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Harmonizing the Settlement of Authority Dispute Between Government Institutions in Indonesian Tax Law

Agus Suharsono✉
BDK Yogyakarta, BPPK, Ministry of Finance – Indonesia

Abstract
Governmental institution obligatorily delivers taxing information to Tax Directorate General constituting an administrative law domain, but the imposition of taxing criminal sanction is considered as less appropriate. Settlement of authority dispute between government institutions in Indonesian tax law was not harmonious as it was not based on Governmental Administrative Law. It could be seen that Governmental Administrative Law has not been included into Academic Draft of Tax General Provision and Procedure Law as the material of substantive evaluation so that the settlement of authority dispute has not considered yet the provision of Article 16 or article 21 of Governmental Administrative Law, but taxing criminal law was imposed directly. This study recommended the Governmental Administrative Law to be included into Academic Draft of Tax General Provision and Procedure Law as the material of substantive evaluation to enable the settlement of authority dispute between governmental institutions based on administrative law.

Keywords: Authority Dispute, Taxing Criminal Law, State Administrative Law.

Abstrak
Instansi pemerintah berkewajiban menyampaikan informasi perpajakan kepada Direktorat Jenderal Pajak merupakan ranah hukum administrasi, namun dikenakan sanksi pidana perpajakan, hal ini dirasa kurang tepat. Penyelesaian sengketa kewenangan antar instansi pemerintah dalam hukum pajak Indonesia tidak harmonis karena tidak berdasarkan Undang-Undang Administrasi Pemerintahan. Dalam Naskah Akademis Rancangan Undang-undang Ketentuan Umum dan tata Cara Perpajakan diketahui belum dimasukkan Undang-Undang Administrasi Pemerintahan sebagai bahan evaluasi substansi sehingga penyelesaian sengketa kewenangan belum mempertimbangakan ketentuan Pasal 16 atau Pasal 21 Undang-Undang Administrasi Pemerintahan, tetapi langsung hukum dikenakan pidana perpajakan. Disarankan agar Naskah Akademis Rancangan Undang-undang Ketentuan Umum dan tata Cara Perpajakan masukkan Undang-Undang Administrasi Pemerintahan sebagai bahan evaluasi substansi agar penyelesaian sengketa kewenangan antar instansi pemerintah diselesaikan berdasarkan hukum administrasi.

Kata kunci: *Sengketa Kewenangan, Hukum Pidana Perpajakan, Hukum Administrasi Negara.*

Introduction

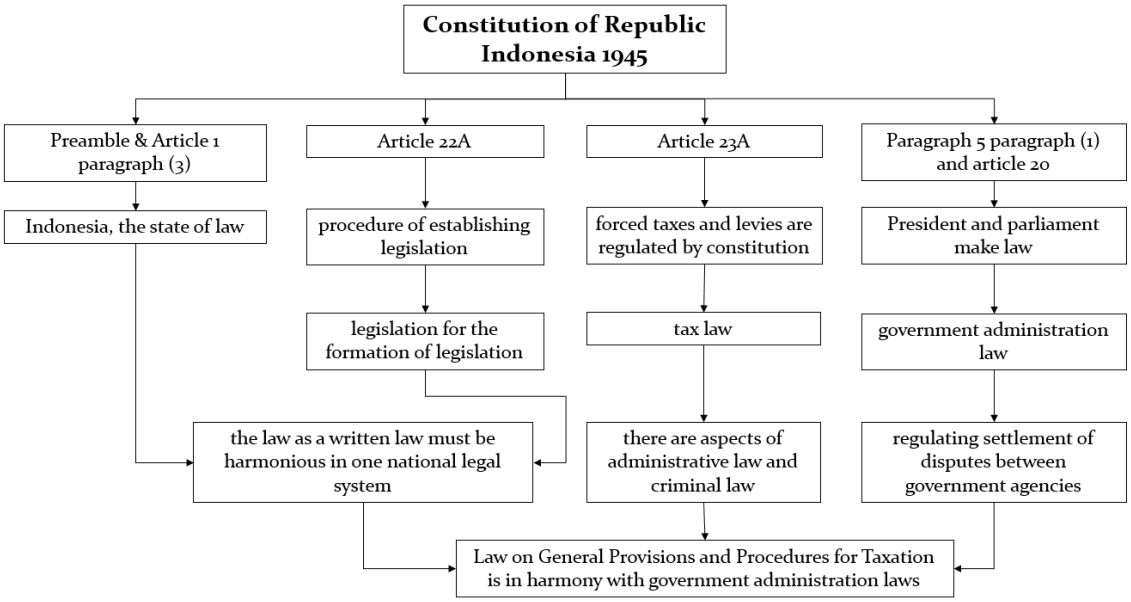
The opening of the 1945 Constitution of Republic of Indonesia (UUD NRI 1945) states "... then the Indonesian Independence was formulated in an Indonesian State Constitution ..." the phrase implies that Indonesia is a legal state. In the explanation of the 1945 Constitution it is stated that Indonesia is based on law *(rechtsstaat),* not based on mere power *(machtsstaat)*. The results of the amendment eliminated the explanation of the 1945 Constitution and included it in Article 1 paragraph (3) of the 1945

✉ Corresponding author: gusharpramudito@gmail.com

Constitution of the Republic of Indonesia (UUD NRI 1945) stipulating that the Indonesia is a state of law. Article 22A of the 1945 Constitution of the Republic of Indonesia stipulates that further provisions concerning the procedure for the establishment of laws are regulated by law, in this case is that Law Number 12 of 2011 concerning Establishment of Legislation.

