

Effectiveness of Criminal Sanctions in Regulation of East Tanjung Jabung Regency Number 08 of 2001 Concerning Advertisement Tax

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Abstract

The provisions concerning criminal sanctions in the law of advertisement tax can not be implemented effectively in East Tanjung Jabung. It was seen on data showing that although the range of 2010 to 2015, there have been as many as 26 (twenty-six) times acts that meet the elements of a criminal offense, but none of the deeds that are done the legal process and criminal sanctions. It happened because the formula of criminal sanctions has weaknesses that are formal, where the regulation of advertisement tax simply regulate the form of criminal offenses and criminal sanctions may be imposed on taxpayers who commit criminal acts in the field of organizing the billboard tax, without clearly and law firm about events or legal procedure of criminal sanctions against offenders. The provisions concerning criminal sanctions in the law of advertisement tax has an effect on the legal compliance of the tax billboard in East Tanjung Jabung. The provisions concerning criminal sanctions in the advertisement tax legislation can not be applied strictly, have significantly affect or have caused noncompliance people in this regard billboard taxpayer in fulfilling their obligations to pay taxes in accordance with Regulation billboard advertisement tax. The effect is not only in the group that did not comply, but also felt by the group that had been dutifully pay the advertisement tax. The absence of criminal sanctions are applied, has justified the action group of taxpayers who have been in violation, that "does not pay the advertisement tax will not be punished." As for the group tax obedient, not subject to criminal sanctions against non-compliant group has brought a decline in their compliance and then "be affected" not to pay.

Keywords: Effectiveness, Criminal Sanctions, Regulation of Advertising.

1. Introduction

In the era of regional autonomy, each region are encouraged to accelerate the pace of development on the initiative, creativity and skills themselves by extracting and exploiting the potential of the regions concerned. So that the area is given greater authority to regulate and manage their own household. The aim among others is to get closer to public services, make it easier to monitor and control the use of funds from the Regional Budget, in addition to creating a healthy competition between regions and encourage innovation. Agree with the authorities, local government is expected to be able to explore the sources of finance, especially to meet the financing needs of government and development in the region through Regional Income.

Thus, the philosophy of decentralization is to bring local independence in all facets of life, as measured by the elements of Regional Income. It is hoped that with autonomy, all regions in Indonesia capable of carrying out all administrative matters and development by relying on the original income. The sources of local revenue potential, should be explored to the fullest, but of course have to comply with existing legislation.

Importance of local financial receipts from taxes and levies also strongly felt by the Government of East Tanjung Jabung. Districts legally-historically a result of the expansion of East Tanjung Jabung and officially declared as an autonomous region on October 4, 1999 based on the Law of the Republic of Indonesia Number 54 Year 1999, relying on local taxes and levies as the backbone of Regional Income. It was seen on the contribution of revenue from taxes and charges in 2009 amounted to 68.6% of total revenue East Tanjung Jabung which reached Rp. 17.9 billion.¹

One source of taxes and levies are derived from advertisement tax or local taxes on the implementation of the billboard. What is meant by billboards are objects, devices, acts or media according to the shape, composition and characteristics is intended for commercial purposes, used to introduce or praise goods, services or people, or simply to attract public attention to a product, service or person placed or that can be read or heard somewhere by the public, unless it is done by the government.

Along with the rapid development and increased economic activity in East Tanjung Jabung, the reception area of the advertisement tax also increased and contributed significantly to source revenue. With a view to improving the arrangements entered into revenue through advertising tax, the Government published the East Tanjung Jabung District Regulation East Tanjung Jabung Number 8 of 2001 Concerning Advertising Tax (hereinafter referred Advertisement Tax Regulation).

According to the "Report on the realization Regional Income, East Tanjung Jabung Year 2010", the data

¹ www.tanjabtinkab.go.id accessed on December 12, 2016.

reception from the advertisement tax from 2005 to 2010, is as set forth in Table regarding the performance of acceptance of advertisement tax Tanjung Jabung Timur from 2005 to 2010, the following:

No	Years	Target (Rp)	Revenues (Rp)	%
1.	2010	35.000.000,00	25.000.000,00	71
2.	2011	53.000.000,00	40.000.000,00	75
3.	2012	89.000.000,00	65.000.000,00	73
4.	2013	101.000.000,00	87.000.000,00	86
5.	2014	167.000.000,00	102.000.000,00	61
6.	2015	289.000.000,00	140.000.000,00	48

