



Provision of Elimination of Tax Administrative Sanctions in Indonesia on 2008 and 2015 Case: Establishment of Tax Law

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Abstract

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Elimination of administrative sanctions or Sunset Policy on 2008 intended to achieve the target of tax revenue and to strengthen the data base by providing incentives in the form of taxation, was not done due diligence measures. Removal of administrative sanctions in 2015 was motivated by the goal of achieving the target of tax revenue and more specific purpose, namely as a continuation next year, the year of law enforcement. Removal of Administrative Sanction was not in accordance with the theory of devotion. Implementation of the elimination of administrative sanction give leeway to the taxpayer to foster a sense of obligation to pay taxes, so it tends to keep the runway taxation in the theory of filial piety.

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INTRODUCTION

Basically, Taxpaying has been carried out since the colonial period by using the term different but the same principle, levies by the State against its citizens coercive.²With the development of era, policies of taxation changes from time to time that is in accordance with the development of society and the State both in the State and in the socio-economic field. As presented by KC Wheare in his book *The Modern Constitution* and quoted by Mahfud MD:

Constitution, when they are framed and Adopted, growing niche to reflect the dominant beliefs and interest, or some compromise between conflicting beliefs and interest, the which characteristic the society at that time... A constitution is indeed the resultant of parallelogram of forces - political, economic and social - the which-operate at that time of its adoption.

From this argument, Mahfud MD concluded that the constitution which in the broadest sense includes all the legislation in the organizing country) is the *resultant* (product of political agreement) in accordance with the political, economic, and social at the time of established. Meaning that, at configuration of political, social, economy and culture is very influential or define the product constitution and legislation.³ In the area of taxation can be considered to change, improvement, and development of the provisions of the legislation which is certainly influenced and motivated by the configuration of the political, social, economic, and cultural.

The tax legislation reform over the years become a proof of the opinion that KC Wheare. Considering to the development of tax legislation (which creates a tax reform) is, in the world of taxation Indonesia also deformed/ concept of policy implementation. The policy involves the application of the abolition of the administrative sanction has been done two times in different moment. The same policy and with the same purpose which is to achieve the target revenue from taxation. In 2015 the government launched a program of coaching Taxpayers Year, President Joko Widodo explained that the purpose of coaching is to bring awareness to the taxpayer in order to dutifully pay tax. Ministry Finance, Bambang Brodjonegoro reported that of the 250 million population of Indonesia, which should have a Taxpayer Identification Number as many as 44,000 .000 population, but only 26 million inhabitants are have NPWP and only 10 million taxpayers to report tax via the Notice

² Art. 23A, Constitution of 1945

³ Mahfud M.D, 2014, *PolitikHukum di Indonesia*, Rajawali Press, Jakarta, p. 6.

(SPT).⁴ Declaration of Taxpayers Year, 2015 to increase state revenue through taxes. In the first quarter of 2015 (January-March) of state revenue through taxes is only about Rp.170 trillion or 13% of the 2015 target of Rp.1,294 trillion. Finance Minister, Bambang Brodjonegoro said that the lack of tax revenue due to tax compliance (WP, *Wajib Pajak*) which does not submit its obligations. The Ministry of Finance will conduct training and improve the record of payment that has been done in the last five years for taxpayers who already have a NPWP and reporting obligations on a regular basis. The Directorate General of Taxation will announce the data WP Personal are not intensively to pay tax in the period of last five years to pay off its obligations, without penalty.⁵ Without fines is meant by the implementation of the abolition of the administrative sanctions, fines is one form of sanctions administration in the field of taxation other than interest. Many factors that lead to such a target is not reached behind the introduction to the program of Taxpayers Year Guidance (*Tahun Pembinaan Wajib Pajak*). This program is one of the implementation or agenda to be implemented by performing the removal of administrative sanctions. But, due to reach the target of course there are other factors that support for the implementation of this administration back in the removal of sanctions.

Whereas earlier in 2008 also implemented *Sunset Policy* as a policy is the same, the elimination of administrative sanctions implemented for the first time in 2008. Of course, in 2008 there are a variety of factors that support the implementation of the abolition of administrative sanctions. Based on this background, the Authority to assess the removal of sanctions policy of the tax administration in 2015 and comparing with the *Sunset Policy* on 2008 thus will be obtained differences between the two policies to eliminate the administrative sanction. Furthermore, this difference will be used as the basis of analysis the Author to recommend improvements in the administration of the removal of sanctions policy settings in the future.

