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ACCESS TO JUSTICE OF PLEA BARGAINING IN ADDRESSING THE CHALLENGE OF TAX CRIME IN INDONESIA

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Abstract

It is crucial and urgent to construct the prevailing law of plea bargaining in the x-factor to generate the ideal of plea bargaining in addressing the challenge of tax crime in Indonesia based on access to the justice concept. The purpose of this study is to show that the use of the normative juridical method is adequate in answering the formulation of existing problems and, at the same time, providing constructive suggestions for these legal issues. Several facts, such as the number of tax crimes and the amount of loss in state revenues that arise, indicate the need to consider law enforcement in the field of taxation with a sociological perspective, one of which is by producing a legal concept in plea bargaining in the taxation sector. Of course, the ideal tax enforcement in renewing plea bargaining in taxes is sufficient to use the idea of access to justice. It is necessary to study legal empiricism on direct taxpayers. However, this normative study can enrich the study of legal empiricism in subsequent research. Access to justice is ideal in building plea bargaining to handle the challenges of tax crimes in Indonesia. The building of the access to justice concept includes regulating taxpayers' good faith, granting taxpayer rights in plea bargaining, and updating the rules for criminal sanctions for fines at each stage of authority.

1. INTRODUCTION

One of the essential functions of the tax is the budgetary function, namely the function to enter as many funds as possible into the state treasury to finance state expenditures[1]. The fiscal position of the tax must be in line with the mandate of Article 23A of the 1945 Constitution of the Republic of Indonesia (*UUD NRI 1945*), namely that tax collection must be based on law. The budgetary function of taxes and their collection, which must be found in the law, shows that any violation of tax laws and regulations will be subject to tax sanctions, namely administrative sanctions and criminal sanctions. Administrative sanctions are imposed on parties who commit acts that violate administrative provisions

[1] Soemitro, R. Brief Introduction to Tax Law , PT. Eresco, Bandung. 1992.

in taxation. In contrast, criminal sanctions are imposed on parties who commit acts categorized as criminal acts in tax[2].

More specifically, regarding criminal acts in taxation, Moeljatno has emphasized that the law has a different system from the system of the Criminal Code (*KUHP*)[3]. One of them is the matter of the execution of the criminal fine, whereas, in tax law, it is carried out like civil law, which applies the payment of losses determined by the judge to the loser in the case, even if the convicted person cannot pay, the convicted goods or the goods in question are declared executable. To pay, the fine can be taken and sold. This is expressly regulated in Article 44 paragraph (2) letter (j) of Law Number 6 of 1983 concerning General Provisions and Tax Procedures as amended several times, most recently by Law Number 7 of 2021 concerning Harmonization of Tax Regulations or Laws HPP (*UU KUP*), whose formulation confirms that civil servant investigators (*PPNS*) within the Directorate General of Taxes (*DGT*) are authorized to block assets belonging to suspects by the provisions of laws and regulations and or confiscate assets belonging to suspects by the Act. Which regulates criminal procedural law, including but not limited to the permission of the chairman of the local district court. Meanwhile, the execution of fines in the Criminal Code system is regulated in Article 30 paragraph (2) of the Criminal Code, which formulates that unpaid fines must be replaced with substitute imprisonment[4].

The thoughts put forward by Moeljatno related to the execution of criminal fines in criminal acts in the taxation sector are in line with law enforcement from a sociological perspective, as stated by Rahardjo[5], and criminal law in the field of taxation, whose position is administrative law. From a sociological perspective, law enforcement is a concept of legal settlement outside the court, which means not only in court. In contrast, administrative law refers to the process of investigating criminal acts in the field of taxation only as a final measure (ultimum remedium), considering that the spirit of the state financial regime (including taxes) is an administrative settlement because the state prioritizes state revenues[6] .

