses, such as in the Environment Law, Draft Criminal Code, and Corruption Law. This also applies in several other countries such as the Netherlands, United Kingdom, United States, Malaysia, and Singapore. In addition to the legal subject as an element of criminal offense, there is also an element of action. Actions that are subject to criminal law must be against the law and meet the definition of offense in the law, either in the form of acts or omissions.

Criminal acts have the characteristics of being against the law and harming society, hindering the achievement of a social order that is considered good and just. According to Roeslan Saleh (2022), criminal acts are antisocial acts. To be considered as a criminal offense, the act must be regulated in the law, following the principle of legality which reads “Nullum delictum nulla poena sine praevia lege poenali,” which means there is no offense and punishment without prior regulation. This principle is very important in criminal law because it guarantees legal certainty.

The principle of legality has two functions: instrument to ensure all criminal acts are prosecuted and protection to ensure there is no punishment without a law. In Indonesia, the source of criminal law is in the Criminal Code and other specific laws and regulations. Article 1 paragraph (1) of the Criminal Code states that no act can be punished except based on criminal regulations that existed before the act was committed. This means that the law is not retroactive and the use of analogies to expand criminal law is not allowed.

In the field of taxation, formulative policies regarding criminal offenses are regulated in Chapter VIII on “Criminal Provisions” of the General Tax Provisions Law. Article 38 regulates negligence related to the Annual Tax Return (SPT), while Article 39 regulates willfulness in tax reporting and other related documents. Article 39A regulates criminal offenses related to tax invoices. Crimes by third parties are regulated in Articles 41A and 41C, while Article 40 sets the time limit for prosecution of tax crimes.

Although the general tax provisions law has undergone several changes, the application of criminal and administrative sanctions for tax offenses remains significantly unchanged, and there are no provisions regarding criminal liability for corporations. The qualification of crimes and offenses in tax criminal sanctions is important because the application of tax sanctions includes criminal penalties and administrative sanctions such as fines and interest. Administrative sanctions are usually applied to administrative violations, while criminal sanctions are imposed on perpetrators who are proven to be negligent or intentionally violating the general tax provisions law.

Liability for Tax Crimes in Indonesia

Roeslan Saleh (2022) stated that criminal responsibility means the continuation of the objective reproach of criminal acts that subjectively qualify for punishment. Objective reproach refers to actions taken by someone that are prohibited, characterized by violations of the law, both formal and material. Meanwhile, subjective reproach refers to the individual who commits the prohibited act. Although a person has committed a prohibited act, if the person cannot be reproached because there is no fault in him, then there is no criminal liability.

In the same context, Chairul Huda stated that the basis of punishment is the principle of legality, while the basis for criminalizing someone is the principle of guilt. This means that a person will only be punished if he has a mistake in committing
the criminal offense. Criminal responsibility is an individual’s responsibility for the criminal offense he/she committed. Criminal responsibility occurs because of the criminal offense committed by a person. In essence, criminal liability is a criminal law mechanism to respond to violations of an agreement to reject a particular act.

Sudarto (1986) added that to criminalize someone, it is not enough just to commit an act that is contrary to the law (objective reproach). Although the act fulfills the formulation of the offense in the law and is not justified, the requirements for criminalization have not been fulfilled. For criminalization, there is a need for guilt in the person who committed the act (subjective reproach). The person must be held accountable for their actions in order for punishment to be carried out.

Sudarto (1986:77) explains in more detail that in order for a person to be subjected to criminal responsibility, there are several conditions that must be met:

1. The existence of a criminal offense committed by the perpetrator.
2. The existence of an element of guilt in the form of intent or negligence.
3. The existence of a perpetrator who is capable of being held responsible.
4. There is no excuse that can exempt the perpetrator from punishment.

Based on the above explanation, a person can be held criminally responsible only if the person has been proven to have committed a prohibited act. It is not possible to hold someone who has not committed an act prohibited by law criminally liable. If this happens, there will be an unavoidable leap of logic and violation of human rights. In the context of taxation crime, the party potentially held criminally liable is the Taxpayer, both individual and corporate legal entity involving the legal subject of person and legal entity.

