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## A Proposition About Common Reporting Standard (CRS) As Evidence: A Tax Criminal Procedure Law Perspective in Indonesia

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### *Abstract*

*The globalization of the economy and advances in information technology have facilitated international economic activities, which, while fostering growth, also increase the potential for economic crimes, particularly in taxation. This study explores the proposition of using CRS as evidence in the taxation of criminal offenses in Indonesia. The primary objective is to evaluate whether CRS data can serve as valid evidence in tax-related criminal cases. Employing a qualitative research method, this study analyzes legal frameworks and applies the constructivist paradigm to explore the relevance and applicability of CRS data in criminal tax proceedings. The results indicate that CRS can indeed be used as evidence, provided that its authenticity and content are verified. Key factors for its admissibility include the nature of the CRS, the accuracy of its content, and its proper implementation. In conclusion, CRS serves as a valuable tool in enhancing tax transparency and can be pivotal in prosecuting tax offenses, though its legal standing requires further refinement, particularly in international legal agreements. This research suggests that CRS should be formally recognized as documentary evidence in the context of Indonesian tax law.*

**Keywords:** *CRS, Law of Evidence, Taxation, Criminal offenses, Evidence.*

### **Introduction**

The quote from Jeremy Bentham emphasizes that the judgment about the truth of facts must consider relevant evidence because evidence is the basis of justice. In this case, relevant evidence must correlate with the facts in question, as Bentham states that evidence is a word of relation. However, Bentham reminds us that the judgment of truth refers to a probability based on experience [1].

Bentham's statement basically affirms that evidence refers to the relationship of facts in which the truth relies on probability based on experience. To acquire such truth, it is worthwhile to Twining, (2016). Wigmore's explanation about the existence of the principles of the law of evidence during a trial that continues to function as a logical means to find the truth in legal disputes. Therefore, in his proposition, Wigmore explains the admissibility of evidence by raising a question about how facts can be disclosed as evidence. [3].

In the context of taxation, taxes can be imposed on almost anything selected according to tax bases that reflect the needs of revenue, ease of administration, and community values through legislation. [4]. In Indonesia, tax bases are determined by circumstances, deeds, and events. Circumstances include a person's wealth, deeds include the activity of handing over goods, including obtaining income, and events include everything that occurs against the will of humans. [5].

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Indonesia's tax bases are imposed on, among others, the income received or earned by taxpayers in the form of additional economic capabilities in any form [10]. The additional economic capabilities can be manifested in assets, which are future economic benefits obtained from past events. Based on this understanding, an account in a bank is a form of assets, possibly obtained from past events, such as income, thus allowing savings to be used to measure taxable income [6]. However, economic globalization and the development of information technology to date allow people to do their activities across national borders and keep their assets in other countries, including savings, properties, and others [7].

Considering the potential for tax crimes, such as cross-border tax avoidance, through cross-border financial transaction schemes, in 2014, the Organization for Economic Cooperation and Development (OECD) and the G-20 Member States initiated the establishment of transparency through the Standard for Automatic Exchange of Financial Account Information in Tax Matters. Such transparency aims to provide information about the assets of certain citizens stored overseas. [8].

The financial information exchange standard was implemented around 2017-2018 on account of the support from more than 100 jurisdictions committed to exchanging financial information. Indonesia became one of the countries adopting the declaration on financial information exchange agreement, with the promulgation of Government Regulation instead of Law (Perppu) No. 1 of 2017 concerning Access to Financial Information for Tax Purposes on May 8, 2017 which was enacted into Law No. 9 of 2017 on the Stipulation of Perppu No. 1 of 2017 on August 23, 2017 [9].

The previous research was done by Erwiningsih, W. (2021). Implementasi Penyelesaian Sengketa Pajak Pada Pengadilan Pajak Indonesia. *Justicia Sains J. Ilmu Huk.*, 6(2), 248-262. This study discusses the implementation of tax dispute resolution in Indonesia's tax court, specifically focusing on the legal frameworks and mechanisms available for addressing taxation crimes. The research highlights the role of financial information transparency and the necessity of evidence, such as the Common Reporting Standard (CRS), in proving tax offenses.

Furthermore, Iryadi, I. (2018). Kedudukan Akta Otentik dalam Hubungannya dengan Hak Konstitusional Warga Negara. *J. Konstitusi*, 15(4), 796-815. This article explores the legal standing of authentic deeds in relation to constitutional rights, providing context for the use of documentary evidence, such as CRS data, in legal proceedings, including taxation-related crimes.

The purpose of this study is to explore the use of the Common Reporting Standard (CRS) as evidence in cases of tax violations in Indonesia. This study aims to analyze whether CRS data can be accepted as valid evidence in the legal process of tax crimes, as well as identify the factors that affect the acceptance of CRS as valid legal evidence in the context of Indonesian law.

