



THE DOCTRINE OF CAUSALITY IN CRIMINAL LAW IN THE FIELD OF TAXATION IN INDONESIA

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Article	Abstract
<p>Keywords: causality doctrine, criminal offense in the field of taxation, tax evasion</p> <p>History of Article Received: December 13, 2023; Reviewed: December 17, 2023; Accepted: December 18, 2023; Published: December 31, 2023;</p> <p>DOI: 10.56282/jtlp.v2i1.479</p>	<p>The complexity of tax evasion and the unregulated causality doctrine in the law (KUHP) and tax law show the need and urgency to answer the problem of the ideal criminal concept in the field of taxation in the future. The analysis and discussion concluded that the ideal concept in handling complex criminal offenses in the field of taxation could be done by regulating the teaching of causality and its modification. The adoption of the doctrine of causality and its modification in the criminal provisions in the field of taxation can provide a guarantee of criminal liability in the field of taxation to any person who has actually caused a certain result prohibited in tax crimes. One of them is by considering the existence of <i>novus actus interveniens</i>.</p>

*This article is a private scientific study of the researcher and does not reflect the institution's opinion/policy.

A. INTRODUCTION

Basically, every event is inseparable from the series of causes and effects that surround it, namely an event that may start from an event that occurred before and which gave rise to the next event, and so on.¹ Causality or cause-and-effect relationship can also be found in the event of criminal offenses in the field of taxation. We should not ignore the fact that the occurrence of criminal offenses in the field of taxation cannot be separated from the involvement of several people or parties, which can be carried out based on direct or indirect working relationships.

¹ Ahmad Sofian, *Ajaran Kausalitas Hukum Pidana*, Jakarta: Kencana, 2018, p. 17.

One of the facts is that a criminal act in the field of taxation in a corporation cannot be separated from collective actions that refer to organizational actions.² For example, the director or management who signs the Tax Return (SPT), employees of the bookkeeping or recording department, and employees of the tax department. One example of tax is Value Added Tax (VAT) transactions on tax invoices that are not based on actual transactions (TBTS), which are still rampant in Indonesia, even though the government has tried to handle it through several tax laws and regulations followed by tax enforcement.³ The criminal offense in the form of intent in issuing and/or using tax invoices that are not based on actual transactions, as referred to in Article 39 A of Law Number 6 of 1983 concerning General Provisions and Procedures for Taxation as amended several times last by Law Number 6 of 2023 concerning Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law (KUP Law) involves more than one perpetrator, including the perpetrator who issues and the perpetrator who credits the TBTS tax invoice. For example, in the Appeal Decision of the Central Java High Court Number 57/Pid.Sus/2018/PT SMG, which corrected the Decision of the Semarang District Court Number 789/Pid.Sus/2017/PN. Smg, it is known that Defendant JB, together with Defendants AK, II, and D als F (each separate case file) from 2010 to 2014, were proven to have violated Article 39 A letter in conjunction with Article 43 paragraph (1) of Law Number 6 of 1983 concerning General Provisions and Tax Procedures in conjunction with Law Number 28 of 2007 concerning the third amendment to Law Number 6 of 1983 as last amended by Law Number 16 of 2009 (KUP Law) in conjunction with Article 64 paragraph (1) of the Criminal Code (KUHP). The defendants were proven to have committed, participated in, encouraged, or assisted in committing a criminal offense in the field of taxation, namely by intentionally issuing and/or using tax invoices that were not based on actual transactions.⁴

The facts that occur in criminal acts in the field of taxation show that sometimes there can be only one cause of alleged losses in state revenue; for example, if someone issues a TBTS tax invoice, then that person is the suspect or defendant. However, in some other cases, the causes can be different and can occur simultaneously or consecutively. Sequential and concurrent causes share the common feature that they are all effective in causing harm, but sometimes, each factor acting alone is sufficient to cause harm, so they can be combined with other factors that cause harm.⁵ However, in some cases, a "latitudinal multiple" situation may also occur, where no single cause is sufficient to cause the loss on its own, so it must be combined with other factors to construct the cause of the loss in revenue. In this case, the various losses occur consequentially, in the sense that the occurrence of one loss causes the occurrence of another loss, and so on.⁶

² Henry Dianto P. Sinaga, Rintis Nanda Pramugar, Aditya Wirawan, Reformulation of *Conditio Sine Qua Non* in the Renewal of *Mens Rea* Corporate Corruption in Indonesia, *International Journal of Advanced Science and Technology* Vol. 29, No. 08, (2020), pp. 1241-1251, p. 1242.

