Confiscation of Copyrights in Investigations of Criminal Actions in the Field of Taxation and Tax Collection

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ABSTRACT
This article discusses the confiscation of copyright as a form of intellectual property in the investigation of criminal acts in the field of taxation and tax collection. Copyright legal provisions recognize the moral right of creators to defend their rights from things that are detrimental to their personal honor or reputation through certain legal measures, while tax law regulates the authority to carry out confiscation in the event of criminal acts in the field of taxation or unpaid tax debts. This can cause conflicts between legal provisions in their implementation and raise questions about how to confiscate copyright as an intangible movable object. To answer this question, the author carried out a juridical analysis of the provisions of Copyright law and confiscation, prepared arguments for the relevance of Copyright confiscation, and drew conclusions inductively based on the results of the analysis. With the conclusion that there is a legal basis for confiscation related to investigations, but regarding tax collection it does not have sufficient legal basis and requires further regulation of confiscation authority. The exercise of confiscation authority that is not against the law will not conflict with the Creator's legal efforts to defend his rights.

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The formation of the Indonesian government in accordance with the 1945 Constitution was to provide protection to all the people and the bloodshed of Indonesia. As in Article 28G paragraph (1) of the 1945 Constitution, namely "every person has the right to personal protection, family, honor, dignity and property under his control, and has the right to a sense of security and protection from the threat of fear of doing or not doing something wrong." is a human right." So that the Indonesian state becomes a system that must be able to provide guarantees in fulfilling various rights in accordance with applicable regulations, where the fulfillment of these rights is something that is emphasized in the theory of the social contract between the state and its citizens according to the conception of John Locke (Wijaya, 2016).

If the rights of the people are not protected, it can be a deviation from the goals of the state and be a sign that the legal system is not being implemented in a country. So, the law becomes the Indonesian legal system that protects its people, which in the context of writing this article is interpreted as positive law regarding the protection of copyright as intended in Law No. 28 of 2014 concerning Copyright (UU 28/2014) that copyright is intellectual property in the knowledge, arts and literature sectors which plays a strategic role in providing support in building and prospering the nation in accordance with the mandate of the 1945 Constitution of the Republic of Indonesia.

Article 1 (1) of Law 28/2014 provides the definition "Copyright is the exclusive right of the creator which arises automatically based on declarative principles after a work is realized in real form without reducing restrictions in accordance with the provisions of statutory regulations". Article 1 (2) defines that "A creator is a person or several people who individually or together produce a creation that is unique and personal".

Article 4 explains further regarding copyright that copyright is a special right which includes moral and economic rights. In the context of these economic rights, Article 8 is defined as: Special rights for parties holding copyrights to obtain economic benefits from their creations. Meanwhile, the provisions of Article 5 paragraph (1) letter e state that the party who creates a creation has the moral right to defend its rights in the event that there is something that has the characteristics of causing harm to the creator's reputation.

There is an economic aspect in Copyright that provides economic benefits for the Creation, so there will be a link between the provisions in copyright in the Law on Income Tax (PPh Law), especially regarding the provisions of Article 4 paragraph (1) of the Income Tax Law that "the object of tax is income, whether originating from Indonesia or outside Indonesia, in any name and in any form, including compensation or compensation in connection with work or services received or obtained including salaries, wages, allowances, honorariums, commissions, bonuses, gratuities...", Thus, the economic benefits received by the Creator in the form of income accompanied by his name or various forms are objects subject to income tax.
Thus, in the event of a criminal violation related to the tax aspects of economic rights to Copyright, it will be followed up in accordance with the criminal provisions in the tax sector, Law No. 6 of 1983 concerning General Provisions and Procedures for Taxation in conjunction with Law No. 7 of 2021 (UU KUP) as formal law. criminal acts in the tax sector.

The KUP Law in Article 39 (1) letter d regulates that "any person who deliberately submits a Notification Letter (SPt) and/or information whose contents are incorrect or incomplete so that it can cause losses to state revenues shall be punished with imprisonment for a minimum of 6 (six) months and a maximum of 6 (six) years and a fine of at least 2 (two) times the amount of tax owed that is not or underpaid and a maximum of 4 (four) times the amount of tax owed that is not or underpaid, where submit the contents of the Tax Return incorrect or incomplete, including filling in the income element in the Tax Return which is in the context of economic rights to Copyright, in the event that there is income received by the Creator or Copyright Holder from his Creation."

In enforcing tax law, Article 44 paragraph (1) of the KUP Law stipulates that investigations can only be carried out by certain Civil Servant Officials who are affiliated with the Directorate General of Taxes and have specific powers as investigators in tax violations. Article 44 paragraph (2) of the KUP Law gives investigators various powers, including searches to look for evidence such as books, records and documents related to taxation as well as confiscating this evidence. There is also the authority of investigators to block or confiscate the suspect's assets in accordance with the provisions of the criminal law and permission from the chairman of the local district court, as regulated in letter j.

Furthermore, Article 44 paragraph (2) letter j of the KUP Law states that "confiscation for the purpose of recovering losses in state income can be carried out on movable or immovable property, including bank accounts, receivables and securities belonging to Taxpayers, Tax Insurers, and/or other parties who have been named as suspects. The confiscation is carried out by investigators with provisions in accordance with the criminal procedural law." Thus, if it is linked to the provisions of Article 16 paragraph (1) of Law 28/2014 which categorizes copyright as an intangible movable object and the provisions of Article 16 paragraph (3) of Law 28/2014 which regulates that copyright can be used as a fiduciary guarantee, then against Material copyrights can be confiscated by tax investigators.