One of the concepts of law enforcement with a sociological perspective or the concept of punishment as the ultimum remedium is the concept of plea bargaining. This concept is also known by various names, such as plea agreement, negotiated plea or sentence bargain, or Article 199 of the Draft Criminal Procedure Code (*KUHAP*), known as the "Special Path." In tax crimes, plea bargaining has been adopted in Article 44B of the *KUP* Law. However, many of the handling of tax crimes during 2016-2020 has reached the P-21 stage (the case file is declared complete by the Prosecutor's Office). The Annual Report of the Directorate General of Taxes (2016; 2017; 2018; 2019; 2020) shows the data for the P-21 case files as presented in Table 1 below.

[2] Sugiharti, DK. The Development of the Tax Court in Indonesia , PT. Refika Aditama, Bandung. 2005.
[3] Moeljatno. Principles of Criminal Law , Rineka Cipta, Jakarta. 2008.
[4] Sinaga, HDP, and Hermawan. AW. "Reconstruction Of The Ultimum Remedium Principle of Administrative Penal Law In Building A Sociological- Opposed Tax Investigation In Indonesia", *AYER Journal* , Vol. 27, No. 2, pp. 50 - 71. 2020.
[5] Rahardjo, S. Law Enforcement: A Sociological Review , Genta Publishing, Yogyakarta. 2009.
[6] Sinaga, HDP, and Hermawan. AW. "Reconstruction Of The Ultimum Remedium Principle Of Administrative Penal Law In Building A Sociological- Opposed Tax Investigation In Indonesia", *AYER Journal* , Vol. 27, No. 2, pp. 50 - 71. 2020.

Table 1: Case File P-21, Article 44B of the KUP Law, and Loss to State Revenue

No	Year	Total case files that are P-21 and equivalent	Case Files Article 44B of the KUP Law	Total loss in state revenue (in billion Rupiah)
1	2016	58	N/A	1.522.3
2	2017	134	N/A	1785.0
3	2018	127	N/A	1.271.0
4	2019	144	6	2,124,60
5	2020	95	2	313.57

Source: *The Annual Report of the Directorate General of Taxes (2016; 2017; 2018; 2019; 2020).*

There are still many handling of tax crimes, there are still significant losses in state revenue in the tax sector, and the minimal use of Article 44B of the *KUP* Law in tax crimes shows the need and urgency to conduct a study on access to justice in plea bargaining in the taxation sector. It is necessary to perform a normative juridical survey on the management of the criminal justice system properly and able to provide the most significant impact and benefit for the nation and state, namely those that support the abolition of imprisonment or short imprisonment when compared to more extended detention[7]. So this study seeks to answer two existing problems. First, what is the prevailing law of plea bargaining of tax in Indonesia? Second, how is the ideal access to justice from plea bargaining in handling criminal acts in the taxation sector in Indonesia?.

2. METHODS

In constructing the prevailing law of plea bargaining of tax in Indonesia to obtain a legal concept of access to justice from plea bargaining in handling criminal acts in taxation, this study is adequate to use the normative juridical method. From its structure, this normative juridical study is a prescription to produce suggestions on what to do in overcoming problems in tax crimes that are not in line with the budgetary function of taxes[8].

The scope of this normative study is to take inventory, describe, interpret, systematize, and evaluate specific favorable laws that apply in a particular society or country utilizing concepts, categories, theories, classifications, and methods, which are directed to answer the formulation of existing problems[9].

3. ANALYSIS AND DISCUSSION

a. Prevailing Law of Plea Bargaining in Indonesia

Plea bargaining has not been regulated in the Criminal Procedure Code (*KUHAP*). However, in the Draft Criminal Procedure Code, plea bargaining is formulated in Article

[7] Bunker, MD, "Press and public rights of access in plea bargains," Newsp. res. J. , vol. 15, no. 3 pp. 46–61. 1994.
[8] Soekanto, S. Introduction to Legal Research, Publisher University of Indonesia, Jakarta. 2010.
[9] Soekanto, S. Introduction to Legal Research, Publisher University of Indonesia, Jakarta. 2010.

199, identical to the Special Pathway. Criminal provisions in the taxation sector are developed as Article 44B of the *KUP* Law.

