

## TAX EVASION AND FRAUD SCANDAL IN PANAMA PAPER CASE

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**Abstract:** *The aim of this research is to find out the relationship between the Panama Papers and the existence of criminal actions in Taxation. The Panama Papers is the name for a document that was created by a company from Panama called Mossack Fonseca, which contains detailed information on more than 214,000 overseas companies, including the identities of their shareholders and directors. This case is an international scale leak of financial documents that reveals how 12 heads of state have a company in an undisclosed tax free jurisdiction (offshore). This leaked document was then distributed to and analysed by approximately 400 journalists in 107 media organizations in more than 80 states. The research conclusions show that the disclosure of the Panama Papers scandal proves clearly that tax which is mandatory and binding is considered a serious burden for the upper class that is involved in this case. Millions of secret financial documents were leaked and revealed how the corruption and tax crime network of heads of state, secret agents, celebrities to fugitives are hidden in tax haven. The scandal that was revealed would have caused the State to lose or reduce the state's wealth (asset forfeiture) which was quite significant. And the relationship between the case and the violation of tax law is that the mistake is deliberate or the mistake is fraudulent.*

**Keywords:** Tax Violation, Tax, Panama Papers

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### 1. Introduction

Today we live in a world full of tax collection. The meaning of Tax according to the Law of the Republic of Indonesia Number 28 of 2007 concerning the Third Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures of Article 1 Point 1 is: Tax is compulsory contribution to the state that are owed by private person or entities that are compelling based on Laws, without receiving direct compensation and used for the state's needs for the greatest prosperity of the people

Looking at the tax definitions above, the authors can conclude that tax is a community mandatory contribution to the state which in its collection can be forced but does not provide reciprocal services directly to the community, this is because tax is the main source of revenue in financing routine government expenditures. (Bohari, 1993)

From these collections the results are used for joint development. As we can see in Indonesia, tax revenue is the main source of state main revenue, namely 73% in LKPP for 2009, 73% in LKPP for 2010, 72% in LKPP for 2011, 75% in APBN-P for 2012 and 78% in APBN for 2013. The functions of tax in government are:

i. Budgetary function (revenue)

Tax as a source of funds is for the government to finance its expenses (both routine expenditures and development expenditures).

ii. Regularand function and (regulate)

Tax as a means of regulating or implementing government policies in the economic and social fields.

a. As a tool to regulate or implement government policies in the economic and social fields.

Example:

1) a high tax is imposed on liquor with the aim of reducing alcohol consumption;

2) export tax rate of 0% with the aim of encouraging exports of Indonesian products to the world market.

b. As a tool to achieve certain goals that lie outside the financial field.

In addition, tax can also be viewed from various aspects. From an economic point of view, tax is state revenue that is used to direct people's lives towards prosperity. Taxis the driving force for people's economic life.(Masinambow, 2013) From the legal aspect, tax law in Indonesia has a clear hierarchy in the order of the 1945 Constitution, Laws, Government Regulations, Presidential Decrees and so on. This hierarchy is carried out strictly, the regulations of the lower levels must not conflict with the regulations of the higher levels. From a financial aspect, taxis seen as a very important part of State revenue. (Waluyo, 2011) When viewed from State revenues, the state's financial condition is no longer solely from State revenue in the form of oil and natural gas, but rather seeks to make tax as the prima donna of state revenue. And from the sociological aspect, that tax is viewed from the perspective of society, which concerns the consequences or impacts on society of collections and what results can be conveyed to the community. (Hamja, 2018) It is clear that taxis a source of State revenue to finance routine expenses and are also used to finance development. Therefore, efforts to increase State revenue from the tax sector are very important, because the funds raised come from the community (private saving) or come from the government (public saving). Thus, it can be seen that from the tax there is an agreed target which is to provide prosperity and welfare to society equally by carrying out development in various sectors.(Utami, 2016)

Taxis obtained from citizens of the state. The state really needs tax to carry out its role, according to the tax functions above. (Nurmantu, 2005)However, the effect of globalization and the increasing sophistication of technology allows certain individuals who are reluctant to pay tax to hide their potential tax that should be taxed in a state called a Tax Haven state (Palan et al., 2010).

The Panama Papers is the name for a document that was created by a company from Panama called Mossack Fonseca(Chohan, 2016), which contains detailed information on more than 214,000 overseas companies, including the identities of their shareholders and directors.This case is an international scale leak of financial documents that reveals how 12 heads of state (former and still in office) have a company in an undisclosed tax-free jurisdiction (offshore). Not only heads of state but also political figures, celebrities (artists), billionaires, businessmen, drug mafia, and other figures from around the world. These documents reveal how the hidden/concealed corruption and tax crime network. The total of leaked documents consists of 11.5 million documents that were published between the 1970s and early 2016 by Mossack Fonseca, a law firm (the fourth largest foreign legal entity in the world) based in Panama. The leak of all this data reveals and provides clues to how law firms work with financial institutions (bank) to promote financial confidentiality.