The second problem formulated that in regard to the theory of devotion in taxpaying principle. Policy as a concrete legal norms and policies is a manifestation of the abstract norms. The elimination of administrative sanctions in the area of taxation is a policy that is poured into a rule (in this case General Provisions of Tax Act and its implementing regulations). Sudikno Mertokusumo stated that, legal principle does not concrete legal norms, but rather a concrete regulatory background and are general or abstract.⁶ Principle of law can be found in the articles of the statutory

⁴ Directorate General of Tax and Finance, "Presiden Jokowi Canangkan Tahun Pembinaan Wajib Pajak", <http://www.pajak.go.id/content/flash-foto/presiden-jokowi-canangkan-tahun-pembinaan-wajib-pajak>, accessed on 10 September 2015.

⁵ Berita Satu, "Jokowi Canangkan Tahun Pembinaan Wajib Pajak 2015", <http://www.beritasatu.com/ekonomi/269612-jokowi-canangkan-tahun-pembinaan-wajib-pajak-2015.html>, accessed on 10 September 2015.

⁶ Sudikno Mertokusumo, 1999, *Mengenal Hukum Suatu Pengantar*, Liberty, Yogyakarta, p. 35.

regulations if legal principles set forth in the form of concrete regulatory or legal principle can also be found indirectly.⁷ Principles of law have two functions, namely the function of the law and function in legal science. A legal basic always be based on its existence on the formulation of forming laws and judges, while principle in the science of law aimed at giving an overview, not normative in nature and does not include the positive law.⁸ on this basis according to the author can be used as a foothold to assess the second time the implementation of policies removal of sanctions of tax administration, which certainly pursued with the principle of special laws in the field of taxation.

ANALYSIS ON ELIMINATION OF TAX ADMINISTRATIVE SANCTION

OPINION of KC Wheare at the previous, was strengthened by Hamzah Halim and Kemal Redindo who argued that the law is not the subsystems are autonomous and neutral but instead are influenced by many factors and interests.⁹In the study of legal science there are at least three factors into parameter legislation could apply as well, namely: has the basic validity of the juridical, sociological, and philosophical.¹⁰

Starting from the above explanation, setting the Elimination of Administrative Sanctions will be analyzed based on three aspects of this (the judicial aspect, the aspect of sociological and philosophical aspects).

Juridical Aspects

THE *first* is juridical aspects that will be discussed on the basis of the legal period of validity. According to Article 37A of Act No.28 of 2007 on General Provisions and Tax Procedures expressly written and enacted in legislation that is determined to tackle the elimination of administrative sanctions in 2008 that applies to the payment of tax debts in the previous year. Removal of sanctions of Administrative 2015 are governed by the provisions of Article 36 of Law No. 16 of 2009 on General Provisions and Tax Procedures, where the articles do not set the validity period of the abolition of administrative sanction so that the provisions of the validity period applied according to the setting in the implementation regulations, namely Regulation Finance.

⁷ *Ibid.*

⁸ *Ibid.*,p. 36.

⁹ Hamzah Halim dan Kemal Redindo S.P, 2013, *Cara Praktis Menyusun dan Merancang Peraturan Daerah*, Kencana, Jakarta, p. 1.

¹⁰ *Ibid.*

Provisions expiry implementation of the abolition of administrative sanction in 2008 had previously been planned, given the authorization of the Act requires a process starting from (i) a *pre-legislation* (planning the establishment of a law/bill; the preparation of a bill consisting of study, research, and academic papers, techniques and mechanisms of the drafting of laws) (ii) *stage of legislation* (discussion of the bill by the House of Representatives and the Government; attestation, establishment and enactment, (iii) *post-legislation* (documentation of Act, dissemination of texts of laws, education, implementation).¹¹ In 2015, the legal basis for the removal of sanctions the administration is setting the validity period determined by the Minister of Finance, in which the Minister of Finance is a legal product that has legal force as the implementing regulations. The implementing regulations were developed after there is a mandate of the regulations on it. The ministerial regulation which formed on the basis of orders of the law categorized as legislation on the basis of delegation (delegated legislation). A. Hamid S. Attamimi in his thesis, stated that:

Legislation delegation is legislation that is formed on the basis of legislation orders higher. The formation process of legislation is also classified as not through the same stage with the law, tend to be simple on condition their removal/handover of authority to establish rules of the holder of the authority of *delegans* to the *delegataris* with responsibility the exercise of authority.¹²