Considering the law states that in order to realize Indonesia as a legal state, the state is obliged to carry out national law development carried out in a plan, integrated and sustainable manner in the national legal system that guarantees the protection of the rights and obligations of all Indonesian people based on the 1945 Constitution of the Republic of Indonesia. Article 23A UUD NRI 1945 regulates that other taxes and levies that are forced for state purposes are regulated by law. Tax can be forced, but forcing it should be based on the law, the tax law that applies as a formal law is Law Number 6 of 1983 concerning General Provisions and Tax Procedures which have experienced four times the last amendment was amended by the Republic Act Indonesia Number 16 of 2009 (Law on General Provisions and Procedures for Taxation).

Administrative law in Indonesia includes: 1) procedural law or formal law is Law Number 5 of 1986 concerning State Administrative Courts, as amended by Law Number 9 of 2004, most recently amended by Law Number 51 of 2009; 2) material law is Law Number 30 of 2014 concerning Government Administration. Tax law is one of the national legal sub-systems that must be harmonious with other legal sub-systems. There are provisions in the General Provisions and Tax Procedures Act which are indicated as being not harmonious as a national legal system, namely: 1) Article 35A paragraph (1) which stipulates that every government agency, institution, association, and other parties must provide data and information related to taxation to the Directorate General of Taxes whose provisions are regulated by Government Regulation; 2) Article 41C which regulates that every person who intentionally does not fulfill obligations, intentionally causes the fulfillment of the obligations of officials and other parties, or intentionally does not provide data and information requested by the Director General of Taxation is a tax criminal offense and receives criminal sanctions. Government agencies as stipulated in Article 35A paragraph (1) of the General Provisions and Tax Procedures Act are subject to administrative law, the legal event is that the legal relationship between government agencies and the Directorate General of Taxes must get into the realm of administrative law, so that if there is a violation of law, the settlement is also based on the Government Administration Act first, indirectly criminal law. This problem can be described as follows.



The imposition of criminal sanctions on government agencies as stipulated in Article 41C of the Law on General Provisions and Procedures for Taxation needs to be assessed from the point of view of a unified Indonesian legal system that must be harmonious. This problem will be analyzed in this paper.

Discussion

Tax Law Position in the National Legal System

The whole regulation in society is a legal system that does not stand alone, but has a relation to each other, as a consequence of the relation between aspects of life in society **(Harjono, 2009).** To realize effective law in a legal system, it can be started from legal development that involves public participation and becomes a guideline for mandate holders to realize it **(Edorita, 2010).** Laws as a form of applicable law must fulfill four conditions, namely: 1) philosophical in accordance with the system, theory, principles, functions and legal objectives; 2) politics which are made by an independent state government and not a colonial heritage; 3) the juridical system which fulfills the procedures for making laws and the order of regulations; and 4) sociologists who are in accordance with the aspirations of the community so that the enactment is accepted and obeyed by the community **(Fendri, 2011).** The Law on General Provisions and Tax Procedures regulates administrative law which must be in accordance with the rules of administrative law, even though it is related to criminal law, but still in a national legal system that must be harmonious with the method of creating and material content.

Fuller proposed eight principles called the principles of legality regarding a legal system, namely: 1) must contain regulations, 2) the regulation was announced, 3) the rules may not apply retroactively, 4) formulated in an understandable formula, 5) may not contain regulations - conflicting regulations, 6) contain demands that exceed what

can be done, 7) often changed so that people lose their orientation, and 8) there is a match between the regulations and their implementation. Principles of legality are more than just a requirement for a legal system, but provide qualifications for a legal system that contains morality. Failure to create a system does not only give birth to a bad legal system, but cannot be called a legal system at all **(Rahardjo, 2006).** Actually the more principles implemented in making a law will further increase the compliance of citizens to implement it **(Murphy, 2005)**. Synchronization of legislation can use a combination of stufentheorie from Hans Kelsen that the law is tiered, layered, and hierarchical vertically but also should not conflict as the principles of legality of Fuller (**Sibarani, 2014**). The principle in accordance with this paper is the principle that a regulation must not contain conflicting regulations or harmonization of laws, because regulations that are not harmonious will be difficult to implement and potentially create injustice

The dynamics of legal norms is a necessity, but must be in a harmonious national legal system. Harmonization of law can create a national legal system with three components, namely legal substance, legal structure, and legal culture and can accommodate demands for legal certainty and justice, while also avoiding overlapping implementation **(Slamet, 2004)**. Harmonization of law formation aims to make adjustments to the principles, systems and legal norms to maintain harmony and prevent overlapping of regulations with other regulations. This type of harmonization includes hierarchical vertical harmonization and horizontal harmonization of equal regulations **(Budoyo, 2014)**. Harmonization of the law is important because there are often differences in the interpretations of the parties in carrying out a regulation which creates a dispute over government policies that must be resolved. Harmonization of regulations must be understood as a sustainable way with progressive and open thinking **(Sitorus, 2018).** Tax administration legal cases are part of administrative law that must be resolved with the principles of administrative law in force in Indonesia, one of which is the harmonization of laws. The harmonization of laws starts with the preparation of Academic Scripts.