Source: Report of the Regional Income Revenues, East Tanjung Jabung 2016 (Diolah)

Based on these data, it seems it can be deduced that the reception area of the East Tanjung Jabung regency cape billboard tax, from year to year showed an encouraging increase. When compared the amount of revenue from advertisement tax in 2005 amounted to Rp. 25.000.000, - (twenty five million rupiah) with revenues in 2010 of Rp. 140,000,000, - (one hundred forty million), means there is an increasing acceptance of the advertisement tax that is very large, reaching 560%. However, despite the increased acceptance was encouraging, the actual receipt of local revenues from the advertising tax heading over a time span of 2005 to 2010, have never been able to achieve revenue targets.

The question is, are not achieving the revenue target of the advertisement tax, caused by non-compliance within the community pay advertisement tax. Furthermore, the influence formulation of criminal sanctions in the law society of advertisement tax compliance in this case the taxpayer of advertisements in fulfilling its legal obligation to pay the advertisement tax.

According to Hans Kelsen as quoted Asshiddiqie and M. Ali Safaat, the existence of a legal obligation is solely the validity of a legal provision making sanctions dependent on the contrary actions of legal obligations. Legal liability is the obligation not to commit the offense, or the obligation to abide by the rule of law subjects.¹ Based on the explanation of the aforementioned legal obligations, would become clear that in every setting legal norms contained a legal obligation for the public to comply with these norms. In addition, the existence of the rule of law is very dependent on how far the legal obligations undertaken and how far sanctions against violations of legal norms has resulted in legal compliance.

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Referring to the above explanation, the question is whether the criminal provisions in particular of criminal sanctions in the law of advertisement tax has been able to be an effective legal tool to make people submissive to implement existing legal obligations on him, as a result of setting the criminal provisions in the tax legislation.

2. Results And Discussion

a. Analysis on Effectiveness of Criminal Sanction In The Advertisement Tax Regulation.

To obtain an answer that is both comprehensive review of the question whether the provisions on criminal sanctions in the law of advertisement tax has can be effectively implemented in East Tanjung Jabung, would need to be raised first two (2) things that are related to it, namely *the first*, about the profile or a general overview of East Tanjung Jabung and *secondly*, on the implementation of the Regulation of advertisement tax in East Tanjung Jabung.

Geographically, Tanjung Jabung Timur, located between 005' - 1041' South Latitude and 102 023' - 104 031' east longitude. District with capital of Muara Sabak this, bordered on the north and east by the South China Sea, on the west by West Tanjung Jabung and Muara Jambi, and Muara Jambi and South Sumatra Province in the south.

In terms of administration, East Tanjung Jabung regency consists of 11 districts, 75 villages and 18 villages. Most of the area is an area of rivers and oceans. The average altitude of the area from the sea level was 1-5 meters. Lowest region is the District Mendahara, Mendahara Ulu and District Geragai. While the highest land area located in District Dendang, Muara Sabak East, West and the District of Muara Sabak Kuala Jambi.

While the demographic angle, the District with an area of 5445 km², has a population of 211 690 inhabitants with an average density of 38.88 people per square kilometer. The area is densely populated Eastern District of Muara Sabak with 145.09 inhabitants per km² and the lowest density area is the District Sadu with an average density of 7.45 inhabitants per kilometer².

From the point of an area, then ranked the largest administrative region in East Tanjung Jabung Regency

¹Jimly Asshiddiqie and M. Ali Safaat, *Hans Kelsen Theory About Law*, Publisher's Secretariat General and Registrar of Constitutional Court, Jakarta, 2006, Pg. 55.

of Sadu, followed by the District Mendahara, Dendang, Muara Sabak Barat, Mendahara Ulu, Rantau Rasau, Geragai, Muara Sabak Timur, Nipah Panjang, Berbak. The smallest administrative area in the district of Kuala Tanjabtim District of Jambi. Based on the profile East Tanjung Jabung mentioned above, presumably can be clearly seen that East Tanjung Jabung has a very strategic location because of its position directly adjacent to the South China Sea, making the area is prospective as the main gateway Jambi province towards the center of *Indonesia, Malaysia, Singapore Growth Triangle/IMS-GT*.

With such a strategic position and an abundance of natural resources potential of being owned, making East Tanjung Jabung as an investment destination which is very promising. A number of investment both domestic investment and foreign direct investment is now growing in this district, including in the field of oil and gas, plantation and industrial estates.