The benefit of this research is that it contributes to the development of an understanding of the application of CRS in the Indonesian legal system, especially in the tax sector. This research is also expected to provide recommendations to improve tax policies and legal procedures related to the use of CRS as evidence, which can increase transparency and accountability in tax law enforcement in Indonesia. In addition, the results of this study can be an important reference for policymakers, legal practitioners, and academics in understanding the potential and challenges of the use of CRS in the tax criminal justice system.

## **Research Methods**

The problem formulation described above was answered through qualitative research by analyzing the CRS phenomenon in the law of evidence for proving criminal taxation offenses. This study used a constructivist paradigm that examines the relationship between actions and practices while developing arguments without relying on a universal standard to define ultimate truth. [11]. To elaborate on the paradigm, this research uses secondary data in the form of primary legal materials, including the Criminal Code (KUHP), the Criminal Procedure Code (KUHP), Law No. 6 of 1983 on General Provisions and Tax Procedures, and their amendments.

To complement the research results from primary legal materials, this study employed a literature review to complete the analysis of secondary legal materials from criminal law books and criminal law of evidence books, articles, journals, and other scientific works to collect the principles of the law of evidence in taxation criminal offenses. In addition to primary and secondary materials, this research also used other secondary legal materials as well as tertiary legal materials, such as the Annual Report of the Directorate General of Taxes, dictionaries, encyclopedias, and others. The research method could provide a scientific description to answer the main problems described. [12].

## **Results and Discussion**

### **Information on the Common Reporting Standard (CRS) and Its Legal Standing**

The Common Reporting Standard (CRS) is one of the elements of financial information exchange for tax purposes, other than the Model Competent Authority Agreement (CAA), Commentary, and Technical Guidelines developed by the OECD together with the G-20 Member States. The exchange of financial information is established based on Article 26 of the OECD Model Convention, which is a model international tax agreement. Such an international agreement gives authority to the Participant Jurisdiction to exchange financial information for tax purposes. [13].

Based on Article 38 of the Statute of the International Court of Justice (ICJ Statute), international treaties are the source of international law. These international treaties become the source of binding law towards the validity of the exchange of financial information performed by the Participant Jurisdiction. [14]. In addition to the ICJ Statute, such other instruments as bilateral agreements based on the OECD Model Convention or the UN Model Convention, as well as other international agreements, can be used as a legal basis for the exchange of financial information. Therefore, the information contained in CRS has validity before the law since it is formed based on the legal sources of international treaties. [15].

The exchange of financial information for tax purposes is carried out through three forms: on-demand, spontaneous, and automatic forms. The OECD explains that the on-demand exchange of financial information is a request from the competent authority of a country to the competent authority of another country for information related to tax audits, inquiries, or investigations for a particular tax year [16]. Meanwhile, information is spontaneously exchanged when one of the competent authorities of the Participant Jurisdiction spontaneously obtains and forwards financial information without a request for tax purposes, attractive to the competent authority of the other Participant Jurisdiction at the time of the implementation of its tax laws. Automatic information exchange is performed with the approval from the competent authority of the Participant Jurisdiction for the type of financial information to be routinely exchanged, such as

*1800 A Proposition About Common Reporting Standard*

information on details of income, dividends, and royalties, including information about residence, purchase or sales of properties, or acquisition of assets [17].

As of March 2024, the OECD has reported more than 5400 bilateral exchange relations with more than 120 jurisdictions committed to the CRS. Indonesia is among the countries conducting bilateral exchange with approximately 202 jurisdictions through the activation of the CRS Multilateral Competent Authority Agreement (CRS MCAA) [18]. The identity of the account holder as the reported party includes the name, address, place/date of birth of the account holder, either on behalf of an individual or an entity, tax identification number (NPWP), and the jurisdiction of the account holder's domicile.

1. The identity of the Reporting Financial Institution includes the name and the special code of the Reporting Financial Institution.

2. The account data to be mandatorily reported includes the customer's account number, balance or account value, including the insurance contract value and its cash value, annuity value, or surrender value at the end of the calendar year or the reporting period, or during the account closure period. In the case of a Custodian Account, the data reported includes the amount of interest, dividends, and other income in respect of the assets in custody during the calendar year or reporting period, the proceeds of the sale or redemption of financial assets to the Reporting Financial Institution acting as a custodian, broker, nominee, or other agent. In the case of a Savings Account, which includes commercial accounts, checking accounts, savings accounts, certificates of deposit, investment certificates, debt certificates, and other instruments, the reported value is the balances and total interest income during the calendar year or reporting period. In the case of accounts other than those in the Custodian Account and Depository Account, the data reported includes the amount paid or credited to the account holder during the calendar year or reporting period, including the amount of each payment to the account holder in that period [19].

Since the OECD and G-20 Member States initiated the establishment of cross-border tax transparency in 2014, the standard for automatic exchange of financial information for tax purposes began to be implemented around September 2017. Four requirements must be met in the implementation of information exchange standards through CRS, which focus on the information to be exchanged, the legal basis of information exchange, the information exchange infrastructure, and the issue of confidentiality and integrity of the exchanged data. The OECD has also outlined how Participant Jurisdictions conduct the process of exchanging financial information for tax purposes.