On the other hand, through Article 5 paragraph (1) letter e of Law 28/2014 concerning the granting of moral rights to creators in order to protect the rights they have which have the nature of causing harm to the creator's reputation, while Article 44 paragraph (2) of the KUP Law grants investigative powers taxes to confiscate movable objects and confiscation of assets, then there will be legal problems in the dialectic between these two legal norms, this can occur because confiscation of objects owned by someone will prevent someone from obtaining economic benefits from these objects, apart from not being able to use them. The object is appropriate for its use, because by confiscating the investigator can have the power to store tangible or intangible objects, and
movable or immovable objects to serve as evidence during the investigation, prosecution and trial processes.

Movements related to human creations in the form of intellectual property and their implications for the economy have become increasingly prominent recently, especially with the issuance of Government Regulation Number 24 of 2022 on 12 July 2022. This regulation, as an implementation of Law Number 24 of 2019 concerning the Creative Economy, underscores the use of Wealth n Intellectual property as collateral for debt in the Intellectual Property Based Financing Scheme, which can be carried out by bank and non-bank financial institutions according to Article 9 paragraph (1) PP 24/2022. With the regulations in PP 24/2022, Intellectual Property is recognized as having economic value and can be used as collateral for debts with financial institutions. This arrangement further strengthens the position of intellectual property so that it can become an additional economic capability for the owner or party who controls it so that in the context of tax law, intellectual property can be used as an object of confiscation to become a tax debt.

In the context of confiscated objects, Law Number 19 of 1997 concerning Tax Collection by Force Letter, which has been amended by Law Number 19 of 2000 (UU PPSP), provides a definition that regulates tax collection and the confiscation process. Article 1 number 9 of the PPSP Law details a series of actions to ensure that the Tax Insurer pays off tax debts, including notifying Forced Letters, proposing prevention, and carrying out confiscation. The definition of confiscation is explained in Article 1 number 14 as an attempt by the Tax Bailiff to control the tax payer's property to use as collateral for the tax debt. Article 14 paragraph (1) of the PPSP Law stipulates that confiscation is carried out on property belonging to the tax insurer located in various locations, including those pledged as collateral to repay certain debts, including movable property. From these legal norms, it can be concluded that confiscation of Copyright as an intangible movable object can also be carried out by Tax Bailiffs, referring to the material nature of Intellectual Property.

LITERATURE REVIEW

From a number of legal provisions described in the previous chapter, it can be found that there is a legal problem in the form of a conflict between legal provisions which aim to give the state the authority to confiscate property belonging to the party paying the tax or the taxpayer for the purpose of investigating or collecting taxes in accordance with the provisions of the law. This aim to provide protection to the creator to maintain the rights of things with characteristics that could cause harm to the creator's reputation. Based on this legal problem, the assessment problem is formulated:

1. How does the Copyright Creator attempt to defend his rights from things that are detrimental to his personal honor or reputation;
2. How to confiscate copyright in investigating criminal acts in the field of taxation and tax collection and in relation to the creator's efforts to defend copyright.
METHODOLOGY
The author carried out a juridical analysis of the provisions of Copyright law and confiscation, prepared arguments for the relevance of Copyright confiscation, and drew conclusions inductively based on the results of the analysis.

RESULT AND DISCUSSION
Efforts by Copyright Creators to Defend Their Rights from Things that are Harmful to Their Personal Honor or Reputation

1. Review of Property Law and Copyright

Based on the KBBI accessed from the site kbbi.kemdikbud.go.id, the meaning of a noun is a valuable item (as wealth); property, while one definition of the word goods is general objects (all things that have a form). From the definitions in the KBBI, objects and goods are identical in meaning and can be interchanged in meaning.

In its legal provisions, as can be traced in the Civil Code (Civil Code) in Article 499, the definition of an object is an object that originates from property rights. Article 504 of the Civil Code covers goods which are divided into 2 types, namely goods which are movable and which are not. Juridically, objects are all things that are the object of law. The essence of objects comes from objective law, but objective law is limited, namely that objective law cannot give that essence to something that cannot possibly be controlled by humans. The sun, moon and stars can never be objects in the juridical sense (van Apeldoorn, 2015).

Furthermore, we still quote from van Apeldoorn that objects are divided into 2 (two) categories, namely:

a. Tangible objects (lichamelijk zaken), namely items that can be captured through the five senses.

b. Intangible objects (onlichamelijk zaken), namely in the form of various subjective rights.

In relation to intangible objects, there are rights regarding various intangible items resulting from human thought or mental objects which can be divided into (van Apeldoorn, 2015):

a. Copyright (auteursrecht) is the absolute right regarding literature, knowledge and art to be published and reproduced.

b. Octroi rights (octrooirecht), namely the absolute right of people who discover the results of intelligence or new ways of working, to be brought into social relations to seek results or to sell.

Property law in Indonesia as stated in the Civil Code basically adopted civil law provisions from the Netherlands. At the time of this adoption, the dynamics of civil law provisions in the modern era were certainly not yet covered in the Civil Code, a product of the Dutch East Indies, so that several civil law provisions were regulated separately in law. -separate laws, including this is stated in Law No. 28 of 2014 concerning Copyright, Law No. 13 of 2015
concerning Patents in conjunction with Law No. 11 of 2020 concerning Job Creation, Law No. 20 of 2016 concerning Marks and Geographical Indications in conjunction with Law No. 11 of 2020 concerning Job Creation.