In Indonesia, the names of well-known billionaires who are included in the Forbes Indonesia's list of richest people every year are also scattered in the Mossack Fonseca document.

They have created dozens of offshore companies for their business needs. One of them is Sandiaga Uno, a prominent businessman who is currently running as a candidate for Vice President in Indonesia. However, Mossack Fonseca's documents indicate that the firm's clients include ponzi scheme fraudsters, drug mafias, tax evaders and corruptors from Indonesia as well. Namely Muhammad Riza Chalid and Djoko Soegiarto Tjandra.

Hence, based on the aforementioned explanations above, this paper wants to shed a light on the Relationship Between the Panama Papers and the Existence of Criminal Actions in Taxation.

## **2. Research Method**

This research method used 2 (two) problem approaches, namely: The first approach in this research was the statute approach. The statute approach is a legal research that puts the statute approach as one approach. The statute approach is carried out by examining all laws and regulations that are related to the legal issue being handled. The second approach used was the conceptual approach, which was carried out by looking for existing theories and doctrines to be used as a reference in order to understand views and doctrines in building economic argument. This journal is using secondary data collection to collect data about Taxes especially Panama Papers Case.

## **3. Results and Discussion**

### **3.1 The Panama Papers and the History of the Leaks**

The Panama Papers are a collection of 11.5 million classified documents (2.6TB) produced by corporate service provider from Panama, Mossack Fonseca. This document contains detailed information on more than 214,000 overseas companies, including the identities of their shareholders and directors. (Obermaier & Obermayer, 2017) The document lists the names of the leaders of five countries: Argentina, Iceland, Saudi Arabia, Ukraine and the United Arab Emirates, as well as government officials, close relatives and close friends of heads of governments of about 40 other states, including Brazil, China, France, India, Malaysia, Mexico, Malta, Pakistan, Russia, South Africa, Spain, Syria and the United Kingdom.

The time span of this document can be traced to the 1970s. This 2.6 terabytes sized document was provided by an anonymous source to Süddeutsche Zeitung in August 2015 and the International Consortium of Investigative Journalists (ICIJ).

This leaked document was then distributed to and analyzed by approximately 400 journalists in 107 media organizations in more than 80 states. The first news report based on this document along with its 149-document file was published on April 3<sup>rd</sup>, 2016. And the full list of companies involved was released in early May 2016.

The leak of data from law firm Mossack Fonseca began when the international media coalition International Consortium of Investigative Journalism (ICIJ) and German newspaper Süddeutsche Zeitung received data from an anonymous source more than a year ago.

According to ICIJ, the data is in the form of e-mail financial spreadsheets, passports and company records detailing how these powerful people used banks, law firms and shell companies to store their assets. The data spans for about 40 years, from 1977 to late 2015.

The journalist is communicated with the source through an encrypted channel because he/she wanted his/her identity unknown: "There are two conditions. My life is in danger. Our chat must be encrypted. We must not meet at all." Süddeutsche Zeitung journalist, Bastian

Obermayer stated that his source decided to leak the document because he considered that Mossack Fonseca acted unethically. According to him, "the source thinks that this law office in Panama is endangering the world, and the source wants to end it. That's one of his motivations."

The International Consortium of Investigative Journalists led the research and document review. They mobilized journalists and staff from The Guardian, BBC England, Le Monde, SonntagsZeitung, Falter and La Nación as well as German TV stations Norddeutscher Rundfunk and Süddeutscher Rundfunk and Austrian TV station ORF. The team of journalists met initially in Munich, Lillehammer, London, and Washington, D.C., to compile their research. The data was then disseminated and analysed by approximately 400 journalists in 107 media organizations in more than 80 states. After more than a year, the first news report based on this document and its 149 files were published on 3 April 2016. And the full list of companies involved was released in early May 2016.

The leaked document sizes beat Wikileaks Cablegate (1.7 GB), Offshore Leaks (260 GB), Lux Leaks (4 GB), and Swiss Leaks (3.3 GB). This leaked data consists of electronic mail, PDF files, photos and files of the Mossack Fonseca internal database. All data were published from the 1970s through the spring of 2016. The Panama Papers list the names of 214,000 companies. There is a folder for each shell company that contains emails, contracts, transcripts, and scanned documents. The leak consists of 4,804,618 emails, 3,047,306 database format files, 2,154,264 PDFs, 1,117,026 photos, 320,166 text files, and 2,242 other file formats.