The normative provisions on the harmonization of laws stipulated in Law Number 12 of 2011 concerning the Establishment of Legislation Regulations are as follows. First, Article 46 paragraph (2) regulates that harmonization, rounding, and consolidation of the conception of the Draft Law originating from the House of Representatives are coordinated by instruments of the House of Representatives that specifically deal with legislation. Second, Article 47 paragraph (3) regulates that harmonization, rounding, and strengthening the conception of the Draft Law originating from the President are coordinated by the minister who organizes government affairs in the legal field. Third, Article 48 paragraph (1) paragraph (2) paragraph (3) and paragraph (4) stipulates that the Draft Law from the Regional Representative Council is submitted in writing by the leadership of the Regional Representative Council to the leadership of the House of Representatives and must be accompanied by an Academic Paper. The Chairperson of the House of Representatives conveyed to the House of Representatives a special

instrument dealing with the field of legislation for harmonization, rounding up and strengthening the conception of the Draft Law and could invite the leadership of the Regional Advisory Council who had the task of drafting the proposal. The completeness means convey a written report regarding the results of harmonization to the leadership of the House of Representatives for further announcement at the plenary meeting. Fourth, in Chapter III of the Academic Paper the Draft Law is discussed about the evaluation and analysis of relevant laws and regulations which contain: 1) existing legal conditions, 2) linkages between new regional laws and regulations with other laws and regulations, 3) vertical and horizontal harmonization, and 4) the status of existing legislation, including legislation that was revoked and declared invalid and legislation that still applies because it does not conflict with new laws or regional regulations . This analysis can illustrate the level of synchronization, harmonization of existing legislation and the position of laws and regional regulations to avoid overlapping arrangements. The provision stipulates that the Draft Law originating from the House of Representatives, the President, the Regional Advisory Council needs to be carried out vertically and horizontally harmonization which is discussed, evaluated, and analyzed in the Academic Paper of the Draft Law.

According to Adam Smith, to make the tax regulation fair, it must fulfill the following requirements: 1) equality and equity, equality means that the same conditions or people who are in the same situation must be subject to the same or non-discrimination tax. Equity or propriety which according to Sir Paul Vinogradov has a function as jus adjuvandi: to adjust the law, jus supplendi: to increase the law, and jus corrigendi: to correct the law; 2) certainty or legal certainty that depends on the composition of the sentence in the law so that it must be clear, firm, and not ambigous; 3) convinience of payment or tax must be collected at the right time; and 4) economics of collection or tax collection costs must be relatively small compared to tax debt **(Soemitro, 1990).**

The Law on General Provisions and Tax Procedures as formal tax law in addition to regulate the tax law itself also regulates tax administration law and tax criminal law. Administrative violations can only be subject to administrative sanctions, but can also be subject to criminal sanctions and then subject to administrative sanctions, namely the Underpayment Tax Assessment Letter as referred to in Article 13 paragraph (5) or the Additional Underpayment Tax Assessment Letter as referred to in Article 15 paragraph (4) Law on General Provisions and Tax Procedures. Administrative sanctions and tax criminal sanctions are intended so that taxpayers obediently fulfill their tax obligations because of the dominant tax revenue in state revenues. Some previous studies have shown that tax justice has a positive and significant effect on compliance **(Siahaan, 2012).** Trust in the government through perceptions of tax fairness has a positive and significant effect on tax compliance **(Guzel, 2019).** Procedural justice and public trust affect tax compliance **(Sellywati & Faizal, 2017).** Compliance with taxpayers is influenced by feelings of disagreement with regulations, this has implications for

regulators making fair rules and not only containing formal regulations, but also involving the generation, expression, and emotion of taxpayers (Murphy K., 2008). Tax sanctions can activate an attitude of non-compliance with people who have strong intentions to comply with tax regulations **(Mohdalia, 2014).** Tax awareness, tax authorities, tax law, and rational attitudes proved to have a positive effect on tax compliance **(Siat, 2013).** Tax collection can run effectively requiring information in the form of potential tax data, potential entities, potential taxpayer classifications, monitoring systems, and imposing sanctions (Bird, 2004). Based on previous research it is known that taxpayer compliance is influenced by justice, regulations in order to create legal certainty, and sanctions. Taxpayers who do not report their tax according to the provisions will be billed by the tax authority by issuing tax assessment letters along with their sanctions.

Article 12 paragraph (3) of the General Provisions and Tax Procedures Act stipulates that if the Director General of Taxes receives proof of the amount of tax payable according to an invalid Notification Letter, the Director General of Taxes determines the amount of tax payable. It means that the tax authority can issue tax assessment letters to collect tax amounts that are not reported by taxpayers, while based on data, there are still taxes that have not been reported in accordance with applicable regulations. Taxation data has an important role in the effectiveness of tax collection, so government agencies are required to provide tax data to the Director General of Taxes as stipulated in Article 35A of the General Provisions and Taxation Procedures Act. Government agencies that do not fulfill the obligation to provide data are subject to criminal sanctions. Based on legal subjects, legal events, and criminal sanctions can be presented as follows.

<table>
<tr><th colspan="2">Subject of Law</th><th rowspan="2">Legal Case</th><th rowspan="2">Sanction</th></tr>
<tr><th>Article 35A</th><th>Article 41C</th></tr>
<tr><td rowspan="3">Paragraph (1): every government agency, institution, association and other party</td><td>Paragraph (1): every person</td><td>intentionally not fulfilling the obligations referred to in Article 35A Paragraph (1)</td><td>Criminal confinement for at most one year or a maximum fine 1.000.000.000 IDR (one billion rupiahs)</td></tr>
<tr><td>paragraph (2): every person</td><td>intentionally causing the fulfillment of obligations of officials and other parties as referred to in Article 35A Paragraph (1)</td><td rowspan="2">a maximum of ten months confinement or a maximum fine 800.000.000 IDR (eight hundred million rupiahs)</td></tr>
<tr><td>Specifically not mentioned</td><td>Paragraph (3): every person</td><td>intentionally not providing data and information requested by the Director General of Taxes as referred to in Pasal 35A ayat (2)</td></tr>
</table>

The follow-up of Article 35A of the General Provisions and Tax Procedures Act is Government Regulation Number 31 of 2012 concerning Giving and Collection of Data and Information relating to Taxation which regulates government agencies that are required to provide tax data to the Directorate General of Taxes as follows: 1) government agencies covering 8 echelon I in Ministry of Finance, 9 echelon I in 5 ministries, 15 ministries, 34 Provincial Governments, and 34 District / City Governments, 2) Institutions which include 1 state institution namely Bank Indonesia, and 9 non-ministerial government institutions , 16 companies, 3) Associations 5, and 4) Other parties namely 23 Banks / Credit Card Organizers.