Article 199 paragraph (1) of the Draft Criminal Procedure Code stipulates that the application of plea bargaining is in the court order, namely the confession of guilt of the accused whose punishment is not more than 7 (seven) years when the public prosecutor reads the indictment. Several provisions for plea bargaining in the Draft Criminal Procedure Code are:

1) The defendant's confession is stated in the official report signed by the defendant and the public prosecutor.
2) Judge is mandatory to notify the defendant of the rights he has relinquished by providing plea bargaining.
3) Judge is obliged to notify the defendant of the length of the sentence that may be imposed.
4) Judge is obliged to ask whether plea bargaining is given voluntarily.
5) The judge can refuse plea bargaining if in doubt about the integrity of the defendant's confession.
6) The public prosecutor may delegate the case to a brief examination session if the judge accepts the defendant's plea bargaining.
7) Byith Article 198 paragraph (1) of the Draft Criminal Procedure Code, a brief examination procedure is carried out in criminal cases that are not included in the examination procedure for minor crimes and in which, according to the public prosecutor, the evidence and application of the law are easy and straightforward.
8) Criminal sentence against the defendant may not exceed 2/3 of the maximum criminal offense charged.

Meanwhile, plea bargaining in criminal provisions in the taxation sector, as formulated in Article 44B of the KUP Law, is plea bargaining in the interest of state revenue as long as it has not been delegated to the court. At the Minister of Finance, the Attorney General may terminate the investigation of criminal acts in the taxation sector within 6 (six) months from the date of the request letter. The termination of the study of criminal acts in the taxation sector is only carried out after the Taxpayer has paid off the tax debt that is not underpaid or which should not be returned and is added with administrative sanctions in the form of fines. An administrative sanction in the form of a penalty of 1 (one) time the amount of loss in state income is imposed on an alpha crime in the field of taxation as stipulated in Article 38 of the KUP Law, in the amount of 3 (one) times the amount of loss in state income is imposed on criminal acts in the taxation sector. This is done intentionally as regulated in Article 39 of the *KUP* Law, and 4 (four) times the amount of loss in state income is imposed on criminal acts in the taxation sector as regulated in Article 39A of the *KUP* Law.

Furthermore, the procedure for requesting the termination of the investigation of criminal acts in the field of taxation for the benefit of state revenues is regulated in the Minister of Finance Regulation (*PMK*) Number 55/PMK.03/2016 as last amended by *PMK* Number 18/PMK.03/2021 concerning Implementation Law Number 11 of 2020

concerning Job Creation in the Field of Income Tax, *PPN*, and *PPnBM*, as well as General Provisions and Tax Procedures. The main requirement for plea bargaining in the context of an application to terminate the investigation of a tax crime is a written application letter in Indonesian from the Taxpayer directly (not authorized) to the Minister of Finance, which is accompanied by a statement of guilt and a tax payment letter (SSP) and which equated. Some of the other requirements are:

1) Amount of taxes that are not underpaid or should not be returned, and administrative sanctions must be calculated based on the minutes of expert examination at the time of the Investigation.
2) The Minister of Finance may approve or reject a Taxpayer's application and consider the results of research and written opinion from the Director-General of Taxes.
3) The Attorney General may accept or reject a request for termination of an investigation or return it to be completed and repaired.

b. Literature Review of Plea Bargaining and Its Relations with Tax Crime

There are various studies, both supporting and rejecting, regarding plea bargaining in criminal acts. Priyambudi, Sinaga, and Bolifaar expressed concerns in dealing with several plea bargaining risks, such as lack of transparency due to inadequate data administration in the process and differences in objectives between each party in the integrated process criminal justice system (which consists of judges and judges)[10]. Prosecutors, investigators, and correctional institutions), and the marginalization of the participation of specific stakeholders in the plea bargaining mechanism.