With the presence of national and international investment in East Tanjung Jabung, making the town of Muara Sabak as the district capital, has now developed into the city services and the city bustling trade. To support the functions of the city and trigger economic growth in the region, a number of infrastructure continues to be built and developed, including roads and bridges, telecommunications, educational facilities, hospitals and hospitality. Infrastructure development and increased economic activity in East Tanjung Jabung and the town of Muara Sabak in particular, has had a positive impact by increasing the potential sources of revenue, as the backbone for the accelerated development of the region in order to improve the welfare of society.

One source of potential revenue that is from the advertisement tax or local taxes on the implementation of the billboard. In the law of advertisement tax explained that the definition of advertisement is a thing, equipment, acts or media that according to the shape, composition and characteristics is intended for commercial purposes, used to introduce or praise goods, services or people, or simply to attract public attention to a product, service or person that placed or that can be read or heard somewhere by the public, unless it is done by the government.

Implementation of most existing billboards in the center of government and commerce, which is in the town of Muara Sabak. This was in line with the marketing principle that the organizers would want a billboard advertisement that they attach, can be heard or seen or read by many people. As for the types of billboards that developed among others are in the form of radio ads and outdoor media advertising, which is generally dominated by billboards vehicles, banking products and tobacco products.

Advertisement tax is the post of potential for Revenue East Tanjung Jabung. Revenues from advertisement tax, from year to year continues to increase significantly. When compared the amount of revenue from advertisement tax in 2005 amounted to Rp. 25.000.000, - (twenty five million rupiah) with revenues in 2010 of Rp. 140,000,000, - (one hundred forty million), means there is an increasing acceptance of the advertisement tax that is very large, reaching 560%.

The question that can be submitted related to the increase in revenue from the advertising tax is whether the income increase, also the result or impact of the advertisement tax legislation in place or enforced effectively. To answer that question, presumably data on the number of advertisement tax revenue, as noted above, it is not sufficient to illustrate that tax revenue occurred as a result of the application of Advertisement Tax Regulation.

A slightly its estimate more comprehensive, new would be obtained from the searches on the performance of the reception area of the billboard tax revenues, which in it the number or the realization of revenue, compared with a previously set revenue target based on the potential real owned.

Based on Realization Report Regional Revenue issued by the Office of Financial Management and Assets of Regency East Tanjung Jabung, it can be seen that although the number of admissions increased convincingly, but the performance of the revenue receipts region of heading billboard tax, have never been able to achieve revenue targets.

Target revenue receipts of postal districts billboard tax, was made based on a number of criteria are measurable. Those criteria are positioning real acceptance of advertisement tax in the current year and must be renewed the following year, the application for the installation of billboards new that has been submitted to the relevant agencies and the potential installation of billboards for their number of events both district and provincial level were held in East Tanjung Jabung, An error rate of in the preparation of the target of course there is, but still within the limits that can be tolerated.

Furthermore, based on the evaluation carried out by the relevant agencies, has not been able to accomplish the target revenue receipts from the post area billboard tax, caused by a number of factors. These factors include the lack of coordination and supervision in the field for abuses such as the implementation of billboard advertisement billboard-old who was not taken care of by the organizers of the licensing renewal billboards and the emergence of new billboards and unauthorized.

Income Tax Billboards in the area of East Tanjung Jabung, are not yet optimal. That's because still have a number of offenses committed by the taxpayer advertisement. Most violations were carried out by the taxpayer in the form of advertisement does not permit the extension of advertisement by the taxpayer or the taxpayer does not pay taxes advertisement implementation the following year. Meanwhile, the number of violations occurred in 2015.

Not optimal achievement of the target revenue receipts from the post area billboard tax, mainly due to weak enforcement of laws against violations in the field of organizing the billboard. The weakness of law enforcement is marked by the absence of legal sanctions that have been imposed against the organizer advertisement violates the provisions stipulated in the law of advertisement tax.

In the advertisement tax legislation forms the legal sanctions that may be imposed against violators of the provisions of Regulation advertisement tax, is in the form of administrative sanctions and criminal sanctions. The provisions concerning administrative sanctions stipulated in Chapter VIII of the Tax Collection Procedures, whereas the criminal sanctions stipulated in Chapter XVI of the Criminal Provisions. That the regulation of advertisement tax has been set provisions regarding the form of administrative sanction against the organizers of billboards that do not pay off the billboard tax, but the provision can not be implemented, because the provision does not set out clear and firm about objects that can be seized and auctioned off, as well as procedures or procedural law, foreclosure and the auction.