Provisions of Article 35A of the Law on General Provisions and Procedures for Taxation have been reduced by the enactment of Law Number 9 of 2017 concerning Determination of Government Regulations to Change Law Number 1 of 2017 concerning Access to Financial Information for the Purposes of Taxation into Law. Article 8 number 1 of Law Number 9 of 2017 stipulates that at the time of the Amendment to the Government Regulation the Act is valid on May 8th, 2017 then Article 35 paragraph (2) and Article 35A of the Law on General Provisions and Procedures for Taxation are declared invalid as long as relating to the implementation of access to financial information for tax purposes. Based on these provisions, it does not mean Article 35A of the Law on General Provisions and Procedures for Taxation does not apply at all but does not apply only to access financial information for tax purposes. Legal subjects that are no longer regulated Article 35A The General Provisions and Tax Procedures Act are financial service institutions that carry out activities in the banking sector, capital market, insurance, other financial service institutions, and / or other entities categorized as financial institutions according to standards financial information exchange based on international agreements in the field of taxation. It means that other government agencies are still follow the Article 35A and Article 41C of the General Provisions and Procedures for Taxation.

Article 41C The Law on General Provisions and Procedures for Taxation is a provision concerning tax criminal law which is a criminal law of administration or criminal law in the field of violations of administrative law *(ordnungstrafrecht or ordeningstrafrecht).* Explanation of Article 38 of the Law on General Provisions and Procedures for Taxation explains that violations of taxation obligations as far as tax administration is concerned are subject to administrative sanctions, while those concerning tax criminal acts are subject to criminal sanctions in the form of confinement, imprisonment, or criminal penalties. The existence of criminal sanctions is expected to grow awareness to fulfill tax obligations as specified in tax laws and regulations. However, it should be noted that the establishment of criminal sanctions pragmatically in administrative law tends to create the phenomenon of "over crime" so that the use of criminal provisions in its formulation must be strictly regulated and obeyed so as not to cause confusion in its enforcement, especially from criminal and criminal perspectives (Sulaiman, 2014). The subject of criminal acts in tax law is oriented

towards people and corporations, in contrast to the Penal Code where the subject of criminal acts is only people. Renewal of tax law needs to form more operational offenses and be supported by special rules regarding accountability and fines for corporations **(Hardinata, 2008)**. In order for the handling of tax crimes to recover losses in state revenues and have legality and legal certainty, it is necessary to expand the notion of "everyone" in tax criminal offenses that include humans and corporations **(Sinaga, 2017).** The Law on General Provisions and Tax Procedures is deemed not in accordance with the conditions of the times so that the government proposes amendments to *prolegnas* 2015 with the name of the Draft Law on the Fifth Amendment to Law No. 6 of 1983 concerning General Provisions and Tax Procedures. In 2015 the discussion was not finished so it was continued to *Prolegnas* 2016*, Prolegnas* 2017, *Prolegnas* 2018, and *Prolegnas* 2019 **(HoR, 2019).** Based on the Final Report on the Alignment of Academic Scripts Draft Law on General Provisions and Procedures for Taxation of the National Law Development Agency of the Ministry of Law and Human Rights in 2015 (BPHN, 2015) it is known the provisions of Article 35A and Article 41C of the General Provisions and Tax Procedures *(ius constitutum)* is also regulated in the Draft Law on General Provisions and Tax Procedures *(ius constituendum)* in two chapters and two articles, namely Article 39 Chapter VI concerning Data and Information Related to Taxation and Article 112 Chapter XXI concerning Criminal Provisions as follows.

Subject of Law		**Legal Case**	**Sanction**
Article 39	**Article 112**		
paragraph (1): government agencies, institutions, associations and other parties	Paragraph (1) letter a: every person	does not fulfill the obligation to provide data and / or information related to taxation	Punished by imprisonment for a maximum of 2 (two) years or a maximum fine 1.000.000.000 IDR (one billion rupiahs)
	paragraph (1) letter b: every person	provide data and / or information relating to improper taxation	
Not mentioned	Paragraph (3): every person	misusing tax data and / or information	
Paragraph (2): leaders of government agencies, institutions, associations and other parties	Not arranged	responsible for fulfilling the obligation to provide data and / or information	Not arranged

Provisions on the obligation of government agencies to provide tax data to the Directorate General of Taxes in the Draft Law on General Provisions and Tax Procedures are similar to the provisions in the General Provisions and Tax Procedures Law, with

several differences: 1) the type of criminal sanctions change from two types to one type; 2) the legal subject is distinguished by the mention of Article 39 paragraph (1) the subject is every government agency, institution, association, and other parties, this indication indicates the subject is a *juristic person or rechtsperson*, while Article 39 paragraph (2) the subject is "leader" of government agencies , institutions, associations, and other parties, this mention indicates the subject is a *natural person or natuurlijk person*; 3) addition of legal events that can be subject to criminal sanctions, namely misusing tax data and / or information; and 4) criminal sanctions that can be imposed are no longer confinement or fines, but imprisonment or fines. This means that in the Draft Law on General Provisions and Procedures for Taxation regulating government agencies as a subject of *rechtsperson* administrative law that can be subject to criminal sanctions as in the General Provisions Act and Tax Procedures.

According to Hans Kelsen, Austin's opinion that the law is static as a complete and ready to be applied regulation, needs to be complemented by dynamic legal studies, namely in the process of creating norms and the limit content **(Kelsen, 2014).** The creation of legal norms in Indonesia can be in the form of the establishment of laws based on Law Number 12 of 2011 concerning the Establishment of Legislation which regulates that in the Academic Paper the Draft Law is discussed about the evaluation and analysis of relevant laws and regulations which include interrelation laws with other laws and regulations and harmonization vertically and horizontally.