In this case the handover of authority from the President to the Finance Minister. Regulation of the Minister of Finance is legislation in accordance referred to in Law No. 12 of 2011 on the Establishment of legislation, namely the legislation that recognized and have binding legal force throughout ordered by legislation that is higher or established by the authority.¹³

Description above described that the elimination of administrative sanctions in 2008 planned to determine a period of implementation of the Elimination of Administrative Sanctions 2015. The legal basis for the Elimination of Administrative Sanctions in 2015 governing the validity period is the Regulation of the Minister of Finance, while the Administrative Sanctions Elimination in 2008 concerning the validity of Act. It can be concluded that there is no basis consistent consideration to the legal basis used to set the validity period of the implementation of the Elimination of

¹¹ Siti Masitah, 2013, "Urgensi Naskah Akademik dalam Pembentukan Peraturan Daerah", *Jurnal Legislasi Indonesia* Vol. 10 No. 02 – June 2013: 109-122, p. 109.

¹² A. Hamid S. Attamimmi, 1990, "Peranan Keputusan Presiden Republik Indonesia dalam Penyelenggaraan Pemerintahan Negara: Suatu Studi Analisis Mengenai Keputusan Presiden yang Berfungsi Pengaturan Dalam Kurun Waktu Pelita I – Pelita VI", *Dissertation*, Graduated School, Universitas Indonesia, Jakarta, p. 347.

¹³ Art. 8 of (2) Act No. 12 of 2011 concerning to Laws and Regulation Establishment

Administrative Sanctions. Regulation in the formation process was more simple and carried out by the authorities (Ministry) which is the delegation of the President. Elimination of administrative sanctions should be the same as the tax amnesty, in which the formulation of the formation of its provisions carried out discussions with Parliament. So the legal product produced is of the Act, for the Elimination of Administrative Sanctions a major impact both on the taxpayer obedient and who enjoy this Administrative Sanctions Removal policy. So the element of fairness should also be achieved.

Juridical aspect *secondly*, the implementation of the PSA in 2008 in the future will be the end of the implementation of this policy, the Government tends to maintain its commitment by issuing laws that decree (Government Regulation in Lieu of Law) No. 5 of 2008 regarding Fourth Amendment of Law No. 5 of 1983 General provisions and Tax Procedures, because the decree (Perpu) have the same position with the Act.¹⁴

Perpu as the regulation set by the President in matters of urgency that forces,¹⁵ in the preamble part, explained about the background of the publication of the decree, which is "...in order to face the impact of global financial crisis, it is urgent to strengthen the national tax base to support the State's revenue from the tax sector is more stable,"¹⁶ this means that:

- (1) The existence of the State of the global financial crisis in which the circumstances are pushing to resolve because urgent that needed solving quick legal under the Act. This provision showed a consistent attitude the Government at that time by changing the legislation with equal legal product legal position by Act that decree.
- (2) Laws that already exist are adequate but the material validity period changes needed for a more extended than the period of validity. Removal of Administrative Sanctions which was originally a one-year extended to 14 months due to external circumstances that on the first point and driven state in which the taxpayer utilizing Removal Sanctions this administration at the end of the period of validity,¹⁷ so much taxpayer who want to use it but can be hampered due to the expiration date while the government was then forced by external circumstances the impact of the global financial crisis.
- (3) The urgency in the form of global financial crisis affecting the national financial and require certainty to be resolved as soon as possible so it can

¹⁴ Art. 7 (1) subsection C, Act No. 12 of 2011 concerning to Laws and Regulations Establishment

¹⁵ Art. 22 (1) Constitution of 1945

¹⁶ Subsection (a), on the *konsideran* of Perpu No. 5 of 2008 regarding Fourth Amendment of Law No. 5 of 1983 General provisions and Tax Procedures

¹⁷ Dahliana Hasan, *Op.Cit.*

not follow the making of the Act in accordance with the existing procedures, the Government took a policy issuance decree.

Perpu published proofed enormous commitment and consistency of the Government at the time of the arrangement Elimination of Administrative Sanctions in 2008.

The *third* judicial aspect, Article 37A of the rules established to deal with legal issues or fill a legal vacuum by considering the existing rule that is where setting the elimination of administrative sanctions that already exist, namely Article 36. Yet it cannot accommodate the objective of the Government or the legislature at the time who want to provide incentives for the checking NPWP voluntary, while the existing arrangement requires examination.