Furthermore, the form of criminal sanctions can be imposed against the offender or a criminal act in the field of organizing the billboard, as set forth in Article 30 of Advertisement Tax Regulation, the author believes that the formulation of the criminal provisions, it contains weaknesses in the formulation of formal criminal. The opinion was based on the fact that the advertisement tax legislation merely regulates the form of criminal activity in the implementation of the advertisement tax, without clearly and firmly about the procedural law or legal procedure of criminal sanctions against the perpetrators of criminal acts in the field of organizing the billboard.

b. Effect of Criminal Sanction In The Advertising Tax Bylaw Compliance Community Against Paying Taxes In Advertising

Referring to the conclusion of the previous section that the provisions of criminal sanctions as provided in the law of advertisement tax, can not be implemented effectively. It happened because the formula of criminal sanctions has weaknesses that are formal, where the regulation of advertisement tax simply regulate the form of criminal offenses and criminal sanctions may be imposed on taxpayers who commit criminal acts in the field of organizing the billboard tax, without clearly and law firm about events or legal procedure of criminal sanctions against offenders.

Referring to the above description, presumably can be concluded at this point that the provisions on criminal sanctions in the law of advertisement tax has an effect on the legal compliance of the tax billboard in East Tanjung Jabung. The provisions concerning criminal sanctions in the advertisement tax legislation can not be applied strictly, have significantly affect or have caused noncompliance people in this regard billboard taxpayer in fulfilling their obligations to pay taxes in accordance with Regulation billboard advertisement tax. The effect is not only in the group that did not comply, but also felt by the group that had been dutifully pay the advertisement tax.

The absence of criminal sanctions are applied, has justified the action group of taxpayers who have been in violation, that "does not pay the advertisement tax will not be punished." As for the group tax obedient, not subject to criminal sanctions against non-compliant group has brought a decline in their compliance and then "be affected" not to pay.

According to Lawrence W. Bernard Friedman was quoted Arief Sidharta, the legal system consists of the legal structure, the substance of the law and legal culture.¹ Referring to the opinion of the legal experts, Sidik Sunaryo concluded that the effectiveness of law enforcement relies heavily on factors substance (legislation), law enforcement and cultural factors. These three factors together or individually will affect the effectiveness of the law.²

Therefore, based on the opinion of experts on the effectiveness of law enforcement, would be normative can be explained that the terms of the theory of the legal system and the effectiveness of law enforcement, noncompliance community in this case taxpayers in meeting their tax obligations billboard in East Tanjung Jabung, due to the ineffectiveness of the substance in the form factor of the weak formulation of the provisions on criminal sanctions in the law of advertisement tax, such that it has weakened the cultural factors such as lowering the compliance culture of society in meeting their financial obligations in accordance with Regulation advertisement tax.

In addition, it is necessary also in retrospect essence or fundamental purpose of law enforcement. According to Gustav Radbruch was quoted as saying Sudikno Mertokusumo, the law serves as the protection of human interests, and through the enforcement of the law is the law becomes a reality. In upholding the law, there are three elements that must always be considered, namely justice (*Gerechtigkeit*), legal certainty (*Rechtssicherheit*) and benefits (*Zweckmassigkeit*).³

¹Bernard Arief Sidharta, *Reflections About Structure of Legal Studies*, Publisher CV. Mandar Maju, Bandung, 2009, Pg. 97.

²Sidik Sunaryo, *Criminal Justice System*, Publisher University Of Muhammadiyah Malang, Malang, 2004, Pg.23.

³Sudikno Mertokusumo, *Know Law An Introduction*, Liberty, Yogyakarta, 2007, Pg. 160.

Regarding the size of the justice system itself is recognized by Mochtar Kusumaatmadja and B. Arief Sidharta as something relative. Both argued that the definition of what is called the fair will be different for every individual. Learn stated that it is not excessive if justice was something difficult to define, but can be felt and is an element that can not be there and not be separated from the law as the principles and rules which ensure the regularity (certainty) and order in society.¹

Based on the opinion of legal experts mentioned above, would be drawn in the sense that law enforcement efforts, there are 3 (three) legal purpose to be achieved namely the achievement of the principles of justice, rule of law and the legal principle of expediency for the public, in the broadest sense. Related to the influence of criminal sanctions provisions in Local Advertising Tax, according to the author to do a search on the achievement of the purpose of setting the organization of law enforcement billboard in East Tanjung Jabung through advertisement tax legislation.