³ Yuli T. Hidayat and Henry D.P. Sinaga, Legal Reconstruction on Tax Invoices Not Based on Actual Transactions: The Legal Meaning of The *Ultimum Remedium* Principle In Sustainability Of Taxpayer's Business In Indonesia, *Scientia Business Law Review*, Vol. 1, No. 2, 2022, pp. 15-35, DOI: <https://doi.org/10.56282/sblr.v1i2.118>.

⁴ Denny Irawan, On One Continued Act in Tax Crime in Indonesia, *Scientia Business Law Review*, Vol. 1, No. 2, 2022, pp. 37-49, DOI: <https://doi.org/10.56282/sblr.v1i2.120>.

⁵ Gandomkar H. and Bagheri P., Comparative Study of Multiple Causation in the Iranian and Malaysian Tort Law, *Social Crimono*/Vol. 4, 2016, p. 134, doi:10.4172/2375-4435.1000134.

⁶ *Loc.cit.*

The nature of taxes, several cases of criminal offenses in the field of taxation, and the complexity of criminal liability in the event of a latitudinal multiple show that everyone must be responsible for their actions, not their consequences, but many of these things have not been regulated or not accepted by the applicable tax law, including causality that is not regulated in the law (KUHP) but left in the doctrine. Considering that the consequences of actions play a very important role in determining criminal liability, but there are still complexities in terms of deciding what consequences of actions a person is responsible for, this study needs to answer the problem of how the concept of causation rules in criminal acts in the field of taxation is ideal in future tax reform.

B. ANALYSIS AND DISCUSSION

a) Literature Review on the Doctrine of Causality in Criminal Law

In general, causality (cause-and-effect) is a relationship or process between two or more events or circumstances of events where one factor causes or causes another factor.⁷ However, there are several literature or opinions on causality in criminal law that must be understood in order to understand causality in criminal acts in the field of taxation.

Herring asserts that criminal law must avoid the controversy that occurs in determining responsibility for a criminal loss, which can involve consideration of political or sociological factors. Criminal law should focus on one person, the accused, and ask whether that person can be said to have caused the consequences, regardless of the extent to which his or her social background or circumstances may also be responsible for the commission of the crime.⁸ For example, a person driving a car recklessly and at high speed has caused the death of a pedestrian. In that case, the law should focus on the driver, regardless of whether the car manufacturer makes cars that can drive at high speeds and advertises cars that encourage high-speed driving. Nonetheless, sometimes, the law allows causation rules to be influenced by policy considerations, and this will become clear when considering causation laws in more detail.⁹ It is in line with Moore's assertion that causality is important in criminal and tort doctrine because criminal law and the law of torts are most directly reflective of an underlying moral responsibility.¹⁰ It can be seen from the fact that many liability rules in criminal law and torts are explicitly framed in terms of everyone (usually the suspect or defendant) causing something (usually causing harm).¹¹ Moore argues that if criminal law (and to a lesser extent tort law) in terms of causality has a dominant policy of achieving retributive and corrective justice, then criminal and tort liability must follow moral responsibility, as justice is achieved only if the morally responsible person is held responsible for the punishment or harm resulting from the tort.¹²

Then, Tomakati argued that the theory of causality or cause-and-effect theory is linked to an explanation from a legal point of view to answer the question of who can

⁷ *Ibid.*, p. 17.

⁸ Jonathan Herring, *Ibid.*

⁹ *Loc.cit.*

¹⁰ Michael S. Moore, *Causation and Responsibility: An Essay in Law, Morals, and Metaphysics*, New York: Oxford University Press Inc., 2009, p. 3.