Based on the description of material law and paying attention to the provisions of Article 16 paragraph (1) of Law 28/2014 which categorizes copyright as intangible movable goods, it can be legally concluded that copyright is in the category of intangible movable goods.

The concept of Copyright was first known to the world through a figure named Vitruvius (257-180 BC) who was a judge in a poetry contest. In his duties as a judge, Vitruvius annullled the poetry entered in the contest but was found to have taken part of the poetry from someone else’s poetry. Institutionally, the Republic of Florence on June 19, 1421 first provided copyright protection by establishing it in state statutes for the intellectual work (patent) of Fillippo Brunelleschi as the architect of his creation. Furthermore, on March 19, 1474, the Venetian Republic became the first jurisdiction to codify patents in statute, regulating the rights of creators, incentives for the use of creations, compensation given for patent infringement and the period of time a patent can be owned by a creator.

Entering the modern era, the international administration and regulation of Copyright is carried out by the World Intellectual Property Organization (WIPO), which in the WIPO Intellectual Property Handbook formulates Copyright as a legal right resulting from intellectual activities in the fields of industry, science, literature and the arts. WIPO further recommends that each member country regulate it in the formal law of each country for the reasons: a) providing a legal basis for the moral and economic rights of the Creator over his Creation and the right to use it for the public; b) as an effort by the government to encourage fair trading which contributes to economic and social development. The World Trade Organization (WTO) in Trade Related Intellectual Property Rights (TRIPs) also provides multilateral regulations on Copyright as stated in the Convention for the Protection of Industrial Property (Paris Convention) and the Convention for the Protection of Literary and Artistic Works (Berne Convention).

When it was still a Dutch colony under the name of the Dutch East Indies, in Indonesia there were copyright provisions in the form of the Auteurswet regulation on 23 September 1912 which was a regulation for creators and their creations, after the proclamation of independence and the inauguration of state sovereignty, the Republic of Indonesia through Presidential Decree Number 24 of 1979 ratified the Paris Convention for the Protection of Industrial Property and the Convention Establishing the World Intellectual Property Organization, however, the signing (signature) of the WIPO Convention by the Republic of Indonesia was carried out 11 years earlier, namely on January 12 1968.

As a follow-up to this ratification, the Republic of Indonesia has prepared a number of legal provisions, according to data from WIPO, there are 33 regulations related to intellectual property. One of them is the Copyright
provisions contained in Law No. 28 of 2014 concerning Copyright (UU 28/2014).

According to Article 1 point 1 of Law 28/2014, Copyright is defined as an exclusive right that is automatically owned by the creator after a work is created in real form, with a declarative principle, but still taking into account the restrictions stipulated in statutory regulations. Meanwhile, according to number 2, a creator is defined as an individual or group who individually or collectively produces unique and personal works.

According to Article 1 point 3 in the regulation, creations are described as works that arise from abilities that are realized in reality, and cover the fields of science, art and literature. Meanwhile, number 25 in the same regulation describes compensation as a transaction to pay money that must be carried out by the perpetrator of the violation of the economic rights of the Creator or the party concerned, in accordance with court decisions in criminal and civil cases with permanent legal force, as compensation for the losses they receive.

Article 4 of Law 28/2014 explains that copyright is a special right that includes moral and economic rights. Furthermore, Article 9 paragraph (1) of the law explains that the Creator or Copyright Holder has economic rights to carry out various actions, namely:

a. Publish works;
b. Copying works in all forms;
c. Translating works;
d. Adapting, arranging, or transforming works;
e. Distributing the work or copies thereof;
f. Displaying works;
g. Announce work;
h. Communicating work;
i. Renting out work.

Article 5 paragraph (1) letter e in the relevant law basically provides Grants the Creator the moral right to maintain the integrity of his work in situations where there is distortion, mutilation or modification of the work, or if such actions are detrimental to the honor or reputation of the Creator. The construction of this article is an alternative cause, so that the meaning of the phrase after the word "or" must be intended as a cause where the legal subject of the creator of copyright is given moral rights in order to protect his rights from something that causes harm to the creator's reputation. However, the phrase "harmful to one's honor or reputation" is not clearly spelled out either in the body of Law 28/2014 or its explanation.

In relation to criminal acts in the field of Copyright and/or Related Rights, the criminal formulation provisions in Law 28/2014 are regulated in Articles 112 to Article 120. Of the number of criminal formulations, Article 112, Article 113, Article 115, Article 116, Article 117, and Article 118 specifically outlines the construction of the criminal act in the phrase "...for Commercial Use...", the definition of Commercial Use is stated specifically in Article 1
number 24 as the use of copyright or product rights for the purpose of obtaining economic profit from paid sources.

Article 114 focuses on criminal aspects related to the management of a trading place intentionally and knowingly allowing the sale and/or reproduction of goods which are the result of violations of Copyright and/or Related Rights. Furthermore, the criminal provisions in Article 119 provide legal protection from withdrawals of Royalties without permission carried out by the Collective Management Institution. Article 120 regulates that criminal act in a quo law constitute a complaint offense.

2. Copyright Creators' Efforts to Defend Their Rights

Article 5 paragraph (1) letter e of Law 28/2014 gives the Creator the right to maintain the integrity of his work in situations of distortion, mutilation or modification of the work, or if this harms the dignity or reputation of the Creator. The formulation and definition of the phrase "harming personal honor or reputation" is not regulated clearly and in detail in Law 28/2014, therefore the meaning of this phrase must be based on the general criminal provisions in the Criminal Code regarding defamation, namely Article 310, the elements of which are: a) anyone who; b) intentionally attack; c) individual honor and good name; d) make accusations; e) with the intention of being notified to the public, where the main elements attached to Article 310 are eer (honor) and goed naam (good name) that exist in a person, however the Criminal Code does not provide a clear definition of the meaning of honor or good name, so that is a phrase that must be interpreted further based on contextuality and legal actions.