More specifically, it is necessary to explore whether the provisions on criminal sanctions in the law of advertisement tax, has been able to achieve the essence or fundamental purpose of law enforcement that is the fulfillment of the principles of justice, rule of law and the principle of legal expediency. Referring to the previous conclusion that the provisions on criminal sanctions in the law of advertisement tax can not be enforced effectively because of the lack of provisions regarding the procedure of criminal procedural law, then it means that even though there are acts that meet the elements of crime referred to in the criminal provisions of Regulation of Tax billboards, but criminal sanctions can not be applied.

If the criminal sanctions can not be applied, there is no difference in the treatment before the law between organizers billboard commit a criminal act, or taxpayers "misbehaving" with the organizers of the billboard that does not commit a criminal act, or taxpayers who "obey the law". Such circumstances, the organizer advertisement does not commit a criminal act, or taxpayers who "obey the law", it is clearly an unfair treatment or cause a sense of injustice. In addition, as discussed earlier, if the applicable law without sanction, it will cause legal uncertainty in the community.

Further, if the law enforcement through advertisement tax legislation is not capable of producing justice and the rule of law in society, it is difficult to expect the advertisement tax legislation will bring benefits to the community, particularly the benefits to create order and legal compliance in paying taxes advertisement. Based on the above explanation, it would become clear that the lack of effectiveness in the implementation or application of criminal sanctions as provided in the law of advertisement tax, has significantly raises public disobedience in pay advertisement tax in East Tanjung Jabung.

Therefore, in order to remember that the billboard tax is post is strategically important to increase local revenue East Tanjung Jabung, then presumably have been urged to make fundamental changes in the formulation of criminal provisions and provisions related to the legal procedure shows execution of criminal sanctions in the Advertisement Tax Regulation, so that law enforcement through criminal sanctions in the law of advertisement tax can be implemented strictly and hard but fair. Enforcement of such a law, order and compliance will result mainly of the organizers of the billboard or taxpayers to pay tax in accordance with Regulation billboard advertisement tax.

As has been stated previously that the main weakness in the formulation of criminal sanctions in the law in the formulation of advertisement tax law regarding the imposition of criminal sanctions against the event organizers billboard commit a criminal act in the field of organizing the billboard. Therefore, the authors argue that the formula of sanctioning criminal procedural law, is a priority in the alteration or renewal of the law on regulation of advertisement tax East Tanjung Jabung.

Associated with it, the authors argue that the formula of sanctioning criminal procedural law, can adopt the same provisions in the legislation of a number of other areas. Together these authors cite one charge of local legislation on criminal procedure law intended, namely Jambi Regional Regulation No. 03 Year 2005 on Taxes (hereinafter referred to Jambi City Hotel Tax Regulation).

With the provisions on the legal procedures in the event of the imposition of criminal sanctions, the writer believes law enforcement through the imposition of criminal sanctions against the perpetrators of criminal acts in the field of organizing billboards, will be implemented strictly and hard but fair. Enforcement of such a law, order and compliance will result mainly of the organizers of the billboard or taxpayers to pay tax in accordance with Regulation billboard advertisement tax.

3. Conclusion

- a. That the provisions of criminal sanctions as provided in the law of advertisement tax can be effectively implemented, then it is urgent to make fundamental changes in the formulation of the provisions relating to the legal procedure shows execution of criminal sanctions in the law of advertisement tax, so that the rule of law

¹Mochtar Kusumaatmadja and B. Arief Sidharta, *Introduction to Law, A First Introduction Scope of Applicability of Legal Studies*, Alumni, Bandung, 2000, Pg. 52-53.

- through criminal sanctions in Local Advertising Tax can be carried out firmly and hard but fair. Enforcement of such a law, order and compliance will result mainly of the organizers of the billboard or taxpayers to pay tax in accordance with Regulation billboard advertisement tax;
- b. In order setting provisions on criminal sanctions in the law of advertisement tax, able to foster compliance with the community to pay the advertisement tax, the main priority in the reform or change is to formulate the provisions on the legal procedures of criminal sanctions. For this purpose, can be adopted similar provisions in the legislation of a number of other areas. In this study cited one charge of local legislation on criminal procedure law intended, namely Jambi Regional Regulation No. 03 Year 2005 on Taxes Hotel.

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