¹¹ *Loc.cit.*

¹² *Ibid.*, p. 4.

be held accountable for the consequences of unlawful behavior.¹³ Furthermore, Sofian argues that in the context of Indonesian criminal law, the doctrine of causality comes from the doctrine of causality that has developed in many countries, both common law and civil law. One of them is the conception of the doctrine of *novus actus interveniens*; although it is not known in the doctrine of causality in Indonesia, this doctrine has become so important in common law countries or the doctrine of adequate theory known in the civil law system, because it can measure the level of responsibility of the criminal.¹⁴ Its doctrine refers to the existence of a third party who takes voluntary, conscious, and free actions that can break the chain of causality. It means that this intervention if it meets certain criteria, can eliminate or reduce the level of responsibility of the original perpetrator (first offender). Third parties that can break the chain of causality are (1) natural events of an "extraordinary" nature; (2) the intervention of a third party that is free, deliberate, and accountable; (3) the intervention of medical treatment; (4) the intervention of the victim himself; (5) the intervention of an insane person, a minor, or something that cannot be accounted for. Although civil law system countries do not recognize the doctrine of *novus actus interveniens*, there is the doctrine of adequate, which can be used to cut off the responsibility of the first offender. However, this theory does not provide more detailed elements, so the categorization of breaking the chain of causality needs to be more firmly developed in this adequate doctrine.¹⁵

There are three theories of causality in criminal law. First, the *conditio sine qua non* theory. This theory, which Von Buri originally proposed, can be the basis for solving problems to determine criminal acts that produce prohibited consequences, so without this theory, it would be difficult to find a legal relationship between the victim and the act. Although theoretically, this theory is considered systematic and rational through its postulate that every condition is a cause and all conditions have the same value because if one of the conditions does not exist, then there will be no subsequent consequences that arise, there is criticism of the establishment of endless causal relationships.¹⁶ Second, the theory of individualization or *causa proxima* testing. This theory teaches that the cause is the closest condition and cannot be separated from the effect.¹⁷ Criminal events are seen in *concreto* or *post factum*, so there is only one condition as the cause of the effect. For example, in the case of an employer who hates his servant, he tells his servant on a rainy day and lightning strikes to go to a shop to buy goods, with the hope that this servant will be struck by lightning. It turned out to be true that the maid was struck by lightning and eventually died. According to the theory of individualization, the practical level must look at the evidence, whether in forensic evidence it is proven that death is indeed the result of being struck by lightning or what the lightning sparked because of so that the closest cause is found. It shows that death cannot be separated from lightning strikes.¹⁸ Third, generalization

¹³ Afdhal Ananda Tomakati, *Konsepsi Teori Hukum Pidana Dalam Perkembangan Ilmu Hukum*, Jurnal Hukum Pidana & Kriminologi, Vol. 4 No. 1, 2023, p. 51.

¹⁴ Ahmad Sofian, *Op.cit.*, p. 305.

¹⁵ *Ibid.*, p. 197.

¹⁶ Tongat, *Dasar-Dasar Hukum Pidana Indonesia dalam Perspektif Pembaharuan*, (Malang: UMM Press, 2009): 170-171.

¹⁷ Flora Dianti, 2020, *Macam-macam Teori Kausalitas dalam Hukum Pidana*, available at <https://www.hukumonline.com/klinik/a/macam-macam-teori-kausalitas-dalam-hukum-pidana-lt5e931262b32db> (accessed 3 September 2023).

¹⁸ *Loc.cit.*

theory only looks for one of the many causes of the prohibited effect.¹⁹ For example, in the case of the maid who was struck by lightning, there are 3 (three) possible causes of the maid's death. First, the employer knows that if it is raining and there is lightning, then there is a high probability that people walking in the rain can be struck by lightning. However, the employer still sent the maid out to buy goods. So, it can be said that the employer became the objective cause of the death of the maid due to lightning because there was no other cause.²⁰ Secondly, there is the negligence of the maid who, when passing the road under the rain, still uses a cellular phone, which then provokes a lightning strike, so that the death can be said to be the result of the maid's negligence which is the reason she was struck by lightning. Thirdly, there was the negligence of the people around the road who should have installed lightning rods on their buildings but did not do so, so it is considered the main cause of the maid's death when she was struck by lightning while passing by her building. The existence of these three causes shows that the generalization theory must find which action is closest to the cause of the maid being struck by lightning.²¹