The exchange of financial information through CRS begins with the identification process carried out by the Reporting Financial Institution on reportable accounts based on the financial data that the institution manages. The Reporting Financial Institution reports the financial data owned by individuals or entities domiciled in the Reporting Jurisdiction consistently against the financial data of new and existing customers, with the accounts either in the name of an individual or on behalf of an entity. The specifications of the financial data to be exchanged are contained in the CRS MCAA, bilateral agreements in the Competent Authority Agreement (CAA), or other international agreements. However, the financial data to be exchanged must, in principle, be able to identify the account owner and guarantee the quality and correctness of the information reported.

The OECD has technically developed a standard for the process of exchanging financial

information based on IT Platforms. The Reporting Financial Institution through the competent authority, automatically exchanges financial information with the CRS Scheme to allow the account data that must be reported to be automatically transmitted by the Reporting Financial Institution through the competent authority by using an IT Platform with the "XML" (extensible markup language) format known as CRS XML. The CRS XML reporting standard contains the Message Header, Person Party, Organization Party, and CRS Body. The names of the data sender and receiver, including the sending period, are contained in the Message Header to ease the identification of the source of information. The Person Party contains data on the name of the account owner/controlling person, place/date of birth, address, NPWP, and the nationality of the account owner/controlling person. The Organization Party contains data on the identity of the account holder from an entity, such as the name of the entity, address, NPWP (TIN), and Entity Registration Number, and its jurisdictional data. The CRS Body contains the name of the Reporting Financial Institution and the reported financial data, including account report, account number, and account holder or controlling person, both individual and organization. In addition, the CRS Body also contains the account balances, payment transactions in depository accounts, custodian accounts, debt or equity accounts, cash value insurance, and annuity contract accounts.

The process of exchanging financial information for tax purposes is carried out based on the principle of data confidentiality and security (data safeguard). This is done to maintain the commitment and data security of the Participant Jurisdiction over the implementation of financial information exchange through CRS. In addition, the principles of data confidentiality and integrity can encourage the countries' commitment to exchange financial information based on the principle of reciprocity to realize financial transparency for tax purposes. Therefore, it is necessary to assess the parties as the senders or receivers of CRS. The assessment is supervised by the Global Forum on Transparency and Exchange of Information for Tax Purposes (hereinafter referred to as the "Global Forum"). The Global Forum is responsible for ensuring that the standards of financial information exchange are met by Financial Institutions, and the Global Forum can recommend the elimination of Financial Institutions that do not meet such standards.

### **Function and Implementation of the Common Reporting Standard (CRS) in the Field of Taxation in Indonesia**

The Directorate General of Taxes, as the tax authority in Indonesia, implemented the Tax Amnesty program known as Tax Amnesty, which was imposed from July 1, 2016, to March 31, 2017. The achievements of the Tax Amnesty program in 2016 are presented in Table 1.

| Types of Taxpayers | Participant |                | Redemption payment (trillion Rp.) | Declared Assets (Trillions Rp.) |              |                     |        |
|--------------------|-------------|----------------|-----------------------------------|---------------------------------|--------------|---------------------|--------|
|                    | Amount      | Proportion (%) |                                   | Domestic Declaration            | Repatriation | Foreign Declaration | Amount |
| Corporate Taxpayer | 237.33      | 24,38          | 15,37                             | 626,15                          | 25,56        | 32,89               | 684,60 |
| a. S ME            | 111.415     | 11,45          | 0,69                              | 86,98                           | 0,01         | 0,62                | 87,61  |
| b. N on-SME        | 125.918     | 12,94          | 14,68                             | 539,17                          | 25,56        | 32,27               | 596,99 |

1802 A Proposition About Common Reporting Standard

|                     |         |        |        |          |        |          |          |
|---------------------|---------|--------|--------|----------|--------|----------|----------|
| Individual Taxpayer | 736.093 | 75,62  | 99,17  | 3.074,65 | 121,14 | 1.003,87 | 4.199,66 |
| a. SME              | 322.189 | 33,10  | 7,81   | 823,81   | 2,13   | 42,26    | 868,20   |
| b. Non-SME          | 413.904 | 42,52  | 91,36  | 2.250,84 | 119,01 | 961,61   | 3.331,46 |
| Amount              | 973.426 | 100,00 | 114,54 | 3.700,80 | 146,70 | 1.036,76 | 4.884,26 |

Table 1

Results of Tax Amnesty per Taxpayer Participation

The amount of taxpayers' assets outside the territory of Indonesia can be seen in the repatriation column, reaching IDR146.70 trillion, and in the foreign declaration column with IDR1,036.76 trillion, thus totaling IDR1,183.46 trillion.