All this data was neatly indexed. Indexing was done using paid software called Nuix which is also used by international investigators. Documents were OCR processed by high-speed computers so that the data can be read and searched digitally. The list of important figures was double-checked with the documents that were processed earlier. The next stage is to connect the characters, roles, money flows, and the validity of the structure.

### **3.2 Specific Impacts Caused for Indonesia**

This secret transaction, which is generally carried out to avoid tax from the country of origin and is suspected of originating and being used for illegal business, is classified as a money laundering attempt which is prohibited by the government. The definition of money laundering is an act that aims to wash or clean the origin of the acquisition of one's assets from a criminal act so that the assets change status and become legal means of payment.

We know that the crimes of tax evasion, money laundering and corruption are a series of crimes that are interrelated. This will have an impact on the State's loss or reduction in state assets (asset forfeiture) by a significant amount.

### **3.3 Relationship Between the Panama Papers and Taxation Crime.**

In the Panama Papers scandal, if it is related to Taxation Crime, it is considered a deliberate mistake or the mistake is fraudulent. In order to avoid tracking assets obtained from economic crimes in the form of taxation crimes, usually the perpetrator takes the act of transferring, concealing and disguising the assets of the proceeds of taxation crimes with the intention of not being detected by law enforcement officials. (Alldridge, 2017) Taxation crimes are classified as "extra ordinary crimes". This fraudulent is in the form of tax evasion in which the tax crimes of heads of state, secret agents, celebrities to fugitives are hidden in tax haven.

Law enforcement is necessary for criminal acts in taxation. According to Soejono Soekanto, law enforcement does not merely mean the implementation of legislation. Even though in Indonesian reality the tendency is so. (Soekanto, 1983)

So that the definition of law enforcement is so popular. There is even a tendency to interpret law enforcement as the implementation of court decisions.

This narrow definition clearly contains weaknesses, because the implementation of legislation or court decisions can actually disturb peace in the social life of community.

Criminal law enforcement is an effort to translate and realize the wishes of criminal law into reality. According to Sajiptop Raharjo, law enforcement is an effort to bring the ideas of legal certainty, social benefit and justice into reality. (Rahardjo, 2009) The process of embodying these three ideas is the essence of law enforcement.

The Professional Standards and Responsibilities Committee from The Institute of Internal Auditors in Statement of Internal Auditing Standard Number 3- May 1985 Defines fraudulent as: "Fraudulent that is designed to benefit the organization generally produces these benefits by exploiting an advantage that is not fair or not honest, which might deceive outsiders. The perpetrator of such fraudulent usually benefits indirectly, because the personal benefits of accrued costs increase, while the organization is helped by the actions concerned."

As it is known that tax is compelling based on Laws so that if it is not obeyed or violated, it will result in sanctions for the perpetrator. The Tax Collection System in Indonesia is a Self-Assessment where taxpayers are given trusted with registering, calculating, counting, paying and reporting their own taxes owed. The consequence of implementing this self-assessment gives large responsibility to Taxpayers to carry out their compliance voluntarily. Potential violations of voluntary compliance are Tax Avoidance and Tax Evasion.

Tax avoidance is a form of transaction aimed at minimizing the tax burden by taking advantage of the weaknesses of taxation provisions. Its characteristic is that it seeks to minimize the tax burden by: Does not clearly violate the taxation provisions; Tend to interpret the tax provisions as incompatible with the aims and objectives of making laws

Tax Evasion is an attempt to smuggle taxes, a form of reducing the tax payable by violating taxation provisions, for example: not reporting a portion of the sale, increase costs in a fictional way, collect taxes but do not deposit.

For example, in the Panama Papers scandal, smuggling tax. Fraudulent that is carried out for the loss of an organization is generally for the direct or indirect benefit of an employee, outside individual, or another company. Embezzlement is characterized by misuse of money or property, and falsification of financial records to cover up the action thus made detection difficult. So it is proven that by doing tax avoidance and tax evasion there is criminal action in Panama Paper's Scandal.

#### **4. Conclusion**

The disclosure of the Panama Papers scandal proves clearly that tax which is mandatory and binding is considered a serious burden for the upper class that is involved in this case. The amount of tax to be paid is considered so large that there are cases of tax evasion to avoid paying tax or reducing the amount of tax.

The old adage said, 'as smart as you can keep a carcass, one day the smell will also smell'. Millions of secret financial documents were leaked and revealed how the corruption and tax crime network of heads of state, secret agents, celebrities to fugitives are hidden in tax haven.



The scandal that was revealed would have caused the State to lose or reduce the state's wealth (asset forfeiture) which was quite significant. And the relation between the case and the violation of tax law is that the mistake is deliberate or the mistake is fraudulent. An example is smuggling and tax evasion as well as Tax Avoidance.

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