b) Causality in Taxation Crime in Indonesia

In addition to proving *actus reus*, *mens rea*, and the suitability of both, causality and loss are important parts of the fulfillment of evidence and evidence in criminal acts²² in the field of taxation. Causality in tax crimes is an important element of interpersonal liability, as it is the causal link between the wrongful act and the loss that brings the defendant and the plaintiff together in an interaction that results in 'wrongful loss'. However, causality also has a limited role, and the evaluative element of liability must be addressed through the existing doctrines of negligence, given that these doctrines can help frame the question of causation and are able to identify harm and fault and then seek a causal link.²³ Hartley argues that causality connects the criminal offense with the harm that occurred, and then the harm must also be proven as a result of the suspect's or defendant's actions.²⁴ Hartley's opinion shows that, basically, criminal offenses in the field of taxation that involve losses to state revenues cannot be separated from the existence of causality teachings in criminal law. The offenses that contain elements of loss to state revenue are regulated in Article 38, Article 39, Article 39A, and Article 43 paragraph (1) of the KUP Law.²⁵ These offenses can be stopped the investigation in the interest of state revenue as Article 44B of the KUP Law regulates as follows:²⁶

(1) In the interest of state revenue, at the request of the Minister of Finance, the Attorney General may terminate the investigation of

¹⁹ Cahaya Harahap, 2023, Mahrus Ali : Penggunaan Teori Kausalitas Menimbulkan Ketidak Adilan, Mengenal Ajaran Asas Kausalitas Dalam Tindak Pidana Indonesia, available at <https://www.pojokhukum.com/mahrus-ali-penggunaan-teori-kausalitas-menimbulkan-ketidak-adilan-mengenal-ajaran-asas-kausalitas-dalam-tindak-pidana-indonesia/> (accessed 30 September 2023).

²⁰ *Loc.cit.*

²¹ *Loc.cit.*

²² Richard D. Hartley, Defenses to Criminal Liability, in Jay S. Albanese (ed.), The Encyclopedia of Criminology and Criminal Justice, First Edition, 2014, John Wiley & Sons, Inc., pp. 1-5, DOI: 10.1002/9781118517383.wbecj368.

²³ Gemma Turton, *Evidential Uncertainty in Causation in Negligence*, Oxford; Portland, Oregon: Hart Publishing Ltd, 2016, p. 30.

²⁴ *Loc.cit.*

²⁵ Rajaguguk, Parluhutan, dan Kuntonegoro, Hariomurti Tri, Tax Bailiff Roles Post Assets Confiscation on Suspect of Tax Crime in Indonesia, Journal of Tax Law and Policy, Vol. 1, no. 2, 2022.

²⁶ Joni Emirzon, F. X. Adji Samekto, Henry D. P. Sinaga, Legal Certainty of Plea Bargaining in Addressing Tax Crimes in Indonesia, International Journal of Global Community, Vol. 5, No. 3, 2022, pp. 189-204.

criminal acts in the taxation sector within six months from the date of the request letter.

- (2) *The termination of the investigation of criminal acts in the taxation sector, as referred to in paragraph (1) shall only be carried out after the Taxpayer or suspect has paid:*
- a. *loss on state revenue as referred to in Article 38 plus administrative sanctions in the form of a fine of 1 (one) time the amount of loss on state revenue;*
 - b. *loss on state revenue as referred to in Article 39 plus administrative sanctions in the form of a fine of 3 (three) times the total loss on state revenue; or*
 - c. *the amount of tax in the tax invoice, proof of tax collection, proof of tax withholding, and or proof of tax payment as referred to in Article 39A plus administrative sanctions in the form of a fine of 4 (four) times the amount of tax in the tax invoice, proof of tax collection, proof of tax withholding, and or proof of tax payment.*
- (2a) *If the criminal case has been transferred to the court, the defendant can still pay off:*
- a. *loss in state revenue plus administrative sanctions as referred to in paragraph (2) letter a or letter b; or*
 - b. *the amount of tax in the tax invoice, proof of tax collection, proof of tax withholding, and or proof of tax payment plus administrative sanctions as referred to in paragraph (2) letter c.*
- (2b) *The settlement, as referred to in paragraph (2a), becomes a consideration for prosecution without being accompanied by an imprisonment sentence.*
- (2c) *If the payment made by the Taxpayer, suspect, or defendant at the stage of the investigation until the trial does not meet the amount as referred to in paragraph (2), the payment can be calculated as payment of a criminal fine imposed on the defendant.²⁷*