Sociological Aspects

THE BASIC of sociological is the foundation that consists of facts that constitute society's demands that drive the need for legislation, namely that there is something essentially needed by the community that need adjustment.¹⁸ As known since the third amendment to the Constitution of 1945, taxes stipulated in article 23A "taxes and other coercive for the purposes of the state governed by law." the Constitution of 1945 is Basic Rules/Principal Country/*Staatsgrundgesetz* which gives binding force to the legal norms laws invitation, or in other words outline the procedures for establishment of legislation which common binding.¹⁹

Sociologically applicable law, if such rules effective. Meant that these rules can be enforceable by the authorities, although not accepted by society (theory of power), or earlier rules apply as accepted or recognized by the community (recognition theory).²⁰ Sociological aspects first, setting on the Elimination of Administrative Sanctions were previously carried out in 2008, held back in 2015. The background of this PSA was revived as deemed successful implementation in 2008, the success of the Annual Income Tax deemed delivered within the framework of *the Sunset Policy* until December 2008 was as much as 556 thousand SPT with the value of tax payments of Rp.5.56 trillion,²¹ on this case there is the addition of 3.5 million taxpayers. The enthusiasm of the people who take advantage of *the Sunset Policy* up to very high in December 2008, an extension of up to two months later as many as 248 thousand SPT submitted and managed to add 2.09 million new

¹⁸ Hamzah Halim and Kemal Redindo, *Op.Cit*, p. 25.

¹⁹ Maria Farida Indrati Soeprapto, *Ilmu Perundang-undangan Dasar-dasardan Pembentukannya*, Kanisius, Yogyakarta, 1993, pp. 30-31.

²⁰ *Ibid.*, p. 6.

²¹ Directorate General Tax, 2009, *Institutional Report of 2008*, Department of Finance, Indonesia, Jakarta, p. 25

taxpayer, the total amount of income tax payments of Rp.7.40 trillion.²² It can be concluded on the Elimination of Administrative Sanctions provisions in 2008 can be accepted by taxpayers.

Tax Ration, 2008- 2012²³

Tax Ratio, Taxation					
a. Tax Ratio, Central Tax (Regional + Natural Resources) to PDB (%)	15,76	15,48	14,58	14,30	18,59
b. Tax Ratio, Central Tax (Regional + Central Resources) to PDB (%)	13,12	12,60	11,95	11,82	14,06 n
c. Tax Ration of Central Tax to PDB (%)	12,34	11,77	11,24	11,06	13,31

Source: Basic Data APBN 2007-2013 and BPS

Table above showed that from year to year for tax ratio central taxes which experienced ups and downs even the most high in 2008, the year of implementation of the *Sunset Policy*. It depends on the objectives underlying the implementation of the Elimination of Administrative Sanctions, if the implementation of the Elimination of Administrative Sanctions aimed to specifically increase the income tax sector in 2008, the Administrative Sanctions Removal is relatively successful. However, due to the success was not followed in subsequent years (tax ratio tends to decline and unstable), it can be concluded that the implementation of the Administrative Sanctions Removal is limited in the short term only.

At the *Sunset Policy* implementation in the form of Administrative Sanctions Removal echoed only implemented in 2008, but in fact the Government to implement back in 2015. Sociologically it affects the understanding or interpretation of the taxpayer against the Removal of Administrative Sanctions. Taxpayers need answers to questions (1) would it be held back elimination of administrative sanctions in the future. (2) is the tax administration sanctions will eventually be eliminated, if the offense in order to achieve the target revenue from the tax. (3) What are the advantages of paying taxes in an orderly manner, if ultimately conducted Elimination of administrative sanctions against violators.

To answer these questions, the government attempted to implement some of the *follow up* of the implementation of the Elimination of administrative sanctions, such as those delivered by the Director of

²² *Ibid.*

²³ Directorate General of Tax, 2011, *Institutional Report of 2010*, Department of Finance of Indonesia, Jakarta, p. 188.

Counseling, Services and Public Relations Directorate General of Taxation Mekar Satria Utama, "We have a 5 year program. This year (2015) called year guidance, in 2016 years of law enforcement, in 2017 the year of reconciliation, seeking activities and deliver improved forgiveness and appreciation to the WP (tax amnesty), the year 2018 with the welfare of civil servants allowances boost purchasing power and prosperity, and in 2019 the independence of the state budget."²⁴

One form of sovereignty of the people is the voice of the people is represented in the form of a Council of Representatives, where members of the House of Representatives elected through general elections.²⁵ The House of Representatives has the power to make law²⁶ and the law is a form of consensus /agreement between the people with the government.