Based on the Academic Script Draft Law concerning General Provisions and Procedures for Taxation, it is known that the evaluation and analysis of relevant laws and regulations are as follows: *First*, the Draft Law on General Provisions and Procedures for Taxation is related to: 1) The Criminal Law *(Wetboek Van Strafrecht)*, 2) Law Number 8 Year 1981 concerning Criminal Procedure Law, 3) Law Number 17 Year 2003 concerning State Finance, 4) Law Number 39 Year 2008 concerning State Ministries, 5) Law Number 5 of 2015 concerning State Civil Apparatus, 6) Law Number 7 of 2011 concerning Currencies, and 7) Law Number 24 of 2009 concerning Flags, Languages, and State Symbols, and National Anthem. *Second,* the substance of the Draft Law on General Provisions and Procedures for Taxation is related to: 1) obligations regarding the confidentiality of positions relating to Law Number 15 of 2006 concerning the Supreme Audit Board; 2) disclosure of data and / or information related to Taxation: a) Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering, b) Law Number 28 of 2009 concerning Regional Taxes and Regional Retributions, c) Law Number 36 of 1999 concerning Telecommunications, d) Law Number 14 of 2008 concerning Public Information Openness, e) Law Number 10 of 1998 concerning Amendment to Law Number 7 of 1992 concerning Banking, e) Law Number 21 Year 2008 concerning Sharia Banking; Head Regulation of the National Land Agency Number 3 of 2011 concerning Management of Assessment and Handling of Land Cases, and f) Law Number 30 of 2004 concerning Notary Position. Based on this information, it is known that the Draft Law on General Provisions and Procedures for Taxation in evaluating and

analyzing relevant laws and regulations has not yet linked the law in the field of administrative law, namely: 1) Law Number 5 of 1986 concerning State Administrative Courts, as amended by Law Number 9 of 2004, last amended by Law Number 51 of 2009; and 2) Law Number 30 of 2014 concerning Government Administration. Considering that tax law is part of administrative law, it should be evaluated in this case and analyzed the link between the Draft Law on General Provisions and Procedures for Taxation with the Government Administration Act, specifically case resolution if government agencies do not provide tax data and information to the Directorate General of Taxes. In order to create harmonization of administrative law in the national legal system between the Draft Law on General Provisions and Procedures for Taxation with the Government Administration Act.

Law, in this case the law, has prescriptive characteristic that must be able to anticipate the possibility of legal events in the future, as well as the Draft Law on General Provisions and Procedures for Taxation. If all government agencies provide data and information relating to taxation to the Directorate General of Taxes it will not cause violations of the law that need to be resolved. However, if there are government agencies that do not fulfill their obligations, it will lead to violations of administrative law, which based on the Law on General Provisions and Tax Procedures, as well as the Draft Law on General Provisions and Tax Procedures, may be subject to criminal sanctions or fines. The application of criminal sanctions against government agencies needs to be analyzed from the point of view of the position of legal subjects of government agencies, because government agencies are more appropriate as subjects of administrative law than the subject of tax criminal law. Administrative law has developed, the Government Administration Law has expanded *access to justice* for justice seekers in the State Administrative Court by opening "empty spaces" that justice seekers cannot previously enter **(Permana, 2015).** One of them is an official and / or government agency can act as a *legal standing* so that the State Administrative Court decides on the dispute over authority in carrying out government duties.

Government Agencies as Subjects of Tax Administration Law

The legal subject according to Hans Kelsen is a legal substance that has legal obligations and rights which are the personification of the unity of a set of legal norms. The *legal person* is translated into Indonesian as a personal law consisting of two, namely *natuurlijk person* and *rechtsperson* (Jimly Asshiddiqie, 2012). *Rechtsperson* or corporation has a very complex nature, can be learned from various disciplines, but it cannot be denied that its existence is useful and able to fill various roles in our lives, so that the rights and obligations must be clearly regulated **(Ripken, 2009)**. Legal entity is a legal construction, created by a combination of five elements: an entity or legal subject, free will, subjective rights, obligations, and legal personality **(Adriano, 2015).** Legal personality was created to identify the subject of certain rights and obligations, and provide legitimacy for actions that are realized in accordance with these rights and

obligations (Adriano, 2015). The Law on Government Administration regulates the subject of administrative law in Article 1 number 3 which defines the body and / or government officials as elements that carry out government functions, both within the government and other state administrators. The subject of administrative law can be *rechtsperson*, namely a government agency or agency and *natuurlijk person* is a government official

There are two objects of administrative law studies, namely: 1) material objects, namely the relationship of public law, not the relationship of private law between humans as citizens and government officials; and 2) formal objects in the form of behavior or legal decisions of government agencies in the form of *regeling* or regulation, or *beschikking* or provisions (Mustafa, 2001). The Law on Government Administration regulates the object of administrative law as follows: 1) Article 1 number 1 defines government administration as governance in making decisions and / or actions by agencies and / or government officials; and 2) Article 4 paragraph (1) stipulates that the scope of government administrative arrangements includes all activities of the body and/ or government officials who carry out government functions within the scope of the executive, judicial, legislative, and government functions stated in 1945 Constitution and/ or legislation.

In general, tax law is part of public law, namely administrative law that regulates the relationship between authorities and citizens, but there is also a relationship between civil law where the state becomes the creditor for taxpayers. In this case civil law acts as *lex generalis*, while tax law as a *lex specialis* is preferred **(Hidayatullah, 2016)**. In addition to dealing with civil law, tax law is also related to administrative law, and criminal law, each of which has a different legal subject, each of which can be one or separate, namely: the subject of a tax law called a taxpayer who includes an individual and the body and has the obligation to have a Taxpayer Identification Number, the subject of tax administration law such as government agencies, and the subject of tax criminal law referred to as everyone, not necessarily a taxpayer. Government agencies are subject to legal public bodies that are not appropriate if grouped as corporate taxpayers.