The provisions in Article 44B of the KUP Law are further regulated in Article 63 and Article 65 of Government Regulation Number 50 of 2022 concerning Procedures for the Exercise of Taxation Rights and Fulfillment of Taxation Obligations, namely the repayment of losses to state revenue in the context of recovering losses to state revenue with administrative sanctions in the form of fines is carried out by applying alternative threats (in the event that the taxpayer or suspect is alternatively threatened with more than one criminal sanction), the highest administrative sanction is applied, or cumulative (in the event that the taxpayer or suspect is cumulatively threatened with more than one criminal sanction, cumulative administrative sanctions are applied).²⁸

²⁷ Setia Untung Arimuladi and Faisal Arif, Reformulation of Dual Authority of Article 44B of the General Provisions and Tax Procedures Law in Indonesia: An Opportunity Principle Perspective, *Scientium Law Review*, Vol. 1, No. 3, 2022, pp. 79-80, DOI: <https://doi.org/10.56282/slr.v1i3.212>.

²⁸ *Loc.cit*

The provisions in Article 38, Article 39, Article 39A, Article 43 paragraph (1), and Article 44B of the KUP Law, as well as the provisions in Article 63 and Article 65 of Government Regulation Number 50 Year 2022, will require the interpretation of the doctrine of causality considering that the implementation of the tax criminal provisions still leaves several things in legal uncertainty. First, in the event that a taxpayer or a suspect exercise his/her right as referred to in Article 44B of the KUP Law (in the investigation stage or the trial stage), but there is a taxpayer employee who is made a suspect or defendant for violating Article 43 paragraph (1) of the KUP Law, for example, because he/she is suspected or charged with assisting the preparation of false tax returns. Based on the doctrine of causality, the termination of investigation against the taxpayer or the suspect, as referred to in Article 44B of UU KUP, should also terminate the investigation against the taxpayer's employee or the suspect allegedly violating Article 43 paragraph (1) of UU KUP. However, the absence of tax criminal provisions governing the termination of the investigation of the case will cause law enforcers who tend to be positivists to continue the case, even though there has been no loss to state revenue.

c) Ideal Setting of Causality in Criminal Offenses in the Field of Taxation in Indonesia

The use of causality in handling criminal offenses in the field of taxation must be able to play two roles at once, namely ensuring that a person cannot be held criminally liable for the consequences of unlawful acts and ensuring that criminal liability can be attributed to the actors or perpetrators who have caused a certain result prohibited by criminal law.²⁹ It is based on several ideas which state that the doctrine of causality is absolutely necessary for material offenses.³⁰

Several provisions in criminal law in the field of taxation that require the teaching of causality and its modifications, such as Article 38, Article 39, Article 39A, Article 43 paragraph (1), and Article 44B of the KUP Law as well as the provisions in Article 63 and Article 65 of Government Regulation Number 50 Year 2022, show that law enforcement in the field of taxation does not only rely on legal logic imposed by legal positivism alone. It is based on several complexities of handling criminal offenses in the field of taxation. First, the vulnerability of using a "puppet" director in the criminal offense of Article 39A of the KUP Law in the form of issuing TBTS invoices. So, what is punished according to positive law is the director who signs the invoice and or tax return, while the offense in the tax crime cannot touch the controller of the company. Second, in the event that there is a handling of tax criminal offense against a domestic corporate taxpayer, where the shareholder is a foreign corporation which is a foreign taxpayer, then according to the existing offense, the person who will be responsible for the criminal offense is the director who signs the tax return of the corporate taxpayer. It is certainly unfair based on the doctrine of causality if the shareholder or controller of the corporation who does not sign the tax return is not made the actual criminal responsible party. Third, the simultaneous cause of a loss to state revenue can be caused simultaneously by several people, so based on the explanation of Article 44B paragraph (2) of the KUP Law, which explains that each suspect also has the right to submit a request for termination of investigation for himself. The suspect requests