In 2021, the Directorate General of Taxes also provided opportunities for taxpayers to voluntarily disclose their tax obligations through the Voluntary Tax Disclosure (PPS) program for the period of January to June 2022. The program was attended by 247,918 taxpayers, with the amount of Income Tax (PPh) payments on assets disclosure reaching IDR122.02 trillion. The total net assets disclosed amounted to IDR594.82 trillion, with the following details: domestic declarations and repatriation assets of IDR512.58 trillion, foreign declarations of IDR59.91 trillion, and investments of IDR22.34 trillion. The achievements of the Voluntary Tax Disclosure program can be seen in Table 2.

|  <b>PPS IN NUMBERS</b>        |   |
|---|---|
| <b>247.918</b><br>TAXPAYERS  | <b>309.050</b><br>CERTIFICATE  |
| Amount of Income Tax<br><b>Rp 61.01 T</b>   | Net Worth<br><b>Rp 594.82 T</b>   |
| Domestic Declaration & Repatriation<br><b>Rp 512.58 T</b>   | Investment<br><b>Rp 22.34 T</b>   |
| Foreign Declaration<br><b>Rp 59.91 T</b>  | Data as of June 30, 2022<br>at 24.00 WIB  |

Table 2

Voluntary Disclosure Program (PPS) in Numbers

The table shows that, until 2020, the data on taxpayers' assets that have not been disclosed abroad is not by the data on assets from the Foreign Declaration of IDR59.91 trillion. The data does not include the data on assets from Repatriation, which comprises taxpayers' assets overseas that are transferred into the Indonesian territory, be it invested or uninvested in business activities in the natural resources sector or renewable energy sector in Indonesia, and Government Securities.

The 2016-2017 data on the disclosure of Indonesian taxpayers' assets abroad, resulting from the Tax Amnesty program, amounting to IDR1,183.46 trillion, became empirical data on the need for international cooperation in taxation transparency through the exchange of financial information for tax purposes. Although Indonesia has activated the CRS-MCAA with more than 120 jurisdictions through a declaration on June 1, 2018, taxpayers have not fully implemented the taxation transparency. This can be proven by the results of the 2022 Voluntary Disclosure Program, which revealed the declaration of assets abroad of IDR59.91 trillion, excluding the data on the declaration of assets from repatriation. The principle of voluntary compliance contained in the self-assessment system as a tax system adopted in Indonesia apparently still leaves a problem of taxation transparency. Therefore, it is necessary to strengthen the implementation of international cooperation through the exchange of financial information for tax purposes.

The financial information transparency for tax purposes is implemented through the following arrangements:

a. Competent Authorities

The Minister of Finance and the Director General of Taxes are appointed as the competent authorities in Indonesia in conducting the exchange of financial information by the standards of financial information exchange in international taxation agreements. The exchange of financial information is conducted between the competent authorities in Indonesia and the competent authorities in the Participant Jurisdiction.

In the context of implementation, the Directorate General of Taxes is a competent authority that plays a crucial role in implementing financial transparency for tax purposes. This is because the provisions of laws and regulations on access to financial information give the Directorate General of Taxes the authority to obtain automatic access to financial information from Financial Services Institutions (LJK) with their activities in the banking, capital market, insurance, and other LJK sectors, as well as from other entities. The granting of authority to the Directorate General of Taxes is based on two purposes: the implementation of international taxation agreements and the implementation of the provisions of taxation laws and regulations.

The collection of financial information from abroad is performed by the Directorate General of Taxes to implement international agreements through the Common Transmission System (CTS) channel or other channels in accordance with the agreements in international laws that regulate the exchange of financial information for tax purposes. These international laws are contained in the Tax Treaty, Tax Information Exchange Agreement, Convention on Mutual Administrative Assistance in Tax Matters, Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information, Bilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information, Intergovernmental Agreement for Foreign Account Tax Compliance Act, or other bilateral agreements.

Not only from the OJK, the Directorate General of Taxes also receives financial information

from Financial Institutions through the EOI Portal or through non-electronic, direct submission to the Directorate General of Taxes. The financial information data is decrypted by the Directorate General of Taxes, reviewed for the information structure, and identified for implementing the provisions of taxation laws and regulations, or followed up for implementing international agreements. The Directorate General of Taxes submits financial information abroad; this is done to the financial information data that has been provided by the information structure to implement international agreements. Meanwhile, the financial information data other than that for the implementation of international agreements is identified by the Directorate General of Taxes to implement taxation legislation. The data that has been identified is used by the Directorate General of Taxes for the supervision of taxpayers' compliance with tax obligations as well as for the conduct of tax audits, tax collection, examination of preliminary evidence, tax investigations, and settlement of tax legal remedies.

b. Reporting Financial Institutions

Reporting Financial Institutions are financial institutions domiciled in the Participant Jurisdiction that are obliged to report mandatory financial information. The implementation of financial information transparency in Indonesia is sourced from Reporting Financial Institutions comprising the Financial Services Institutions (LJK), other Financial Services Institutions, and other Entities. LJK is an institution engaged in Banking, Capital Market, Insurance, Pension Funds, Financing, and other businesses. Other LJKs are engaged in pawnshop, guarantee, and financing businesses, including management of public funds such as social security, pension, and welfare program organizations. Meanwhile, Other Entities include legal entities other than LJK, according to the information exchange standards contained in international agreements. These Reporting Financial Institutions must submit financial information to the Directorate General of Taxes.