Law Enforcement Against Perpetrators of Taxation Crimes in Indonesia

One way to deal with crime is through the use of criminal law that provides sanctions in the form of punishment. This penalty has a higher level of strictness compared to sanctions in civil or administrative law. According to Roeslan Saleh (2022), punishment is a response to a violation of the law which is a form of suffering deliberately imposed by the state on the perpetrator of the offense. This view is in line with Van Bemmelen’s statement that criminal law sets sanctions for violations of prohibitions with the aim of intentionally adding suffering.

Roeslan Saleh (2022) then explained that the suffering is not the ultimate goal desired by society. Suffering is only a closer goal. He gave the example of what a judge in England named Hence Burnet said to a horse thief: “You will be hanged, not for having stolen a horse, but so that other horses will not be stolen.” So, there is another purpose in imposing such punishment, that is, deterrence.

Provisions regarding the determination of criminal sanctions in cases of tax violations are regulated in Articles 38, 39, 39 A, 41 A, and Article 41 C of the general tax provisions law.

In the current positive legal system, criminal sanctions for tax violations are regulated by Article 38 letter a and b of general tax provisions law, which threatens the perpetrators with imprisonment or fines. Article 39 paragraph (1)(i) stipulates that “..... any person who intentionally...... shall be sentenced to imprisonment for a minimum of 6 (six) months and a maximum of 6 (six) years and a fine.” Article 39 paragraph (3) stipulates that “..... shall be sentenced to imprisonment for a minimum of 6 (six) months and a maximum of 2 (two) years and a fine of not less than .....”.

Article 39 A (b) confirms that “every person who intentionally: issues a tax invoice but has not been confirmed as a taxable entrepreneur, shall be punished
with imprisonment of at least 2 (two) years and a maximum of 6 (six) years, as well as a fine of at least .... and at most ......."

Furthermore, Article 41 C of Law No. 28 Year 2007 on the Third Amendment to Law No. 6 Year 1983 on KUP, basically regulates imprisonment or fines.

Criminal Law Politics related to general tax provisions law in Indonesia should focus on the restitution of State revenues through the application of criminal law processes. So far, criminal sanctions in the field of taxation tend to only prioritize imprisonment or confinement against perpetrators by taxpayers, which still leads to losses of State revenue. To protect the State’s revenue, the application of fines against perpetrators of tax crimes by taxpayers is the main priority as a form of compensation, while imprisonment is considered as the last sanction applied.

Taxation System in Malaysia

In general, Malaysia's tax laws are perceived as favorable and attractive to both domestic taxpayers and foreign investors who choose to invest in the country. Malaysia does not impose taxes on wealth, land, gifts, or state-level taxes, thereby fostering a conducive tax environment. Furthermore, the Malaysian government refrains from implementing specific regulations concerning Controlled Foreign Company, Thin Capitalization, and Transfer Pricing, aiming to maintain simplicity and ease in tax administration and implementation while encouraging foreign investment inflow.

Initially, Malaysia utilized the Official Assessment System for tax collection, wherein the government employed the preceding year's income as the basis for taxation in the current year. However, as part of efforts to modernize the tax administration system, the government announced the transition to the Self Assessment System in 1999. This change, effective from January 1, 2000, replaced the preceding year basis of assessment with the current year basis, reflecting a shift towards more contemporary tax assessment practices.

The adoption of the self-assessment system was not uniform across all business sectors; rather, it was introduced gradually. Individuals and companies saw the implementation of this tax collection method commence effectively in 2001. For business enterprises, including firms, partnerships, and other collaborative entities, this policy was phased in starting from 2003. Finally, income derived from salaries and similar sources became subject to this system in 2004. This phased approach ensured a smooth transition for each sector, allowing sufficient time for adjustment and compliance with the new system’s requirements.

Liability for Tax Crimes in Malaysia

In Malaysia, individuals and entities are held liable for tax crimes under the provisions of various tax laws enforced by the Inland Revenue Board of Malaysia (IRBM). Tax crimes encompass a range of offenses, including evasion, fraud, non-compliance, and incorrect reporting. The penalties for such offenses can vary depending on the severity and nature of the violation. Offenders may face fines, imprisonment, or both, as stipulated in the Income Tax Act 1967 and other relevant legislation (Yunius et al., 2017).