²⁹ Ahmad Sofian, *Ajaran Kausalitas Hukum Pidana*, Jakarta: Kencana, 2018, p. 302.

³⁰ *Ibid.*, p. 279.

termination of the investigation after paying off the amount of loss to state revenue in accordance with the proportion of his burden plus administrative sanctions in the form of fines. However, this provision does not provide a solution, either theoretical or legal, to the differentiation of situations, for example, concurrent situations (longitudinal) and multiple situations (latitudinal), because each situation has a different solution.³¹ For example, the bookkeeping staff was made an accessory suspect for carrying out the director's order to make false tax returns, and a company security guard was made an accessory suspect for obstructing the investigation. At the time of the verdict, the bookkeeping staff and the security guard were sentenced to imprisonment while the trial of the director was still ongoing. At the time of the trial, the company paid the loss to the state revenue in proportion to the director so that the director was prosecuted without imprisonment. In such cases, there is no clear solution provided in the law, as it is bound by positive law that views all factors as contributing to the loss of revenue.

Law enforcers in the field of taxation should understand the doctrine of causality and its modifications in order to obtain fair criminal responsibility in the field of taxation. Understanding the doctrine of causality will lead law enforcers in the field of taxation to look for acts that contribute to the birth of prohibited consequences. The acts that cause the consequences of criminal offenses in the field of taxation will be harmonized with unlawful acts and interpreted with theories relevant to the doctrine of causality, as the complicated handling of causality can be learned from legal texts and legal cases of other countries. For example, Malaysia treats 5 (five) situations as double causality, as the direct quote is:

“(1) Concurrent causes act at the same time, and each one acting alone, is capable of causing the damage. (2) Several causes contribute in causing the same damage, but no one of them is sufficient to cause that damage, such as in medical cases, where a patient dies from the fault of several persons. (3) Successive causes lead to damage in succession, as where in a vehicular accident, a car is damaged in two successive accidents. Here, the cause of the first accident will be liable for repairing and spraying the damaged car. However, the cause of the second accident will only be liable for repairs. (4) Various causes lead to an injury at different times, but it is not certain which one injured the plaintiff. A useful example here is where a person worked at five different factories in succession and then contracted a skin disease. (5) Various sources produce the same disease, such as environmental pollution caused by several factories, or injury caused by pills made by twenty manufactures”³²

The criminal incident demonstrates the need to understand the difference between causes and conditions. According to Gandomkar and Bagheri, it is the cause and not the condition that is responsible for any alleged loss or damage. In all cases, the responsibility for proving causation lies with law enforcement³³ (in the case of an investigation, it is the investigator, while in the case of the prosecution, it is the prosecutor). In addition, it should be noted that the substantial factor (cause) is the basic rule and theory of causation. Legal accountability determines the substantial

³¹ Gandomkar H. and Bagheri P., *Ibid.*

³² *Loc.cit.*

³³ *Loc.cit.*

factor, and this factor can vary from case to case. The cause is a factor that is necessary to carry out the alleged occurrence of a loss or damage so that it is determined whether the perpetrator can be held criminally liable in the field of taxation; it is necessary to consider whether there is a *novus actus* intervention from a third party.

C. CONCLUSION

Based on the analysis and discussion, it is concluded that the ideal concept of causation rules in criminal offenses in the field of taxation is to regulate the doctrine of causality and its modification. These provisions can provide a guarantee of criminal liability in the field of taxation to every person who has actually caused a certain result prohibited in tax crimes and, at the same time, provide a guarantee that a person cannot be held criminally liable for the consequences of unlawful acts in the field of taxation.

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