In the civil realm, Article 1372 of the Civil Code emphasizes the importance of honor and good name by stipulating that civil claims related to insults aim to obtain compensation for losses and restoration of honor and good name. In assessing the claim, the judge must consider the level of insult, as well as factors such as the social status, position and abilities of both parties and the circumstances that occurred.

In the Big Indonesian Dictionary (KBBI), honor is defined as a good name, self-esteem, so that from the perspective of the definition of self-esteem, this is attached to a person's perspective on themselves. From a number of meanings of the phrase honor, it can be concluded that the point of view of measurement and assessment lies in the individual of the legal subject who is that person.

Regarding the meaning of harm, the KBBI provides an explanation as causing harm, causing loss, causing bad things to someone. From this description, the meaning in the KBBI, harming one's honor can be interpreted as accepting something bad in the form of distress or damage to one's self, where the element of harm to one's good name is a subjective element depending on one's assessment of oneself. From a legal point of view, when a legal meaning is interpreted subjectively from one party without any legal guidance, it creates the potential for confusion which harms legal certainty, moreover Article 120 of
Law 28/2014 explains that criminal acts in the legal construction of the a quo law are offenses of complaint.

Within the framework of Law 28/2014, there are legal provisions that provide creators with a basis for carrying out legal actions related to the copyright they own. This is regulated in Article 96 paragraph (1) together with Article 99 paragraph (1) of Law 28/2014 which gives Creators, Copyright Holders, or related Rights owners the right to obtain compensation or submit a claim for compensation to the Commercial Court for Copyright infringement as well as Related Rights products.

Article 96 paragraph (1) Law 28/2014 specifically determines the legal subject as Creator, Copyright holder, and/or Related Rights holder, including their heirs. This regulation emphasizes that to obtain compensation, legal subjects must experience losses in their economic rights, and as a result, are entitled to compensation.

This compensation is provided through court decisions in cases of copyright and related violations. Thus, the legal construction of Article 96 paragraph (1) a quo must be interpreted to mean that there is a loss of economic rights that can be proven in casu in copyright and related criminal cases. Criminal cases related to Copyright or Related Rights can be interpreted as regulated in Articles 112 to 120 of Law 28/2014 or related to criminal cases in casu Article 5 paragraph (1) letter e of Law 28/2014 in conjunction with Article 310 of the Criminal Code.

In its material meaning, the provisions of Article 406 paragraph (1) of the Criminal Code explain that "whoever intentionally and unlawfully destroys, damages, makes unusable or loses something which wholly or partly belongs to another person", can also be applied to elements of unlawful acts. Copyright can be used by the creator to cause loss of economic rights. Article 96 paragraph (1) a quo also does not limit the competence of courts that hear copyright and related criminal cases, or means that case decisions do not have to come from the Commercial Court.

Article 99 paragraph (1) specifically stipulates that the legal subject consists of the Creator, Copyright Holder, or Related Rights owner to file legal action in the form of a claim for compensation to the Commercial Court in cases of infringement of Copyright or Related Rights products. Violation of Copyright or Related Rights products in Article 99 paragraph (1) must be interpreted as a criminal offense included in Articles 112 to Article 120 of Law 28/2014.

As explained above, it can be synthesized that there are a number of legal provisions as the basis for the legal efforts of Creators, Copyright holders and/or Related Rights holders to defend and protect their rights, where these legal efforts will intersect with the provisions regarding confiscation of goods in casu provisions. in the KUP Law and the PPSP Law.
Confiscation of Copyrights in Criminal Investigations in the Field of Taxation and Tax Collection and Their Relation to Creators' Efforts to Maintain Copyrights

The laws in the field of taxation implemented in the Republic of Indonesia are a manifestation of the implementation of Article 23A of the 1945 Constitution which provides the basis for taxes and other levies that have a coercive nature for the needs of the state as stipulated in law.

It is important to recognize that in the current era, taxes are a source of revenue, especially for developing countries, to support government programs without having to depend on profits from exploitation of natural resources or loans to guarantee the achievement of planned national development. As stated by Odd-Helge Fjeldstad, the leaders of the G20 countries in 2010 emphasized the importance of strengthening domestic revenue mobilization to create an effective tax system. Furthermore, in the same article it is highlighted that an effective tax system is the key to sustainable development because it is able to mobilize domestic income as developing countries attempt to become independent without relying on aid or exploitation of natural resources (Fjeldstad, 2013).