The definition of corporate taxpayers is regulated in Article 1 number 3 of the General Provisions and Tax Procedures Act, which is a group of people and / or capital which is a unit of business or non-business which includes limited liability companies, partnership companies, other companies, state-owned enterprises or regionally-owned business entities of any name and form, firms, congresses, cooperatives, pension funds, partnerships, associations, foundations, mass organizations, socio-political organizations, or other organizations, institutions and other forms of agencies including contracts collective investment and permanent business. The provisions of corporate taxpayers in the Draft Law on General Provisions and Procedures for Taxation are regulated in Article 1 point 3 with the same editorial, only added by village-owned business entities. It means that both do not define government agencies as corporate taxpayers, if forced it can only enter the understanding of other organizations. The

definition of corporate taxpayers is more appropriate as the subject of private entity tax law, while government agencies are subject to legal public agencies. This is reinforced by the provisions of Article 2 paragraph (3) letter b of Law Number 7 of 1983 concerning Income Tax as has been amended several times, the latest by Law Number 36 of 2008 stipulating that the subject of domestic taxation is a government body that fulfills criteria: 1) establishment based on the provisions of legislation; 2) the financing comes from the State Revenue and Expenditures or the Regional Revenue and Expenditures; 3) the revenue is included in the budget of the Central Government or Regional Government; and 4) the books are checked by the state functional monitoring apparatus. Based on these provisions it can be concluded that government agencies are excluded as subject to corporate tax law and are more appropriate as subjects of tax administration law. Based on this, the government agency is a material object of tax administration law while the obligation to provide tax data and information is a formal object of administrative law, so that the provisions other than subject to the Law on General Provisions and Tax Procedures must also be subject to administrative law.

Nowadays the quality and quantity of corporate criminal crime is worrying because the impact is not only detrimental to a few but very broad, threatening the stability of the national economy, endangering the integrity of the national financial system, damaging the lives of the nation, and carried out so that easy proof. For this reason, the law must take back its role in order to create justice and prosperity for the people, one of which is to make or regulate corporations as subjects of criminal law that are considered capable of committing crimes and can be accounted for criminally (Kristian, 2014). This idea has been accommodated in Article 48 to Article 54 of the Draft Law concerning the Criminal Code.

The formulation of the offense in the General Provisions and Tax Procedures Act is unclear, as if it includes the corporate or corporate taxpayer as the offender. However, the formulation of sanctions in the form of imprisonment and / or fines does not accommodate the corporation as a criminal offender. It is time for the Law on General Provisions and Procedures for Taxation to specifically regulate tax offenses (Wan July, 2012). The Draft Law on General Provisions and Procedures for Taxation has clearly stipulated provisions on tax crimes by corporations or legal entities, namely Article 118, Article 119, and Article 120. Corporate actions can not only violate criminal law, it can also violate civil or legal law administration **(NLDA, 2015)**. But the provisions of government agencies as the subject of tax criminal law are not appropriate, because government agencies are the subject of legal public bodies that are more appropriate as subjects of administrative law, while the subject of tax criminal law in the Draft Law on General Provisions and Procedures for Taxation is the subject of legal private bodies.

The formulation of corporate responsibility policies must be clear and accurate, weaknesses in the formulation of the system of corporate criminal liability in Indonesian legislation will also influence law enforcement **(Priyato, 2007).** The sanction of corporate criminal acts not only has *financial impacts* but also has *non-financial impacts*

by utilizing the criminal justice system in the form of preventive actions both by means of both *penal* and *non-penal* **(Wulandari, 2013)**. Regulations of government agencies as subjects of taxation must be clear and accurate in order to facilitate enforcement, one of which must clearly regulate the differences in legal actions by government agencies as legal entities and actions of government officials as individuals.

But in addition to the subject being fulfilled, so that criminal sanctions can be applied, the element of action must also be fulfilled, the act must be a criminal act, that is the action based on the principle of legality must be mentioned in the law before the act is committed. The actions of government agencies to provide tax data and information to the Directorate General of Taxes are not criminal acts, more precisely categorized as administrative acts, the relationship between government agencies and other government agencies. Not fulfilling the element of criminal acts, it is not possible to apply criminal sanctions.

Criminal provisions in a law outside the juridical normative law are governed by Annex II of Law Number 12 Year 2011 as follows: 1) number 119 stipulates that if the criminal provisions apply to anyone, the subject of criminal provisions is formulated with everyone's phrase; 2) number 120 stipulates that if criminal provisions only apply to certain subjects, the subject is expressly formulated, for example, foreigners, civil servants, witnesses; and 3) number 126 stipulates that criminal acts can be carried out by individuals or by corporations. Criminal acts committed by corporations are imposed on legal entities including companies, associations, foundations, or cooperatives and / or giving orders to commit criminal acts or acting as leaders in committing criminal acts.

The subject of tax criminal law Article 41C Paragraph (1), paragraph (2), and paragraph (3) of the Law on General Provisions and Procedures for Taxation is everyone, meaning that it applies to anyone, whether legal person or legal entity, in terms of this as referred to in Article 35A paragraph (1) of the Law on General Provisions and Procedures for Taxation, namely every government agency, institution, association and other party. These provisions indicate that the legal subject is a corporation as a subject of legal entity. However, if it is seen that the criminal sanctions that can be imposed are alternatives to imprisonment or fines, then what is meant is the legal subject of a person as a person because the imprisonment cannot be imposed on the legal subject of the body. In addition, government agencies are subject to administrative law which is subject to administrative law provisions. This provision can be categorized as a less harmonious regulation between articles and other articles in a law.