In addition, there are Financial Institutions that are not required to report financial information, namely Non-Reporting Financial Institutions. These financial institutions include government entities, international organizations, or central banks that do not receive payments from commercial financial activities, and pension institutions, including a Broad Participating Retirement Fund, a Narrow Participation Retirement Fund, which includes pension funds belonging to government entities, international institutions, or central banks. Other Non-Reporting Financial Institutions include Exempt Collective Investment Vehicles, Trusts, and other low-risk entities.

c. Reporting

The commitment to financial information transparency in Indonesia is realized by requiring Reporting Financial Institutions to report financial information to the Directorate General of Taxes to implement tax obligations or tax interests. Reporting Financial Institutions are required to register with the Directorate General of Taxes before reporting financial information.

To implement international agreements, LJK, other LJK, and other Entities in Indonesia as Reporting Financial Institutions are obliged to report financial information for each reportable account to the Directorate General of Taxes either through the OJK or directly to the Directorate General of Taxes. The reportable accounts should have passed an identification process by the Reporting Financial Institution related to the ownership of financial accounts through self-certification documents or other evidentiary documents, determination of the country of domicile of the account holder (reportable person/controlling person), and the amount of account

balances/aggregate of account balances in United States dollars. The Reporting Financial Institution is required to report any financial account held by an individual or entity from the Participant Jurisdiction, except for financial accounts that have an aggregate balance or value of up to USD 250,000.00 managed by the Reporting Financial Institution as of June 30, 2017. The report contains the identity of the Reporting Financial Institution, the identity of the financial account holder along with the financial account number and the balance or value of the financial account, including the cash value (surrender value) in the insurance contract, and the active status of the account, as well as the income related to the financial account.

For the implementation of tax purposes, LJK, other LJK, and other Entities in Indonesia as Reporting Financial Institutions are obliged to report financial information automatically to the Directorate General of Taxes with an electronic mechanism through the EOI Portal developed by the Directorate General of Taxes. If there are problems in reporting through the electronic mechanism, the Reporting Financial Institution can report financial information with a non-electronic mechanism directly to the Directorate General of Taxes. The submission through a non-electronic mechanism uses security or encryption provided by the Directorate General of Taxes in storage media (CDs, flash disks, or other storage media).

d. The Law of Evidence for Taxation Criminal Offenses

The law of evidence is provisions related to legal evidence, physical evidence, collection and acquisition of evidence, as well as the presentation of evidence in the court, the probative force of evidence, and the burden of proof. Why is the law of evidence needed? In principle, evidence has various forms, such as objects or means used, testimonies, statements, or anything related to an event. Ian Dennis states that many people use evidence to investigate a fact in different ways and judgments. According to Dennis, this has encouraged the arrangement of uniform procedures in handling evidence, thus emphasizing the need for the law of evidence.

Dennis's statement is in line with Wigmore's view on the existence of the law of evidence that continues to function as long as the court continues to be a logical means to find the truth about the occurrence of legal disputes. Wigmore states that there are two principles of proof, including proof in the general sense and admissible proof (admissibility). In a general sense, proof focuses on the process of thinking about a matter in a logical way (ratiocinative), which, in the context of criminal law, is used to assure the evidence presented at the trial. Admissible proof (Admissibility) is a procedural provision stipulated by law as a guideline for the court. Wigmore emphasizes that admitted evidence is the quality between relevance to the value of proof and the strength of proof. Wigmore's view is supported by McCormick, who states that the law of evidence is a system and standard of rules that govern the admissibility of evidence in a trial.

These views provide logical consideration for the arrangement of evidence in the law of evidence, which is qualified into procedural law. In the context of criminal law, the law of evidence in criminal cases is contained in the criminal procedure law, or procedural law, used to implement criminal law or substantive law. Criminal procedure law in the doctrine of criminal law division is called formal criminal law, while criminal law or substantive law is called material criminal law. The establishment of formal criminal law aims to seek and find the truth as the basis for the judge's decision, and is used to implement the decision.

The law of evidence in Indonesia is regulated in the Criminal Procedure Code, or KUHAP, as a codification of criminal procedure law to implement material criminal law codified in the Criminal Code or KUHP. The establishment of Criminal Procedure Code promulgated through

Law No. 8 of 1981 as then stated by the Minister of Justice is to seek and obtain or at least to approach the material truth, which is the most complete truth, by the criminal procedure law honestly and appropriately to find the perpetrators to be held criminally accountable.

Tax criminal law is contained, among others, in Law No. 6 of 1983 on General Provisions and Tax Procedures and their amendments. A quo law regulates not only material criminal law but also formal criminal law in taxation. Material criminal law is regulated in Chapter VIII of the law on criminal provisions, with the regulations comprising Article 38, Article 39, Article 39A, Article 40, Article 41, Article 41A, Article 41B, Article 41C, and Article 43. Meanwhile, formal criminal law in taxation, according to a quo law, is subject to the Criminal Procedure Code except for those specifically regulated in a quo law. Therefore, the law of evidence in taxation criminal cases systematically-mechanistically refers to the Criminal Procedure Code and Law No. 6 of 1983 on General Provisions and Tax Procedures and their amendments.