Fjeldstad, citing Moore (2008) and Prichard (2010), highlights the contribution of the tax system in improving government administration through increasing the capacity of the state bureaucracy in managing tax collection. Indonesia, in the context of the tax system, adheres to the principle of self-assessment, where Taxpayers have the responsibility to fill out and submit Tax Returns (SPt) correctly, completely and clearly in accordance with Article 4 paragraph (1) of the KUP Law. The existence of criminal sanctions in the KUP Law, as regulated in Article 39 paragraph (1), is significant considering the importance of tax revenues for state finances. Furthermore, the application of criminal sanctions in the KUP Law, as part of Administrative Law, in accordance with the principle of in cauda venenum (there is poison at the end), aims to ensure compliance with orders in the KUP Law through a system of social rules that regulate individual behavior and provide measured pressure. Measurable coercive measures based on this law are absolutely necessary as a control mechanism for the self-assessment principle of Indonesian taxation. Quoted from the Performance Report of the Directorate General of Taxes from 2016 to 2020, the following table is presented:

<table>
<thead>
<tr>
<th>Year</th>
<th>Realisasi Pajak</th>
<th>% Realisasi</th>
<th>Target Pajak</th>
<th>% Realisasi</th>
<th>Target Pajak</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016</td>
<td>1,105.81</td>
<td>81.60%</td>
<td>1,355.20</td>
<td>81.60%</td>
<td>1,198.82</td>
</tr>
<tr>
<td>2017</td>
<td>1,151.13</td>
<td>89.68%</td>
<td>1,283.56</td>
<td>89.68%</td>
<td>1,198.82</td>
</tr>
<tr>
<td>2018</td>
<td>1,315.51</td>
<td>92.24%</td>
<td>1,424.00</td>
<td>92.24%</td>
<td>1,198.82</td>
</tr>
<tr>
<td>2019</td>
<td>1,332.06</td>
<td>84.44%</td>
<td>1,577.56</td>
<td>84.44%</td>
<td>1,198.82</td>
</tr>
<tr>
<td>2020</td>
<td>1,069.98</td>
<td>89.25%</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: DJP Annual Performance Report 2016-2020 (processed)

From Table 1 it is known that the realization of tax revenues in 2016 was only 81.60%. For 2017, the realization of tax revenues amounted to 89.68%, an increase of 4.10% compared to 2016. After 2017, tax revenues increased
significantly in 2018 where Year on Year (YoY) increased by 14.28% with a realization percentage in 2018 of 92.24%. This realization is the highest realization in the period 2016 to 2020, because in 2019, the realization of tax revenues actually decreased by only 84.44%, YoY increasing 1.26% compared to 2018, while the realization in 2020 was only 89.25% with growth minus 19.67%.

The lack of realization of tax revenues is a reflection of the ineffectiveness of the tax authorities in Indonesia in implementing the coercive provisions of the tax law, namely criminal provisions in the field of taxation which in the context of the function of tax law can be interpreted as regulating (regular), namely making tax regulatory norms obeyed. completely by the Taxpayer due to the threat of criminal penalties and can also function to collect tax revenues for the state treasury (budgetary) through the imposition of criminal sanctions of fines and refund of state losses for tax receipts that are not paid by the Taxpayer. Such conditions can occur due to a number of factors, originating from internal and external institutions. Umar and Tusubira emphasize that the quality of tax administration is very dependent on the internal capabilities of the organization, the response of individuals and society, as well as the complex dynamics between various environmental factors (Umar & Tusubira, 2017). As a result of this interaction, the formation of optimal strategies is influenced, in accordance with the theory put forward by Gill, which states that the greatest effectiveness occurs when the strategy adopted is in line with environmental characteristics and available resources (Gill, 2000).

In carrying out the process of formulating strategies related to tax collection and administration, it becomes relevant to know the existing legal problems in order to provide the right diagnosis to realize solutions that are useful in solving problems according to the concept of Silvani and Baer, the first step required by the authorities to start tax administration reform is to diagnose existing problems and design appropriate strategies for improvement (Baer & Silvani, 1997). Without an appropriate strategy, the performance of the tax authority will not reach an adequate level to achieve the organization's objectives, namely collecting tax revenues. One of the important components of this strategy is the implementation of the tax authority granted by law and implementing it in the field.

One of the aspects regulated by legal provisions is the authority described in Article 44 paragraph (2) letter e of the KUP Law, which allows tax investigators to carry out searches to collect evidence such as books, records, documents and other evidence suspected of being related to tax violations. In addition, Article 44 paragraph (2) letter j provides the authority to block the suspect's assets or confiscate these assets in accordance with applicable criminal procedural law procedures, provided that he obtains permission from the chairman of the local district court. Confiscation as regulated in Article 44 paragraph (2) letter j aims to recover losses and can be carried out on various types of assets, including bank accounts, receivables and securities owned by Taxpayers, Tax Insurers or other parties who are suspects.

In the context of tax investigators' authority regarding confiscation, the legal basis is contained in the Criminal Procedure Code (KUHAP). Article 1
number 16 of the Criminal Procedure Code provides a definition of confiscation as a series of actions carried out by investigators to take over or store objects, whether movable or not, tangible or not, for the purposes of evidence in investigations, prosecutions and trials. Furthermore, Article 38 stipulates that confiscation can only be carried out by investigators with written permission from the chairman of the local district court, and only in very important and urgent situations. Confiscation is only permitted for movable objects, and in that case, investigators must immediately report to the head of the local court for approval.

Article 39 in the relevant law stipulates that confiscation can be applied to:

a. Goods or bills which are suspected to have been obtained in whole or in part from criminal acts or as the proceeds of crime;
b. Goods that have been used directly in the commission of a criminal offense or in preparation for it;
c. Items used to obstruct investigations into criminal acts;
d. Goods specifically made or intended to commit criminal acts;
e. Other items that have a direct connection to the criminal act that occurred.

Article 42 paragraph (1) in the law which concerned gives authority to investigators to order individuals who control objects that can be confiscated, to hand over those objects.

Article 46 of the same law in paragraph (1) stipulates that confiscated objects will be returned to the individual or party who originally owned them, or to the party who is most entitled to them in the following situations:

a. The need for investigation and prosecution is no longer necessary;
b. The case is not continued due to lack of evidence or it turns out that it is not a criminal act;
c. The case is stopped in the public interest or for legal reasons, unless the object was obtained from or used to commit a criminal act.