Article 112 of the Draft Law on General Provisions and Procedures for Taxation regulating the subject of tax criminal law is anyone who refers to Article 39 paragraph (1) of the Draft Law on General Provisions and Procedures for Taxation, meaning that it applies to anyone, whether subject to legal person or subject of legal entities, in this case are every government agency, institution, association, and other parties. If seen from criminal sanctions that can be imposed are imprisonment or fines, then it can be imposed on legal subjects people or subject to legal bodies or corporate criminal. Article

39 paragraph (2) of the Draft Law on General Provisions and Procedures for Taxation regulates the legal subject is the head of government agencies, institutions, associations, and other parties who indicate that the legal subject is a person or an official. It's just that the legal subject of Article 39 paragraph (2) of the Draft Law on General Provisions and Procedures for Taxation is not regulated for imposing sanctions in Article 112 of the Draft Law on General Provisions and Procedures for Taxation. This provision can also be categorized as a less harmonious regulation between articles and other articles in a law. In order to create harmonization between articles, Article 112 of the Draft Law on General Provisions and Tax Procedures clearly regulates tax criminal sanctions that can be imposed on legal subjects of the body as referred to in Article 39 paragraph (1) and legal subjects of persons as referred to in Article 39 paragraph (2) Draft Law on General Provisions and Tax Procedures. The obligation of government agencies or institutions to submit data and information relating to taxation to the Directorate General of Taxes as regulated in Article 35A of the Law on General Provisions and Procedures for Taxation or Article 39 of the Draft Law on General Provisions and Procedures for Taxation is the scope of government administrative arrangements which organizes executive functions so that the provisions of administrative law first apply, criminal law does not directly apply.

Harmonization of Disputes in Authority Between Government Agencies in Tax Law

The purpose of the Government Administration Law can we know from its considerations, among others, to solve problems in the administration of government and can be a solution in providing legal protection for both citizens and government officials. Government agencies that do not carry out providing tax data and information to the Directorate General of Taxes are disputes over administrative legal authority based on the Government Administration Law with the following explanation. First, Article 1 number 5 defines authority as the rights owned by the body and/or government officials or other state administrators to make decisions and/or actions in the administration of government, in this case the Directorate General of Taxes is authorized to request taxation data to government agencies. Second, Article 1 number 6 defines government authority, hereinafter referred to as authority, is the authority of the agency and / or government officials or other state administrators to act in the realm of public law, government agencies must provide tax data to the Directorate General of Taxes. Third, Article 1 number 8 defines government administrative actions, hereinafter referred to as actions, are acts of government officials or other state administrators to carry out and / or do not carry out concrete actions in the administration of government, in this case government agencies can provide or not provide tax data to the Directorate General of Taxes. Fourth, Article 1 point 13 defines an authority dispute as a claim for the use of authority carried out by two or more government officials caused by overlapping or

unclear government officials who are authorized to handle a government matter, in this case if the government agency does not provide tax data to the Directorate General of Taxation there is a violation of administrative law because it prevents tax collection.

If interpreted only textually or grammatically the actions of government agencies do not provide tax data to the Directorate General of Taxes are not exactly the definition of authority disputes based on Article 1 number 13 of the Government Administration Act. The fulfilled element is carried out by two or more government officials. That authority disputes are caused by overlapping or unclear government officials who are authorized to handle a government matter are not met directly. If judging by the meaning of the word, the Great Dictionary of Indonesian means that a dispute is something that causes differences of opinion, arguments, disputes, disputes, disputes, cases in court. While authority is defined as the right and power to act, authority, power to make decisions, govern, and delegate responsibility to others, functions that may not be implemented **(ID, 2017).** So in a sense the word dispute authority can be interpreted as a disagreement in acting or acting. This means that government agencies that do not provide tax data to the Director General of Taxes are disputes over the authority of tax administration

Disputes in administrative law consist of two, namely: 1) internal disputes concerning issues of authority of officials in one agency or authority between departments or other agencies, 2) external disputes, namely disputes between state administration and the people originating from pure administrative justice elements **(Putrijanti, 2015).** Based on a futuristic view, it needs to be explored further on the meaning of state administrative disputes in the form of public legal actions by state administrative positions that violate the law **(Susilo, 2010)**. Government officials are responsible for the tasks they carry out, if doing outside the authority limits becomes personal responsibility **(Huda, 2013)** including if subjected to criminal sanctions. The government is given extensive authority to realize people's welfare, so given the power to exercise discretion which is limited by the principle of legality if there are rules and Good Governance Principles if there are no rules. The authority given is inherent in the position of responsibility if it is in accordance with the limits of the authority given and personal responsibility if carrying out maladministration actions **(Sufriadi, 2014).** Material administrative law lies between private law and criminal law **(Wakhid, 2017)**. Tax management is basically an administrative legal activity within a special authority, namely taxation, so that it remains subject to the State Administration Law. Government administrative actions have limitations in carrying out their authority, if their actions exceed the limits, they become unauthorized, and can even be included in the category of criminal acts **(Nursadi, 2018).** Tax law regulates the provisions of administrative law and criminal tax law, both of which can stand alone or interlocked so that harmonious arrangements need to be made in a national legal system.