Starting from the above explanation, as (1) The form of commitment to implement several planning the continuation of the Elimination of administrative sanctions by the government to the people (2) The legal basis is strong to carry out planning the continuation of the Elimination of administrative sanctions, it places a legal product through the trial process by House of Representatives that Act. Preparation of the legislation is based on the aspirations and needs of the legal community.²⁷ The second sociological aspects of setting elimination of administrative sanction which involves empirical facts where the country needs to achieve the target of tax revenue and the spirit of the country to increase the registered NPWP.²⁸

Philosophical Aspects

ACCORDING Soerjono Soekanto, law applies philosophically, that is to say in accordance with the ideals of law as a positive value the highest.²⁹ The philosophical ground of the judgment or the reasons which illustrate that the rules established to consider the views of life, consciousness, and the ideals of law which includes the atmosphere of mysticism and philosophy of the nation Indonesia sourced from Pancasila and the Preamble to the Constitution of the Republic of Indonesia of 1945.³⁰ Every society has always had a "*rechstidee*", which is what the public expect from the law, for example, the law is expected to ensuring justice (*gerechtigheit*), legal certainty (*rechtssicherheit*), expediency

²⁴ Ministry of Finance, Pemerintah Canangkan Tahun Pembinaan Wajib Pajak 2015, available at <http://kemenkeu.go.id/Berita/pemerintah-canangkan-tahun-pembinaan-wajib-pajak-2015>, accessed on 19 October 2015

²⁵ Art. 19 (2) Constitution of 1945

²⁶ Art. 20 (1) Constitution of 1945

²⁷ Art. 19(h) Act No. 12 of 2011 concerning to Laws and Regulations Establishment

²⁸ Document meeting of Special Committee (Pansus) Tax Bill (RUU Perpajakan), between DPR and Ministry of Finance RI, aspiration delivered by Rama Pratama SE from PKS Party, Monday, November 25, 2005.

²⁹ Hamzah Halim and Kemal Redindo, *Op.Cit.* p.8.

³⁰ Attachment I of Law No. 12 of 2011 concerning to Laws and Regulations Establishment

(*zweckmassigkeit*), and order, as well as well-being, where "*rechstidee*" this is the task of legal norms.³¹

In accordance with the ideal and objective of the law which is the purpose of the tax law is to create justice in the matter of taxation. This principle of justice must always be adhered to, both in principles regarding the inviter-invitation, as well as in daily practice; where, according to Santoso Brotodihardjo this is the principal joints that should be considered well by any State to expedite his efforts on tax collection.³²

Philosophical aspects of legislation explicitly can be found on the weighing and implicitly of course, can be found in the material section or clause enshrined in the legislation. Elimination of Administrative Sanctions Act regulated in the General Provisions and Tax Procedures that basically both Elimination of Administrative Sanctions in 2008 and 2015 have a same basis consideration as the abolition of administrative sanctions in 2015 have no legal basis Article 36 of Law No. 16 of 2009 which is an amendment of the Act No. 28 of 2007, in which a change of one of them lies in the extension of the implementation of the Elimination of administrative sanctions, namely Article 37A. Beep weigh preamble are as follows:

That in providing justice and improve service to taxpayers and to give more legal certainty and to anticipate developments in the field of information technology and developments in the material provisions in the field of taxation is necessary to amend Act No. 6 of 1983 on the General Rules and Tax Procedures as amended by Act No. 16 of 2000.³³

Based on explanation above, the philosophical foundation of legislation on General provisions and Tax Procedures provide justice and for greater legal certainty. There are some meanings of justice in question, including during the formulation of the Act KUP submitted by members of the board: impartiality on the interest (in the discussion of changes in taxation law, each member of the board do not represent the interests of any party), the material of the tax law provides results that can truly be enjoyed by the people.³⁴ Includes on UU KUP contained provisions on the Elimination of Administrative Sanctions should of course based on the settings to deliver justice and to give more legal certainty in the implementation of the Administrative Sanctions Removal.