Article 14 paragraph (2) of the relevant Law regulates that after a court decision, confiscated items will be returned to the individual or party mentioned in the decision, unless the judge determines that the items will be confiscated for the state, destroyed or damaged, or if the items are still needed as evidence in other cases.

Provisions regarding confiscation related to taxation are also found in Article 1 number 14 of the PPSP Law. Here, confiscation is explained as the Tax Bailiff’s action to take control of the Tax Insurer's property as collateral to pay off the tax debt. The definition of confiscated objects and goods is explained in numbers 15 and 16. Article 14 paragraph (1) of the PPSP Law stipulates that confiscation is carried out on goods belonging to the Tax Insurer located in various locations, including movable and immovable goods. Article 14 paragraph (3) provides limitations regarding other rights that can be confiscated, which are regulated by Government Regulations, and the Explanation to paragraph (3) explains that this is necessary to anticipate the possibility of expanding the objects of confiscation. The procedural law
implementation of the confiscation provisions in the PPSP Law is further regulated in Government Regulation Number 135 of 2000 concerning Procedures for Confiscation in the Context of Tax Collection with a Forced Letter which broadly regulates the procedures for confiscation of gold jewelry, jewels and the like, procedures for confiscation of cash, procedures for confiscation of assets stored in banks, procedures for confiscation of securities traded on the stock exchange or not traded on the stock exchange, procedures for confiscation of receivables, procedures for confiscation of capital participation in other companies for which there are no share certificates.

Based on a number of descriptions that have been provided by the author, in relation to the material law of Copyright, according to legal norms, either tax investigators or Tax Bailiffs can confiscate Copyright. However, it should also be noted that the procedural law for confiscation related to investigations as regulated in the Criminal Procedure Code focuses on tangible goods, although it can still be applied to intangible goods, which in the context of this article is Copyright. This main focus is reflected in Article 129 paragraph (1) of the Law which stipulates that before confiscation, investigators are obliged to show the items to be confiscated to the individual who owns the items or their family. Furthermore, Article 130 paragraph (1) regulates confiscation procedures, including recording the weight, quantity, type, characteristics, place, date and identity of the owner of the goods. However, Article 130 paragraph (2) provides an exception if the item cannot be wrapped, where the investigator will make a written note attached or attached to the item.

From the application of a quo provisions, of course it will raise the question, what if tax investigators want to confiscate intangible movable property and why is this necessary? This question must be answered based on the relevance of the need for confiscation of intangible movable property, where Copyright is included. The relevance of confiscation in the context of investigating criminal acts in the field of taxation or confiscation in the context of tax collection can be seen from the portion of intangible assets for companies included in the share performance monitoring index of 500 large companies on the United States stock exchange which is commonly referred to as S&P 500, research was carried out on the companies in the S&P 500 by the firm Ocean Tomo LLC which focused on intellectual property and intangible assets, the research results were published on the site oceantomo.com/intangible-asset-market-value-study which accessed on August 14 2022, as shown in the following graphic:

Table 2. Market Value Components of the S & P 500

Source: Ocean Tomo (A Part of J.S. Held), Intangible Asset Market Value Study
This research revealed the fact that of the 500 large companies in the S&P 500 index, the total value of intangible assets reached 90% of all company assets, experiencing a consistent percentage increase since 2005, namely 80% of all company assets, in 2015 it was at 84% of all company assets. This large percentage of intangible assets can also be found in 350 large companies in Europe which are included in the S&P Europe 350 index, from 71% of the percentage of intangible assets of all assets in 2015 to 74% of the percentage of intangible assets in 2020.

The results of this research show that the assets of large companies are currently shifting into a form of intellectual property, which includes copyright, as quoted from the site dgip.go.id/about-djki/intellectual property which was accessed on August 14 2022, that works that can be protected include but are not limited to books, computer programs, pamphlets, layouts, songs or music with or without text, fine art in all forms.

By paying attention to global trends and the fact that companies based on information technology services are currently increasingly developing in Indonesia, it is not impossible that now and, in the future, there will be companies that have a dominant intangible assets value of all their assets, which in the context of actions criminal penalties in the field of taxation and the existence of unpaid tax debts, normatively the company's intangible assets can be confiscated.

However, with the current legal provisions, tax investigators or Tax Bailiffs will certainly experience difficulties in applying procedural law related to confiscation, this is because the current legal provisions still have the perspective of confiscation of tangible objects.

From a tax investigator's point of view, confiscation procedural law, which includes asking investigators to wrap and record the weight of the object, will create confusion in the interpretation of legal regulations in the case of confiscation of computer programs. What will be recorded as the weight of the object, is the weight of the computer device where the program is installed, or the weight of the data storage hardware where the computer program is stored systemically?

Not to mention the question that arises, in the event that a computer program is confiscated, does that mean that what is confiscated is the work or does it also include the copyright attached to the work? This problem will of course be different from the problem in the case of confiscation related to songs or fine art uploaded on online video channels to obtain income incentives based on the number of viewers or advertisers as is the monetization mechanism commonly found on the internet.