Additionally, special penalties, such as triple the amount of unpaid tax, may be imposed for specific offenses. The IRBM conducts regular audits, investigations, and enforcement actions to detect and prosecute tax crimes. Collaboration with other government agencies, such as the Malaysian Anti-Corruption Commission (MACC) and the Royal Malaysia Police, is also employed to combat tax evasion and related financial crimes. Furthermore, the IRBM utilizes advanced data analytics,
digital tools, e-filing systems, and electronic payment methods to enhance tax collection efficiency and reduce opportunities for evasion. Overall, robust enforcement measures and collaboration efforts are in place to ensure compliance with tax laws and hold offenders accountable for tax crimes in Malaysia.

Law Enforcement Against Perpetrators of Taxation Crimes in Malaysia

In Malaysia, law enforcement against tax violations is primarily carried out by the Inland Revenue Board of Malaysia (IRBM), also known as Lembaga Hasil Dalam Negeri Malaysia (LHDN). The IRBM is responsible for administering and enforcing tax laws to ensure compliance and collect taxes due to the government. Here are key aspects of how tax violations are enforced:

1. Tax Audits and Investigations
   The IRBM conducts regular tax audits and investigations to detect discrepancies, underreporting, and non-compliance. These audits can be random or targeted based on risk assessment, unusual financial activities, or tips from informants.

2. Penalties for Non-Compliance
   Various sections of the Income Tax Act 1967 specify penalties for different types of non-compliance, such as failure to file returns, incorrect reporting, or providing false information. Fines, imprisonment, and additional penalties, such as double the amount of undercharged tax, can be imposed depending on the severity and nature of the violation.

3. Legal Prosecution
   Severe cases of tax evasion and fraud can lead to criminal prosecution, where convicted individuals or entities may face significant fines, imprisonment, or both.

4. Special Penalties and Orders
   For specific offenses, the law allows for special penalties, such as triple the amount of unpaid tax, as seen in sections 112 and 113 of the Income Tax Act. Courts can also order convicted persons to comply with tax filing requirements within a specified period.

5. Public Awareness and Education
   The IRBM conducts public awareness campaigns to educate taxpayers on their responsibilities and the consequences of non-compliance. This includes seminars, workshops, and information dissemination through various media.

6. Voluntary Disclosure Programs
   The IRBM periodically offers voluntary disclosure programs where taxpayers can come forward to rectify their tax affairs with reduced penalties. This encourages compliance and allows taxpayers to avoid harsher penalties and legal actions.

7. Collaboration with Other Agencies
   The IRBM collaborates with other government agencies, such as the Malaysian Anti-Corruption Commission (MACC) and the Royal Malaysia Police, to combat tax evasion and related financial crimes. International cooperation with tax authorities in other countries is also leveraged to track cross-border tax evasion.

8. Digital and Technological Measures
   The IRBM employs advanced data analytics and digital tools to track financial transactions and detect anomalies. E-filing systems and electronic payment methods are also used to streamline tax collection and reduce the chances of evasion.

Overall, the enforcement of tax laws in Malaysia involves a combination of preventive measures, strict penalties, and proactive audits and investigations to ensure compliance and deter tax violations.

CONCLUSION

In conclusion, law enforcement against taxation crimes in Indonesia and Malaysia reveals similarities and differences in their approaches. Both countries have tax authorities responsible for enforcing tax laws, conducting audits, and prosecuting offenders. They also impose penalties such as fines and imprisonment for tax evasion and fraud.
Collaboration with other government agencies and international cooperation are key strategies employed to combat tax crimes. However, there are notable differences in the specific legal provisions, enforcement mechanisms, and technological capabilities between the two countries.

Indonesia and Malaysia each face unique challenges in addressing tax crimes, influenced by factors such as legal frameworks, institutional capacities, and socio-economic contexts. Further research and analysis are needed to deepen our understanding of effective strategies for combating taxation crimes in both countries and enhancing regional cooperation in this area.

Nevertheless, the research underscores the significance of collaboration and knowledge exchange between Indonesia and Malaysia to address shared challenges effectively. By leveraging each other's strengths and learning from best practices, both countries can strengthen their enforcement mechanisms, close regulatory loopholes, and enhance coordination to combat taxation crimes more efficiently. Ultimately, the findings of this study serve as a valuable resource for policymakers, law enforcement agencies, and stakeholders, guiding efforts towards the development of more robust and harmonized strategies to uphold fiscal integrity and combat tax-related offenses across Southeast Asia.

BIBLIOGRAPHY