The Criminal Procedure Code regulates evidence in legal evidence (*alat bukti*) and physical evidence (*barang bukti*). Provisions on legal evidence in expressive verbis are stated in Article 184 of the Criminal Procedure Code as witness statements, expert statements, letters, clues, and statements of the defendant. Witness statements are what witnesses state in a trial. In this case, a witness is a person who is able to provide information for the investigation, prosecution, and trial of a criminal event that he did not always hear himself, see himself, or experience himself. This means that the fundamental part of witness statements is the relevance of the testimony to the alleged crime.

A letter or a document is written evidence because it contains understandable reading marks to convey a person's thoughts, which is used as proof. Such evidence is documentary evidence used to prove the truth of an event. This is explained by the explanation of Glover and Murphy, who state that the main characteristic of a document is that it must have content and be used to convey information. Jefferson L. Ingram also states that a document is any message that is expressed, described, written, and stored through letters, numbers, or signs that are meant to prove something. According to Ian Dennis, three aspects make documents become documentary evidence: first, the nature and authenticity of the document, second, proof of the contents of documents, and third, proof of the execution of documents.

The Criminal Procedure Code does not define a letter or a document (documentary evidence) but outlines the qualifications of a letter as legal evidence. As legal evidence, a letter or a document must be made under an oath of office or strengthened by an oath. Such documentary evidence is independent legal evidence (*bewijsmiddelen*). However, a letter or a document that is not made under an oath of office or strengthened by an oath can still be used as legal evidence if the content of the letter is related to other legal evidence.

Clues are legal evidence whose assessment of the strength of proof is performed by the Judge. The Criminal Procedure Code emphasizes that clues as legal evidence can only be obtained from the compatibility of the legal evidence from witness statements, letters, and statements of the defendant. According to the Criminal Procedure Code, clues are acts, events, or circumstances that are compatible with each other and indicate that a crime has been committed, including indicating the perpetrator. The fundamental aspect of clues is that there is a compatibility among the witness statements, the letter, and the statements of the defendant. Therefore, if the three pieces of evidence stand independently of each other, the judge can use them to increase his confidence based on the compatibility of the three legal evidence.

The statements of the defendant are also independent legal evidence, although a defendant basically has the right to reject evidence that incriminates him (privilege against self-incrimination) and the right to remain silent. The principle of self-incrimination and the right to remain silent give the defendant the privilege to refuse to give incriminating evidence. This is because the burden of proof is on the investigator, not on the defendant, to prove his charges according to the principle *actori incumbit onus probandi*, or the burden of proof principle, which means that the burden of proof is on the accuser. This principle is also recognized by the Criminal Procedure Code, which states that the statements of the defendant alone are inadequate to prove the defendant's guilt. These statements must be supported by other legal evidence.

Because the Criminal Procedure Code is a reference in enforcing criminal law in taxation based on Law No. 6 of 1983 on General Provisions and Tax Procedures and their amendments, the provisions of legal evidence and physical evidence in proving criminal offenses in taxation also refer to the provisions of legal evidence and physical evidence as referred to in the Criminal Procedure Code. In the event of a criminal offense in taxation, the process of enforcing criminal law in taxation is guided by the Criminal Procedure Code and Law No. 6 of 1983 on General Provisions and Tax Procedures and their amendments.

### **Proposition about Common Reporting Standard (CRS) as Evidence in the Law of Evidence in Taxation Criminal Offenses**

"*Probationes debent esse evidentes, (id est) perspicuae et faciles intelligi*"

In principle, this postulate can be interpreted as that evidence must be clear, explicit, and easy to understand. This is because evidence, as stated by Ian Dennis, is information that provides a basis for belief in the truth of a fact or series of facts. Facts or a series of facts based on such evidence become the object of proof. Ian Dennis classifies these series of facts into facts in issue and evidentiary facts. Facts in issue, or *factum probandum* in Latin, mean facts that must be proven, while evidentiary facts or *factum probans* are supporting facts for the proven facts.

In the context of taxation, global financial information transparency initiated by the OECD and G-20 Member States has given birth to the exchange of financial information through the Common Reporting Standard (CRS). The exchange of financial information is automatically performed based on international treaty law from the competent authority in a particular country to the competent authority in the destination country (residence country). The exchange of financial information is carried out online based on the IT Platform with the format "XML" (extensible markup language), also called CRS XML, through the Common Transmission System (CTS) channel or other channels by agreement in international treaties.

The financial information data in CRS resulting from the information exchange with the competent authority in the participant jurisdiction is collected by the Directorate General of Taxes for tax purposes. The financial information data is a database used by the Directorate General of Taxes for the supervision of taxpayers (including for extensification activities, tax intelligence, or assessment), tax audits, tax collection, preliminary evidence examinations, tax investigations, and settlement of tax legal remedies. The Directorate General of Taxes uses the financial information in CRS to compare it with the tax returns (SPT) submitted by taxpayers or with other tax obligation data.