As presented by Ms. Sri Mulyani as Minister of Finance during the discussion of the bill CTP that the Government is important is the tax revenue will always need to be improved and can be fully increasingly meet the needs

³¹ Prof Edward Omar Sharif Hiarij, *Legal Theories and Philosophy of Law Course*, 30 September 2015.

³² Santoso Brotodihardjo, 1984, *Pengantar Ilmu Hukum Pajak*, Eresco, Jakarta, p. 23.

³³ See Act No. 16 of 2009

³⁴ Pansus Document, 21 November 2005

for financing the activities of the state including the financing of national expenditure.³⁵ However, the increase in tax revenue was based philosophical aspect in chapter and verse bill KUP, where philosophical bill CTP is to reduce the overall tax burden that compliance was increased and thus “*at the end*” ultimately tax revenues will increase.³⁶ This is partly reflected in the policy of Elimination Administrative sanctions that the tax burden in the form of administrative sanction was abolished with the aim of taxpayer stimulated/encouraged to dutifully fulfill its obligations to pay the tax debt and eventually reached the target of tax revenue and foster a sense of adherence to the taxpayer.

Philosophical aspect hereinafter that the shifting of the meaning of justice in the original purpose of the Removal of Administrative Sanctions, where Article 36 starting from the beginning formed casuistry destined for the taxpayer which have or will fulfill the tax obligations but is constrained by reason of coercion then given a dispensation Elimination of administrative sanctions by Director General of Taxation decision. In 2008 based on the newly formed article (Article 37A) born out of a sense of justice in order to provide incentives to taxpayers who voluntarily avail the facility of Administrative Sanctions Removal. However, in 2015 in the framework of Article 36 Administrative Sanctions Removal massively changed the meaning of justice. Elimination of administrative sanctions as a means that government *law enforcement* program in the next year.

THE PROVISION OF ELEMINATION OF TAX ADMINISTRATIVE SANCTION: FUTURE PERSPECTIVE

THE PROVISIONS concerning the establishment of the legislation is set to Act No. 12 of 2011, which was originally set on Act No. 10 of 2004. The provision on the Elimination of Administrative Sanctions in 2008 and 2015, both settings contained in the Act and the General Conditions Tax Procedures third amendment in 2007 and the Constitution of the General provisions and Tax Procedures fourth change in 2009. Both the Law on General provisions and Tax Procedures were formulated based on Law No. 10 of 2004 on the Establishment of Legislation. However, in the chapter on the principle of formation of legislation that either does not change regulated in Chapter II, Article 5 and Article 6 of the Law on the Establishment of Legislation.

Contrary to the explanation above, although arrangements Elimination of Tax Administration Sanction is not regulated separately in the provisions of the Act, but should be in accordance with the principle of the

³⁵ Pansus Document, 27 May 2007.

³⁶ Enggartiatio Lukita, Golkar Party as reported on Pansus Document of Bill of Act of Taxation (RUU Perpajakan), 21 November 2005.

establishment of legislation which better in order to create harmony in each verse and chapter regulating the Elimination of Administrative Sanctions contained principles the. The principle of the establishment of legislation that either: (a) Clarity of purpose; (b) Institutional or appropriate forming organs; (c) Compatibility between types, hierarchy, and material content; (d) to be implemented; (e) usefulness and benefits; (f) Clarity formulation; (g) Disclosure.³⁷ Further, the discussion at sub fifth chapter entitled setting the elimination of administrative sanction in the future explained with the principles of good legislation, that the principles of clarity of formulation of the problem, the principle foundation of clarity of the formulation, the principle can be implemented, the principle correspondence between the type and content material principle.

The Provisions on the Elimination of Administrative Sanctions currently incorporated into the material Chapter VII. Chapter VII regarding specific provisions from Article 32 to Article 37, elimination of administrative sanctions stipulated in the provisions of Article 36 and Article 37A, in the second such article contained provisions regarding arrangements addressed to the tax authorities, the obligation for the Minister of Finance and the Directorate General of Taxation (Article 36A, 36B, 36C, 36D, 37). To make it easier to understand and establish unity in the arrangement, according to the **foundation of clarity of formulation**, that any legislation must meet the technical requirements of the preparation of legislation, systematic choice of words or terms, as well as the legal language that is clear and easy to understand so as not to cause a variety of a wide interpretation in its implementation.³⁸ There should compilation of setting the Elimination of Administrative Sanctions made in a single article in order to form an understanding comprehensively integral understanding of the arrangement Removal of Administrative Sanctions Article 37A is different from the understanding of the regulation on the Elimination of Sanctions Article 36 so that it can be used as the basis for a legal basis Elimination of Administrative Sanctions implementation in a different time. The two are not contradictory, but in accordance with Article 37A of socialization by the tax authorities that the *Sunset Policy* is only implemented in 2008, but with consideration and assessment that are not contrary to existing regulations, the *Sunset Policy* implemented back in 2015.