Even though there are concerns about the risks of plea bargaining, several experts provide support for implementing plea bargaining. Considering that criminal justice is the last resort of dispute, McConville argues that plea bargaining does not conflict with adversary principles and traditional sentencing theory because the system should provide room for reducing sentences or relinquishing the right to be tried for defendants who are genuinely sorry and plead guilty. Thus, the system has taken steps to rehabilitate and, at the same time, ensure the achievement of the intended purpose of punishment. Chilton revealed that the scope of plea bargaining should be found in all jurisdictions[11]. For example, the verdict handed down by the judge in plea bargaining is to keep punishing the victim. At the same time, in the case of the prosecutor's decision, it is a form of accountability from the power or sovereignty of the state in prosecution, which should be in the form of a hierarchy and active public participation.

Furthermore, Langer argues that plea bargaining and its variations should be conceptualized as a mechanism for imposing sentences outside the court by giving more authority to investigators and prosecutors in deciding who will be punished and for which crimes are not included in the trial process related to the suspect's rights or

[10] Priyambudi, Sinaga, HDP, and Bolifaar, AH, "Managing Plea Bargaining Risk in Indonesia: An Effort to Overcome the Corporate Corruption", *Engineering & Management Test* , Vol. 83 (March–April), pp. 11993–12005. 2020.
[11] Chilton, BS. Reforming plea bargaining to facilitate ethical discourse, Criminal Justice Policy Review , vol. 5, no. 4 (1991), pp. 322–334.

defendant[12]. One of the administrative mechanisms can be carried out by admitting guilt to the perpetrator. Then, Nelson argues that plea bargaining is in line with a legal culture that upholds honesty and apologies; it is appropriate to apply it in criminal acts oriented towards recovering state financial losses[13].

Many countries have adopted plea bargaining in their tax crimes, one of which is the United States. Section 9 of the United States Internal Revenue Manual (IRM) confirms that although every Taxpayer can apply for a plea agreement at every stage of a tax investigation, the Criminal Investigation (CI) Division of Internal Revenue Services (IRS) is the one conducting tax enforcement is not authorized to initiate or negotiate plea bargaining, because the authority is attached to the Department of Justice (DoJ). Counsel must represent taxpayers who apply for plea bargaining[14]. In the case of submitting plea bargaining for taxpayers, the DoJ is not allowed to reduce the principal amount of tax, and the investigation procedure must be accelerated and required to obtain sufficient evidence. However, it will not be tried. Then, Article 11(b) of the Federal Rules of Criminal Procedure Rule stipulates three requirements for plea bargaining: advising and questioning the defendant, ensuring that a plea is voluntary, and determining the factual basis. In the case of renewing and investigating the perpetrator, the offender may be placed under oath before the court accepts a guilty plea. When an open trial is conducted, the court must inform and ensure that the defendant understands the following essential matters, such as (a) the authority of the state to prosecute all statements under oath given by the suspect which turn out to be false or false statements, (b) the right to plead not guilty or have confessed to defend his right to the application, (c) the right to have a trial before a jury, (d) the right to be represented by legal counsel in every stage and process of the trial, (e) the right to confront and cross-examine witnesses who incriminate the suspect in court, (f) acquittal of the accused from the right to try if the court accepts a guilty plea (*nolo contendere*), (g) the possibility of imposing a maximum sentence, including imprisonment, a fine, and a term of imprisonment. Parole, (h) obligation to serve a minimum sentence, (i) pe-confiscation, (j) the court's authority to order restitution.

In addition, Article 11 (b)(2) of the Federal Rules of Criminal Procedure Rule ensures that the court is obliged to directly ask the defendant in open court whether plea bargaining is submitted voluntarily and not based on coercion, threats, or promises (other than things promised). In the plea agreement. Meanwhile, taxpayers who apply for plea bargaining must cooperate with the IRS in determining and fulfilling tax administration obligations and the criminal aspects of taxation.

In line with Article 44B of the *KUP* Law in Indonesia, plea bargaining in the United States requires several things, such as the authority to determine plea bargaining with the DoJ but submitted in writing to the CI Division of the IRS. Then the IRS will make a

[12] Langer, M., "Plea Bargaining, Conviction Without Trial", The Global Administration of Criminal Convictions , Vol. 4, pp. 377-411. 2020

[13] Nelson, FM, Plea Bargaining & Deferred Prosecution Agreement in Corruption Crimes , Sinar Graphic Publisher, Jakarta. 2020.