Wigmore explains the proposition about facts as evidence in the relationship between the fact in issue and the evidentiary fact, which involves several questions, including the question of "What facts may be presented as evidence?" Wigmore states that the question relies on the procedural

provisions in the law of evidence. Therefore, the procedural provisions in the law of evidence provide the basis for the relationship between the fact in issue and the evidentiary fact, and such a proposition is then used to draw (inference to the application of the law).

The law of evidence in Indonesia in the context of tax criminal law refers to the Criminal Procedure Code and Law No. 6 of 1983 on General Provisions and Tax Procedures and their amendments. The legal provisions of a quo proof require the application of criminal law in taxation (*rechtstoepassing*) by the judge based on at least two valid legal evidence to allow the judge to achieve confidence in the truth of a criminal tax offense, and the defendant can, therefore, be held criminally liable. To increase the judge's confidence, the compatibility between the legal evidence based on a quo provision can also be supported by physical evidence. Therefore, the law of evidence by the quo provisions in expressive words regulates legal evidence and physical evidence.

About the law of evidence in taxation criminal offenses in Indonesia, CRS is written information that can be evidence in the form of documents, as explained by Glover and Murphy, as well as Jefferson L. Ingram. However, three aspects need to be traced to allow CRS as documentary evidence to provide facts that can prove taxation criminal offenses by referring to what has been explained by Ian Dennis: first, the nature and authenticity of CRS, second, proof of the content of CRS, and third, proof of the implementation of CRS.

Like documentary evidence in paper form, the principle of authenticity of electronic evidence is fundamental to making electronic evidence reliable in proving an event. However, proving the authenticity of electronic evidence is different from the authenticity of physical evidence in the form of paper documents. George L. Paul explains that the authenticity of information in paper documents is influenced by physical changes in the object material of the paper documents, making the authenticity of the documents depend on physical examinations, while the authenticity of electronic evidence is not affected by changes in the material of the information storage media because the object of electronic evidence is the information *per se*.

Integrity, according to Paul, refers to the assurance that the information in electronic evidence does not change over time, as when the electronic evidence is first created or acquired. Paul explains that to test the integrity of electronic evidence, it can be compared with other relevant evidence (circumstantial evidence) or tested in an integrity testing system such as an Audit Log and a hash function. Such a testing system involves integrity testing through comparisons of the electronic evidence fingerprints (digital fingerprint) at the time the data is obtained with the electronic evidence fingerprints at the time of use in the evidentiary process.

As previously described, CRS is transmitted online in an IT Platform with "XML" format through the Common Transmission System (CTS) channel. Referring to what George L. Paul explains, the authenticity of the information in CRS can be seen in the Message Header data, which contains information about the competent authority in the Participant Jurisdiction that sends financial information through CRS to the Directorate General of Taxes. The information contained in the Message Header for authentication includes the name and identity of the competent authority in the Participant Jurisdiction, the Transmitting Country Code, the Receiving Country Code, and the Contact Number. In addition to the Message Header, CRS authentication can be seen in the CRS Body data, which contains data from the Reporting Financial Institution or the competent authority in the Participant Jurisdiction that sends the financial information through CRS. Therefore, CRS authentication in the context of authorship can be traced through the Directorate General of Taxes as the party receiving financial

information and the competent authority in the Participant Jurisdiction, and the Reporting Financial Institution as the party reporting the financial information through CRS.

The integrity of the information in CRS can be referred to in the encrypted CRS data sent by the Reporting Financial Institution or competent authority in the Participant jurisdiction to the Directorate General of Taxes through the Common Transmission System (CTS) or other channels, according to international agreements. The processing of encrypted CRS data is performed by the Directorate General of Taxes by decrypting CRS data using a decryption password sent by the Reporting Financial Institution or the competent authority of the Participant Jurisdiction. The OECD even strictly states that the method of transmission and encryption of financial information exchange must meet minimum standards for data confidentiality and security to prevent the information from being disclosed to unauthorized persons and from being altered. Therefore, CRS strongly supports the principle of data integrity in the form of confidentiality and data security to ensure the reliability of financial information exchanged for the sake of financial transparency for tax purposes, based on international agreements.

About the content stated by Ian Dennis, CRS Body provides financial information data qualified as an account that is required to be reported. The standard content of the financial information exchanged between Indonesia and the Participant Jurisdiction is sourced from international agreements through the activation of the CRS Multilateral Competent Authority Agreement (CRS MCAA). Therefore, the content of CRS can be considered as the implementation of legal orders sourced from international agreements for the sake of financial information transparency for tax purposes. Therefore, the content of the CRS can provide a factual description of the financial information owned by the reported party.

Requests for information to prove the implementation of the contents of CRS can be made directly to the Directorate General of Taxes, either in the form of testimony as a witness or information in the form of a written statement made based on the oath of office. Requests for information to the competent authority in the Participant Jurisdiction and the Reporting Financial Institution can be made through the request mechanism (on request) by sending a letter or a document requesting information about the financial information that must be reported along with the source of document or supporting documents that can prove the accuracy of the implementation of the CRS content. These source documents or supporting documents are qualified as evidentiary facts or *factum probans*, as explained by Ian Dennis. These evidentiary facts are crucial to prove the truth of the content of the CRS document as facts in issue or *factum probandum*.