It does not reflect the “foundation of formulation clarity”. The cornerstone of clarity formulation of a Law can be analyzed from the process of formation. As we know that law established by the discussions were held in advance by the House of Representatives as well as the UU KUP. Minister of Finance as representative of the government in meeting Bill Special Committee On Taxation explained the main points of the draft changes to the

³⁷ See Art. 5, Act No. 12 of 2011 concerning to Laws and Regulation Establishment

³⁸ Explanation of Art 5 subsection (f) Law No. 12 of 2011 concerning to Laws and Regulation Establishment

Law on General Provisions and Tax Procedures, point to five submitted is "...given a chance to correct the notification letter to provide relief in the form of reductions or elimination of administrative sanctions on the condition that the correction is done in the first year of the enactment of this law..."³⁹ Based on the formulation of the draft amendment of the law on the taxation embodied in Article 37A of the basis of the implementation of the Removal of Administrative sanctions in 2008 (*Sunset Policy*). Furthermore, the minutes of meetings of the committee until the signing of the bill on CTP not found the discussion on the formulation of an idea to be implemented back Removal of administrative sanctions for the second time during the CTP Act applies. However, the implementation of the Removal of Administrative Sanctions both times its 2015 does not violate the rules for in Article 36 paragraph (2) states that the provisions of Article 36 paragraph (1) shall be regulated by or under the Regulation of the Minister of Finance.⁴⁰ Do not violate the rules on the grounds that the basic settings Elimination of Administrative Sanctions Article 36 is a policy, where policy can be implemented with consideration to adjust the situation and economic conditions were wrestling at that time or the policy applied to a case by case basis from the taxpayer.

The formulation of the continuation of the Removal of Administrative Sanctions is one manifestation of the cornerstone principles of the formation of good regulation, namely, **can be implemented**, that any legislation must take into account the effectiveness of the legislation within the community, either on philosophical, sociological, or juridical.⁴¹ Being ineffective on the grounds that the achievement of the target of the tax sector only achieved in the implementation of the removal of sanctions and the administration cannot be accepted if Elimination of Administrative sanctions implemented within the adjacent, so that the necessary arrangements emphatic about the continuation of the elimination of administrative sanctions. It is also to emphasize commitment of the government towards a policy program to be implemented in the future, given the many circumstances/conditions that can affect the running of the government. However, the elimination of administrative sanctions implemented in 2015 as one of the government's efforts to foster a sense of taxpayer compliance, so it is not solely aimed at achieving the target of tax revenue, so that the next government plans implemented in 2016 *law enforcement*.

Based on the exposure of the above legislation should take into account the effectiveness of the legislation within the community,

³⁹ Pansus Document, of Taxation Bill of Act, 21 November 2005, delivered by Yusuf Anwar as representative of Financial Minister.

⁴⁰ Mardiasmo, as representative of Financial Minister, on National Seminar of Optimizing of Tax revenue: Strategy and Challenge, Auditorium BRI, Faculty of Economic and Business, UGM Yogyakarta, 7 November 2015.

⁴¹ Explanation of Art 5 subsection (d) Law No. 12 of 2011 concerning to Laws and Regulation Establishment

sociologically highly dependent on the results of the implementation of the Elimination of administrative sanctions in 2015 were certainly in terms of the level of tax compliance, because Elimination of Administrative Sanctions are of fundamental policy originally used to casuistry but used as a national policy. Surely this should really be considered the power of his behavior in the community.