[14] IRS, https://www.irs.gov/irm/part9/irm_09-006-002 , accessed on March 30, 2022.

referral to the DoJ by submitting a written plea bargaining proposal for the tax crime being handled. Before making an assessment, accountability, and presenting a referral to the DoJ regarding the plea bargaining submitted by the Taxpayer, the tax investigator must examine all records/bookkeeping in detail to ensure that there are no significant issues that have not been covered or that there has been no loss of state revenue that has not been covered—Taken into account. To overcome any problems that arise and recur in the Tax Return (*SPT*), Taxpayers, assessment results, or tax investigator referrals should secure and review SPT for all years, both after the years being investigated and the years before the investigation was conducted.

In anticipating the failure of plea bargaining or the withdrawal of plea bargaining or rejection by the DoJ, before sending a formal letter to the DoJ, the IRS must be careful in ensuring that the information provided by the Taxpayer will not be prohibited from being used in the future as regulated in Article 11 (f) Federal Rules of Criminal Procedure Rule. This provision confirms whether or not plea bargaining is accepted shall still refer to Article 410 of the Federal Rules of Evidence which regulates the prohibitions of uses and exceptions of plea bargaining. Prohibited uses handle unacceptable evidence from tax criminals who submit plea bargaining. At the same time, exceptions hold whether courts can accept statements based on Article 11 of the Federal Rules of Criminal Procedure Rule or a similar procedure, or plea bargaining statements that do not reflect the real or the later revoked.

Plea bargaining submitted by taxpayers in the United States cannot be separated from adequate sanctions to prevent similar criminal violations by other taxpayers. Penalties to taxpayers who receive plea bargaining can be in the form of restitution and costs of prosecution. Restitution or refund in the form of money in connection with a criminal suspect/accused is an effective method to facilitate the settlement of a tax crime case and is a form of cooperativeness of the Taxpayer.

c. Access to The Justice of Plea Bargaining in Addressing Tax Crime in Indonesia

Access to justice is one of the crucial keys in plea bargaining in handling the challenges of tax crime in Indonesia, as a tax that is as large as possible for the welfare of the people requires a concept in the form of an important part to reduce poverty, strengthen democratic governance, and prevent and resolve conflicts (United States)[15].

Availability Access to justice will be able to ensure that every citizen must get their legal rights at a minimum cost[16]. That is, access to justice is a reality that occurs if specific individuals or groups experience injustice and have the ability to make their complaints heard so that they receive proper handling of their complaints by state or non-state institutions that result in recovery from injustices experienced based on the principle of justice or specific legal rules. Furthermore, Otto emphasized that the reach of legal certainty must go beyond juridical legal certainty, namely reaching the availability of

[15] United Nations Development Program, accessed on March 25, 2022. "Access to Justice: Practice Note". Available on the https://www.undp.org/publications/access-justice-practice-note page.
[16] Evans, DM, "Access to Justice", The Liverpool Law Review , Vol. XIX, No. 1 (1997), pp. 37-45.

clear, consistent, and accessible legal rules issued by state power, with a note that government institutions that enforce the law must consistently comply with and obeying these legal rules and judicial institutions that are independent, impartial, and consistent when resolving legal disputes through judicial decisions that can be concretely implemented[17].