From the Tax Bailiff's point of view, the most glaring legal problem with confiscation procedures is that the Government Regulation has not yet been issued which provides an elaboration of provisions regarding other rights that can be confiscated as stipulated in Article 14 paragraph (3) of the PPSP Law, so that without an elaboration of other rights that can be confiscated then confiscation of Copyrights in order to collect tax debts has no legal basis.
Problems from the perspective of procedural law that have not accommodated the implementation of legal norms, namely that although according to legal norms it is possible to confiscate copyrights owned by creators who commit criminal acts in the field of taxation or do not pay tax debts, the procedure for confiscation is not yet complete. This can be done based on the provisions of the Criminal Procedure Code or the tax provisions currently in force.

However, by observing the legal provisions for confiscation in the KUHAP, in reality the legality of carrying out a confiscation according to the KUHAP is only related to the condition of having a permit or approval from the head of the local district court in accordance with Article 38 of the KUHAP, as long as there is formal permission or approval from the competent authority, then the confiscation can still be carried out by making an official report on the confiscation of objects in accordance with the provisions of Article 75 of the Criminal Procedure Code.

Regarding the implementation of Article 130 of the Criminal Procedure Code, this provision is essentially aimed at preventing mistakes in confiscation with other objects that have nothing to do with the case in question. In the event that tax investigators can carry out an action or procedure to differentiate between objects to be confiscated, of course the implementation of Article 130 The Criminal Procedure Code is not absolute to be implemented.

To provide clearer legal certainty, the implementation provisions of Article 44 paragraph (2) of the KUP Law should be clarified in a Government Regulation with the power of Article 48 of the KUP Law which provides the opportunity to make further arrangements with Government Regulations on matters that are not sufficient. Regulated in the KUP Law, this is of course in line with the provisions of Article 103 of the Criminal Code which provides space for the implementation of special criminal laws that are specifically regulated in other laws in accordance with the legal principle of lex specialist derogate lex generally, including in regulating procedures for implementing the provisions of criminal acts in the field of taxation.

What has been explained is relevant is to carry out confiscation of intellectual property with the type of Copyright and the existence of sufficient legal provisions as a legal basis for carrying out legal action, in relation to efforts to defend rights by the Creator and the exercise of confiscation authority by tax investigators granted by law as regulated in the KUP Law or the Criminal Procedure Code, then the authority to confiscate will conflict with the moral rights of the creator of the Copyright owner to defend his rights because of the existence of two conflicting legal interests.

Law 28/2014 in its capacity as Copyright administrative law which has criminal provisions in its articles, places greater emphasis on legal protection for Creators for Copyright violations that occur with economic motives in accordance with the construction of criminal articles in the a quo law, so that in the case of Creators committing a crime in the field of taxation and carrying out an investigation and confiscation, which results in the creator's economic rights being harmed by not being able to receive income from Copyright.
The loss of economic rights cannot be recovered using the power of Article 96 paragraph (1) of Law A. quo because the legal construction of Article 96 requires that there be losses of economic rights that can be proven in case in criminal cases of Copyright and/or Related Rights, while the criminal articles of the a quo law in Articles 112 to Article 120, generally require the existence of the element of Commercial Use, which in the formulation of the element of Commercial Use, the act of the tax investigator in confiscating is actually the reason for not fulfilling the criminal offense, because there is no commercial motive in carrying out the confiscation, which, although detrimental to the economic rights of the creator, is in fact carried out in the context of an appropriate investigation. tax law.

Likewise, regarding the power of Article 99 paragraph (1) of the a quo law, creators cannot base their legal efforts on this article, with the consideration that the elements in the a quo article are violations of Copyright or Related Rights products in Articles 112 to Article 120, criminal violations require an element of Commercial Use, so that the tax investigator's action of confiscating in accordance with his authority based on the tax law certainly cannot be categorized in a commercial sense, as long as there is no unlawful act that abuses his authority for his personal interests.

The criminal provisions that can be used by creators in an effort to defend their rights if something that harms their personal honor or reputation occurs can actually be found in Article 310 of the Criminal Code concerning defamation of the creator and in Article 406 paragraph (1) of the Criminal Code regarding alternative elements that make it impossible an object is used, with the argument that by confiscating the Copyright by the tax investigator, the existing Copyright cannot be used to produce economic benefits to the Author because while it is under confiscation, the Copyright is taken over under control of the tax investigator.

However, if we examine it more deeply, in relation to the implementation of tax investigators' confiscation duties, Article 310 of the Criminal Code is not appropriate to apply to legal remedies for confiscation actions, this happens because the exception element in Article 310 paragraph (3) of the Criminal Code is fulfilled because the confiscation is carried out in the public interest, namely ensuring that tax collection is carried out optimally, which is in line with Article 23A of the 1945 Constitution that taxes and other levies for state needs are regulated by law, while one of the objectives of the formation of the Indonesian state government is to advance general welfare by being financed from tax revenues, apart from that in relation to Article 50 of the Criminal Code, tax investigators are not punished for implementing the provisions of the law.

Regarding Article 406 paragraph (1) of the Criminal Code, it is necessary to carefully interpret the elements that can be punished, namely intentionally and against the law, because in the context of criminal procedural law, there will be a number of legal provisions that must be fulfilled when carrying out confiscation, but the element against the law in Article 406 paragraph (1) in the event that the confiscation carried out by a tax investigator is not carried out for
the purposes outlined in the law so that there is an abuse of authority, the element of unlawfulness is not in terms of the administration of the confiscation. Unlawful in the context of confiscation here is if it is carried out for the personal interests of the tax investigator rather than in his capacity to implement the provisions of the law in the interests of the state, for which the act of implementing the law is not punishable according to Article 50 of the Criminal Code.