Other mismatches are found, *i.e.* on the substance of what was to become the authority at the level of the product in terms of legal regulation set the Elimination of administrative sanctions for the implementation of the first and second differ significantly. The difference lies in the laws governing the period of validity of the removal of sanctions the administration so that it does not reflect the principle of the establishment of good regulation. **Correspondence between types, hierarchy, and the substance** was found in the formation of legislation should really pay attention to the substance of the right according to the type and hierarchy of legislation.⁴² This does not provide a disadvantage in practice but in addition to a lack of compatibility between types, hierarchy, and material content, as well as legal certainty is not reflected in it. Legal uncertainty that occur are shown on their implementation of the inspection in which in 2008 established a legal basis for the implementation of the Removal of Sanctions Administration with the purpose of inspection is not conducted in order to solicit taxpayer voluntarily register the NPWP. Whereas in 2015, the Administrative Sanctions Removal carried out the legal basis of that examination will be undertaken to further the implementation of the government program (*in law enforcement*). Although the policy of different materials and discretion on the basis of its implementation, according to the opinion Writer legal certainty for the purpose of Removal of Administrative Sanctions cannot be solely on the basis of discretion may be implemented differently although depending on the situation and conditions. This will lead to a different interpretation by the taxpayer and for *fiscus* regenerate.

The different types of legislation to allow same material shows a lack of compatibility between types, hierarchy and content material. Settings on the expiration, administrative sanctions, due diligence measures, is set in the Act for the Abolition of Administrative Sanctions in 2008 while on the Elimination of Administrative Sanctions in 2015, is set in the Regulation of the Minister of Finance. Legislation with the Regulation of the Minister of Finance has a different legal force due to the superior legislation (hierarchy) than the Ministry of Finance Decree (according to the theory put forward by Hans Kelsen).⁴³

As mentioned that the Removal of Administrative Sanctions are *soft tax amnesty*,⁴⁴ where the tax is the relationship between the tax authorities to the

⁴² Explanation of Art 5 subsection (c) Law No. 12 of 2011 concerning to Laws and Regulation Establishment

⁴³ Maria Farida I.M, *Op.Cit.*,p. 25.

⁴⁴ Gunawan Agung Waskito, *Op. Cit.*, p. 91.

taxpayer⁴⁵ then the substance of the policy settings on the Elimination of Administrative Sanctions needed to accommodate between the two sides. Two-times implementation of the Elimination of Administrative Sanctions greatly influenced by financial circumstances were grappling at the time both in 2008 and 2015. This is one of the factors the Government so that the implementation of the policy. However, the Government must be careful when solely aimed at achieving compliance with state revenue.⁴⁶ As mentioned that it is very important to know also the viewpoint of the taxpayer, therefore we need a special effort to this information. Research and study academically accountable was required to endorse legal products that can be implemented so that it meets the sociological aspect.⁴⁷ So it required an academic text and certainly setting the level of legislation because in addition to the circumstances of the economy, the factors that influence in this policy is the belief of Taxpayers policy in the future and the facilities they can get.⁴⁸

CONCLUSION

DIFFERENCES of elimination of tax administrative sanctions in 2008 and 2015 lies in: the background, the legal basis, the content/materials, and the period of validity. It's just that underlie these differences are on the background to the birth of the policy. Elimination of administrative sanction in 2008, aims to achieve the tax revenue target also aims to strengthen the basis of taxation data by providing incentives in the form of no examination action of Taxpayers who utilize this facility voluntarily, where the removal of administrative sanctions such as penalty interest on the type of income tax, Elimination of administrative sanction in 2015 was motivated by the aim to achieve the tax revenue target and a specific objective, namely as a continuation next year, the year of *law enforcement* so enmeshed taxpayers who do not fulfill their responsibilities not merely as a *data-based*, but for subsequent follow. Taxpayers who use the facilities of the removal of sanctions is still potential to do due diligence measures on SPT/accurate reports when there is a suspicion (as a form of *law enforcement*).

Elimination of Tax Administrative Sanctions does not reflect the overall principle of formation of the legislation was good as stipulated in Act No. 12 of 2011, particularly the principle of clarity of formulation of the problem, the principle can be implemented, the principle of compatibility between types, hierarchy and content material. In the future Sanctions Removal setting tax administration must accommodate these principles so as

⁴⁵ Sumyar, *Op. Cit.*

⁴⁶ Ralph C. B, Harald O., Hannes W., *Op. Cit.*, p. 2.

⁴⁷ Art. 1 (11) Act No. 12 of 2011 concerning Laws and Regulations Establishment

⁴⁸ *Op. Cit.*, p. 17.

to ensure legal certainty and justice. In addition to design appropriate measures, preparedness system should also be considered.

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Law Adagium

**ACCIPERE QUID UT
JUSTITIAM FOCIAS NON
EST TEAM ACCIPERE
QUAM EXIORQUERE**

To accept anything as a reward for
doing justice is rather estorting
than accepting