This understanding of access to justice shows that the prevailing law of plea bargaining in the taxation sector has not yet reached its das sollen. This can be seen from the plea bargaining of tax crime in Indonesia that cannot be separated from the concept of access to justice as its constitutional basis refers to Article 1 paragraph (3) and Article 23A, Article 28I, and Article 28J of the 1945 Constitution of the Republic of Indonesia. Article 1 paragraph (3) and Article 23A of the 1945 Constitution emphasize that every tax collection in Indonesia must be found on the law as a state based on law. Article 1 paragraph (3), Article 28I, and Article 28J of the 1945 Constitution have required a state of the law as a state that is obliged to uphold and protect human rights (*HAM*). However, the draft procedural law (namely Article 199 of the Draft KUHAP, which explicitly regulates the role of judges and prosecutors in the form of a speedy trial against plea bargaining approved by the judge) still imposes a maximum sentence of 2/3 of that charged by the prosecutor[18] against plea bargaining or "Special Path" approved by Judges and Prosecutors. Of course, this gives rise to various (negative) interpretations, as Bunker argues[19], as a "clear subject to abuse by prosecutors, judges, and others " and the need for certainty of justice for suspects or defendants and victims in terms of recovering state revenue losses suffered by the state. (as victims) and at the same time to protect taxpayers who have good intentions to apply for plea bargaining.

Regarding the taxpayer's good faith, it needs to be derived from the concept of access to justice to the state as a victim who suffers a loss due to a tax crime. The legal image must still include the intention not to repeat tax crimes that have been committed and in good faith also to comply voluntarily in improving SPT reporting whose contents or statements have not been clear, complete, and correct in previous years and recent years, next year. This voluntary compliance is also a manifestation of good faith before the scope of tax crime investigations is extended to continuing actions, considering that continuing efforts refer to the unity of the will for similar acts that have a time relationship factor (not long-distance)[20] . The mutual relationship between one action and another on the condition that it is the embodiment of a forbidden will and the act must be of the same kind[21].

[17] Otto, JM, "Real Legal Certainty in Developing Countries", in Irianto, S., et al ., Socio-Legal Studies , Larasan Library, Denpasar. 2012.
[18] Priyambudi, Sinaga, HDP, and Bolifaar, AH, "Managing Plea Bargaining Risk in Indonesia: An Effort to Overcome the Corporate Corruption", Engineering & Management Test , Vol. 83 (March–April), pp. 11993–12005. 2020.
[19] Bunker, MD, "Press and public rights of access in plea bargains," Newsp. res. J. , vol. 15, no. 3 pp. 46–61. 1994.
[20] Abidin, AZ, and Hamzah, A., Introduction to Indonesian Criminal Law, PT. Yarsif Watampone , Jakarta. 2010.
[21] Hiariej, EO, Legality Principles & Legal Inventions in Criminal Law, Erlangga Publisher, Jakarta. 2009.

Furthermore, Article 199 of the Draft Criminal Procedure Code and Article 44B of the KUP Law shows that several institutions have mutual authority in terms of plea bargaining. For example, there is the authority of the Attorney General's Office and the Court in the prosecution stage. In contrast, there is the authority of the Attorney General's Office and the Ministry of Finance in the investigation stage. Indeed, the division of power is part of the principle of checks and balances. Still, it must be realized that plea bargaining must be a right for everyone to be better off and the right to admit their mistakes and contribute to the welfare of their country. In this case, the Taxpayer must obtain information and ease in applying for plea bargaining. Likewise, from the taxpayer's perspective, taxpayers must voluntarily comply and be transparent in disclosing all books, news, information, and data owned and known to them in plea bargaining.

Considering that several legal institutions have the authority to decide on a plea bargaining, it is fairer if the Taxpayer is allowed to apply for a plea bargaining in any existing tax crime handling process, namely, each of which has a limit on the authority to decide on plea bargaining on the investigative officer—carried out by the *DGT*, the head of the Prosecutor's Office, and the judge's power in the integrated criminal justice system. The implementation is to give access to taxpayers to the maximum extent of their rights in the form of the right to life, the right to improve themselves, and the right to act Bedneer y participate, including to participate in recovering losses in state income from the tax sector due to the occurrence of the tax crime[22].