With the increasingly clear position of intellectual property in the form of Copyright which has economic value as confirmed in article 16 paragraph (3) of Law 28/2014, where Copyright can be a fiduciary guarantee and there are certain and in PP 24/2022 which provides a legal basis that intellectual property is used as collateral for debt in intellectual property-based financing schemes, then in the context of recovering state losses due to non-payment of taxes that should be paid by taxpayers, confiscation of copyright becomes relevant because from this point of view from a legal perspective, copyright is a person's property that has economic value and has been legally recognized as being included in financing schemes involving bank and non-bank financial institutions.

By taking over control under a tax investigator, the relevant economic rights can also be transferred to the state, so that income from the use of copyright that should have been received by the creator, due to legal orders or a court decision, is transferred to the state as state revenue.

In addition, to maximize the payment of criminal fines in handling criminal acts in the field of taxation, the Republic of Indonesia Attorney General's Guidelines Number 2 of 2019 provides directions that allow the confiscation of suspects' assets, in accordance with Article 44 paragraph (2) letter e of the KUP Law.

This approach is also reflected in the Circular Letter of the Chairman of the Supreme Court Number 10 of 2020, which confirms that in tax crime cases, the Panel of Judges can impose a fine of at least twice the amount of tax that was not paid or misappropriated by the defendant. If the convict fails to pay the fine within one month after the court decision becomes legally binding, his property can be confiscated and auctioned by the prosecutor to cover the amount of the fine. If the convict does not have sufficient assets, he can be sentenced to imprisonment for up to eight months, according to the proportion of the offense.

The formulation contained in the Attorney General's Guidelines Number 2 of 2019 and SEMA Number 10 of 2020 shows that in the context of recovering state losses, assets belonging to suspects or defendants who have Copyright as an element of their wealth, then the Copyright can be confiscated and then an auction is held in the event that the fine imposed is not paid to recover state losses resulting from criminal acts in the field of taxation.
CONCLUSIONS AND RECOMMENDATIONS

Whereas based on the description of material law and taking into account the provisions of Article 16 paragraph (1) of Law 28/2014 which categorizes Copyright as an intangible movable object, it can be legally concluded that Copyright is included in the category of intangible movable object. By categorizing Copyright as an intangible movable object and by having economic rights in Copyright, Copyright is a property asset for a person or company which is categorized as intellectual property.

Copyright creators have the moral right to defend their rights from things that are detrimental to their personal honor or reputation, including through the power of Article 96 paragraph (1) and Article 99 paragraph (1) of Law 28/2014 and the criminal provisions in a quo law. Apart from that, related to general criminal provisions, regarding personal honor, creators can use the power of Article 310 of the Criminal Code, then there is the power of Article 406 paragraph (1) of the Criminal Code regarding the element of making copyright unusable.

Current developments in the business world show that the world's largest companies actually have the greatest wealth in the form of intangible assets, the proportion of which is increasing from year to year. This is relevant to the need to confiscate copyright as a form of intellectual property of a person or company, because legally the nature of the object is clear and has economic value that can be utilized in terms of recovering state losses from criminal acts in the field of taxation.

The legality of confiscation of Copyright related to an investigation is based on permission or approval from the chairman of the local district court and the existence of a confiscation report as regulated in the Criminal Code and the KUP Law.

Confiscations related to tax collection currently do not have sufficient legal basis, namely Government Regulations regarding other rights that can be confiscated as stipulated in Article 14 paragraph (3) of the PPSP Law, so that without an explanation of other rights that can be confiscated, copyright confiscations are carried out in order to collect tax debt becomes without legal basis.

The legal efforts that creators can take to defend their rights through the power of Article 96 paragraph (1) and Article 99 paragraph (1) of Law 28/2014 will not conflict with the confiscation authority possessed by tax investigators, as long as there are no unlawful acts of abuse of authority for personal interests. Tax investigators, apart from that, the construction of criminal articles in Law 28/2014 generally includes the phrase Commercial Use as a motive for the violation, in relation to the task of investigating criminal acts in the field of taxation, it becomes clear that there is no commercial motive in it. In relation to Article 310 of the Criminal Code, confiscation actions by tax investigators are not classified as defamation, because they are carried out in the public interest and to implement the provisions of the law.

Regarding Article 406 paragraph (1) of the Criminal Code, the element of intentionally and unlawfully rendering an object unusable cannot be punished
by confiscation action carried out by a tax investigator, because the investigator's action is not against the law, implementing the provisions of the law as long as there is no action abuse of authority for the tax investigator's personal interests.

Confiscation of assets from taxpayers is essentially an important strategy in efforts to recover state revenues from potential state losses resulting from criminal acts in the tax sector as reflected in the Attorney General's Guidelines Number 2 of 2019 and SEMA Number 10 of 2020, where fines are imposed. imposed, in the event of non-payment by the convict, the property belonging to the convict which has Copyright as an element of his wealth, then the Copyright can be confiscated and then auctioned to recover state losses resulting from criminal acts in the field of taxation.

As a suggestion, in relation to the current confiscation procedural law, it still has the perspective of confiscation of tangible objects, so that in order to carry out confiscation of intangible objects, the implementation procedures need to be clarified, including through further regulations in Government Regulations in accordance with the authority of Article 48 of the KUP Law, where this is Regarding the specifics of tax crimes, it is regulated in the KUP Law which is in line with Article 103 of the Criminal Code.

FURTHER STUDY

This research still has limitations so further research needs to be done on this topic “Confidentiality of Copyrights in Investigations of Criminal Actions in the Field of Taxation and Tax Collection.”
REFERENCES