In the case of taxation criminal offenses, the proposition about CRS as an electronic document that has met the qualifications as documentary evidence, as explained by Ian Dennis, is more of CRS as legal evidence. This is because the criminal procedure law in taxation, which refers to the Criminal Procedure Code and Law No. 6 of 1983 on General Provisions and Tax Procedures and their amendments, has not regulated Electronic Evidence as independent evidence (*bewijsmiddelen*). In the doctrinal context, letters are written evidence, which is then normatively regulated in the criminal procedure law in Article 187 of the Criminal Procedure Code (KUHP) as letters made on oath of office or corroborated by oath and other letters that are supported by other valid legal evidence.

However, in international agreements, it is necessary to reformulate the standards for the automatic exchange of financial information for tax purposes, in which any financial information exchanged must be made based on an oath of office or corroborated by an oath (under oath). The

oath is needed to guarantee the reliability of financial information in CRS through holistic thinking by approaching the absolute truth. In addition, the fundamental reason for the need for an oath is that lying under oath is universally a crime, known as perjury. Therefore, CRS in an electronic document printed as a document can meet the qualification as letter legal evidence by the Criminal Procedure Code by considering that the CRS is made on oath of office or corroborated by an oath or at least as another letter that needs to be proven by the testimony of the competent authority who handles CRS and by the expert's statements.

If the CRS cannot meet the qualifications as letter legal evidence according to the Criminal Procedure Code, the CRS printed as a document can at least be used as physical evidence that can be subject to confiscation to strengthen the proof by the Investigator and Public Prosecutor as well as to increase the Judge's confidence in deciding taxation criminal cases. The physical evidence is included as factum probans or evidentiary facts, which must be cross-examined with other legal evidence to obtain a match of facts to allow the physical evidence to be reliable to prove the facts at issue, which are the criminal taxation offenses.

## **Conclusion**

The Common Reporting Standard (CRS) is the implementation of the standard for the automatic exchange of financial information based on international agreements in the context of financial information transparency for tax purposes. The international agreement is the basis for the Participant Jurisdiction to report the financial information of each account obliged to be reported (Reportable Account). The financial information contains at least information about the identity of the account holder or controlling person, the identity of the Reporting Financial Institution, and Account Data, including the customer's account number and account balance.

The competent authority in each Participant Jurisdiction exchanges financial information that must be reported in the form of CRS through the Common Transmission System (CTS) channel or other channels by international agreements. The exchange of financial information is carried out online based on the IT Platform with the format "XML" (extensible markup language), making CRS an electronic document. In the event of taxation criminal offenses, the electronic document is most effective if it is printed as a document to allow it to be used as evidence in proving taxation criminal offenses.

In the criminal procedure law in taxation in Indonesia, CRS as documentary evidence is more of legal letter evidence because the criminal procedure law has not regulated Electronic Evidence as independent legal evidence. However, it needs to be reformulated in international agreements to make CRS based on an oath of office or strengthened by oath (under oath). This is used to ensure the reliability of the content of CRS through holistic thinking by approaching the absolute truth.

Three factors can determine CRS as evidence to prove taxation criminal offenses: first, the nature and authenticity of CRS; second, proof of the content of CRS; and third, proof of the implementation of CRS. The nature of CRS as electronic documents requires testing for authenticity and integrity. Authenticity or authentication can be traced through the identities of the parties involved in the exchange of financial information through the competent authority in the Participant Jurisdiction or the Reporting Financial Institution. The integrity of CRS can be traced from the implementation of the principle of confidentiality and security of CRS data through the implementation of CRS data encryption when transmitted through the Common Transmission System (CTS) channel or other channels in accordance with international

agreements. The integrity of CRS can also be tested using the help of Digital Forensic disciplines through the management of audit logs and hash functions by comparing the fingerprint of electronic evidence at the time of data acquisition with the fingerprint of electronic evidence at the time of use in the evidentiary process. The content of CRS can be traced from the CRS Body section, which provides financial information data as reportable accounts to provide a factual overview of the financial information owned by the reported party. The implementation of the content of CRS must be further proven through the testimony of the parties involved in the exchange of information as relevant evidence (evidentiary facts) to prove the truth of the content of the CRS.

From the description above, CRS in the law of evidence in taxation criminal offenses is more of a legal letter evidence. However, if the CRS cannot meet the qualifications as legal evidence, the CRS can at least be used as physical evidence that can be subject to confiscation to strengthen the proof by the Investigators and Public Prosecutors as well as to increase the Judge's confidence in making decisions for criminal taxation cases. Therefore, clear and explicit CRS as evidence that is easy to understand is fundamental in the law of evidence for criminal taxation offenses.

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1812 *A Proposition About Common Reporting Standard*

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