The tax investigation authority to decide on plea bargaining related to tax crimes can be based on Article 7 paragraph (1) letter j of the Criminal Procedure Code, which confirms that the investigator, because of his obligations, is authorized to take other actions according to the responsible law. Then, the prosecutor's authority to decide on plea bargaining related to tax crimes can align with Article 44B of the KUP Law and Prosecutor's Regulation (Perja) No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. Article 2 Perja No. 15 of 2020 has formulated that prosecutions based on restorative justice are based on fairness, public interest, proportionality, punishment as the ultimum remedium, and fast, simple, and low cost. In addition, public prosecutors who are authorized to close plea bargaining cases in tax crimes must meet material requirements and formal requirements. The mechanism must be under a more robust and more secure legal umbrella, namely the Tax Law. Furthermore, it is hoped that the judge's authority in deciding plea bargaining related to tax crimes is not expected to conflict with Article 199 of the Criminal Procedure Code, where the fulfillment of material requirements, formal requirements, and the mechanism in the criminal lex specialist in the field of taxation must be under a more robust and more secure legal umbrella namely in the Tax Law.

[22] Sinaga, HDP, and Hermawan. AW. "Reconstruction Of The Ultimum Remedium Principle Of Administrative Penal Law In Building A Sociological- Opposed Tax Investigation In Indonesia", *AYER Journal* , Vol. 27, No. 2, pp. 50 - 71. 2020.

4. CONCLUSION

This study yields two conclusions. First, plea bargaining in tax crimes in Indonesia is currently regulated in Article 44B of the *UU KUP* and *PMK* Number 55/PMK.03/2016 as lastly amended by PMK Number 18/PMK.03/2021. However, the regulation has not fulfilled the concept of access to justice, namely plea bargaining as a taxpayer's right (right to life, right to improve oneself, and right to actively participate in recovering losses to state income, due to the occurrence of a tax crime) and state rights (the right to discipline and equalize the voluntary compliance of its taxpayers). The following critical reviews reflect the unfulfilled concept of access to justice in plea bargaining in taxes. First, if Article 199 of the Draft Criminal Procedure Code applies, it will cause injustice and legal uncertainty with Article 44B of the KUP Law. Second, the requirements of PMK No. 55/PMK.03/2016 in the form of a plea bargaining application that must be signed by the taxpayer himself (cannot be authorized) creates legal uncertainty in Article 54 and Article 56 of the Criminal Procedure Code. Article 54 of the Criminal Procedure Code stipulates that in the context of defense, suspects and defendants are entitled to legal assistance from legal advisors during and at every level of examination. In contrast, Article 56 of the Criminal Procedure Code stipulates that legal counsel must accompany tests of suspects who face a minimum sentence of five years. Thus, considering that a taxpayer will apply for plea bargaining with the status of a suspect, it is his right to be accompanied in every plea bargaining process.

Second, access to justice is one of the legal ideals in building the concept (law) of plea bargaining in handling criminal tax challenges in Indonesia because it is the right of the state to obtain a recovery for the losses it has suffered, the right to defend its sovereignty in taxes, the right to prevent and resolve repeated conflicts from the prevalence of tax crimes, and the right to ensure order and equality of voluntary compliance in tax. The concept of access to justice in the renewal of the plea bargaining rules in taxation includes the following: a) the taxpayer's good faith, which must be followed by a statement and minutes of not repeating tax crimes in the future and is willing to improve annual tax returns reporting before expiry and tax returns for the years after the investigation, b) the rules for granting the right of Taxpayers always to have the opportunity to apply for plea bargaining in every existing tax crime handling process, which refers to the respective limits of authority in deciding plea bargaining (whether when are in the process of investigation, prosecution, or trial, c) renewal of the rules for criminal penalties related to the existence of the authority of each institution in deciding whether or not a plea bargaining is accepted.

Based on these two conclusions, this study produces several suggestions, including a) the authority of each law enforcement institution (tax investigations, prosecutors, and judges) in every process of handling tax crimes (investigation stage and prosecution stage) must decide on plea bargaining in the tax law order, which at least must regulate the fulfillment of material, formal requirements, and its mechanism, b) the concept of

access to justice is needed to renew plea bargaining in handling the challenges of tax crimes which still have to pay attention to the related draft laws, such as the Draft Criminal Procedure Code, c) changes in the number of criminal fines in terms of plea bargaining must be in the legal umbrella of the Tax Law which considers level/quality of compliance and good faith performed by the Taxpayer.

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