Government agencies or institutions that do not provide data and information relating to taxation to the Directorate General of Taxes are administrative legal disputes

in the form of internal disputes that must be settled based on administrative law. Authority dispute resolution in the Government Administration Law is distinguished between administrative disputes and misuse of authority that can be punished. The explanation is as follows; First, the settlement of administrative disputes is regulated in Article 16 of the Government Administration Act which states that government agencies and/or officials are obliged to prevent the occurrence of disputes over authority. If the dispute over the resolution of authority arises as follows: 1) in the event of an authority dispute in the government environment, the authority to settle the dispute over authority is at the discretion of the government officials who dispute through coordination to produce an agreement, unless otherwise specified; 2) the agreement binds the parties to the dispute insofar as it does not harm the state's finances, state assets, and/or the environment; 3) if it does not produce an agreement, the resolution of the authority dispute within the government at the last level is decided by the president; and 4) resolution of authority disputes involving state institutions resolved by the constitutional court. Officials who do not carry out their obligations are subject to administrative sanctions in the form of minor administrative sanctions that can be directly imposed, moderate administrative sanctions, or heavy administrative sanctions that can only be imposed after going through an internal inspection process. The imposition of administrative sanctions is carried out by the superior of the official who determines the decision, the minister if the decision is determined by officials in the environment, or the President if the decision is determined by the ministers.

Second, the abuse of authority is regulated in Article 21 of the Government Administration Act that the State Administrative Court has the authority to accept, examine and decide whether or not there is an element of abuse of authority carried out by government officials. Government agencies and/or officials can submit applications to the State Administrative Court to assess whether there is or no element of abuse of authority that must be decided no later than twenty-one working days after the application is submitted. The decision can be appealed to the State Administrative High Court which must be decided no later than twenty-one working days after the appeal is submitted and is final and binding.

The authority to test abuse of authority is very limited when compared to the extent of the scope of abuse of authority in administrative law, but the parameters of abuse of authority in criminal law are broader than administrative law. Abuse of authority in the Government Administration Act is a genus consisting of three species, namely exceeding authority, confusing authority, and acting arbitrarily **(Simanjuntak, 2018).** The factual actions of officials who harm the people onrechtmatig overheidsdaad can be sued to court, initially this was a civil suit. After the enactment of the Government Administration Law, factual actions enter into the realm of administrative law, so that if there is a dispute resolved in the State Administrative Court **(Bimasakti, 2018)**. Article 21 of the Government Administration Act is not a single norm that stands alone, but must be comprehensively understood in the situational development of the

development of public law especially the socio-political-cultural aspects when the norms of abuse of authority are put into thinking towards ius constitutum, for example administrative penal law. The values contained in Article 21 of the Government Administration Act are two, which are instrumental in which officials must use appropriate and protective authorities that provide legal protection for officials with good intentions **(Yulius, 2015)**. Settlement of abuse of authority must be decided beforehand there is or no element of abuse of authority carried out by government officials based on the Decision of the State Administrative Court **(Putrijanti, 2015).** Completion of administrative law is a prerequisite for criminal proceedings, criminal law is no longer the first choice, procedurally there must be a State Administrative Court Decision that has the legal force that has been abused **(Manao, 2018)**, in order to determine whether or not criminal sanctions can be imposed **(Yudanto, 2017)**. If there is an abuse of authority that causes state losses, the return of state losses does not eliminate the punishment. The perpetrator must be held accountable for his actions in a criminal manner, the administrative dossier is used as evidence in his criminal case **(Panjaitan, 2017).**

Abuse of authority is an act of maladministration that carries consequences of criminal, civil and administrative accountability. Responsibility for the position regarding the legality or validity of government actions. The legality of the act of government in administrative law is related to the power of government, while personal responsibility is related to functional or behavioral approaches. Article 21 of the Government Administration Law can be interpreted as a response to law enforcement practices that examine allegations of abuse of authority, often directly linking them with criminal acts that cause concern for government officials in making decisions and or actions, thus disrupting their performance, innovation and creativity. However, if there is proven abuse of authority, criminal sanctions can be imposed as the final sanction or ultimum remedium **(Simanjuntak, 2018)**. The Government Administration Law allows for discretion, but if the discretion is an abuse of authority, it can be subject to criminal sanctions after the Decision of the State Administrative Court Judge has an abuse of authority. This has been confirmed by the Supreme Court with the Supreme Court Regulation Number 4 of 2015 **(Suhariyanto, 2018)**. Discretion that misuses authority affects the illegitimacy of official actions and can be subject to administrative and criminal sanctions **(Hulu, 2018).** Discretion or freis ermessen is the domain of administrative law, so that it cannot be used as a basis for direct criminal penalties **(Endang, 2018)**. Discretion by government officials is passive and if carried out beyond the limits of authority, it must still be accounted for administratively, civilly, or criminal **(Hadi, 2017).** Government agencies that do not provide tax data to the Director General of Taxes are clearly stipulated in the General Provisions and Taxation Procedure Law, so that they cannot reason that the refusal is a discretion.

Authority dispute resolution is based on the Government Administration Act if it is used to resolve authority disputes of government agencies that do not provide tax data to

the Directorate General of Taxes so that the settlement begins with making an agreement, if violated is resolved, the land will be decided by the president. For example, the government agency that does not provide tax data is the first echelon agency in the Ministry of Finance, so the Minister of Finance as the superior of the two agencies decides. However, if the government agency does not provide tax data in other ministries/government institutions, the Minister of Finance makes an agreement with the heads of other ministries/government institutions. If there is no agreement between the Minister of Finance and the heads of ministries/other government institutions then the one who decides is the president as the head of government or executive leadership. The Indonesian government system is presidential with the president as the head of government who is responsible for the performance of the government that is imaged through the creation of performance and the application of law as an embodiment of government action or bestuurhandeling **(Rahman, 2017).**

Based on the discussion, it is known that the resolution of authority disputes regulated in the General Provisions and Tax Procedures Act as well as the General Provisions and Tax Procedures Bill in the case that government agencies do not provide tax data and information to the Directorate General of Tax can directly be subject to criminal sanctions is a statutory provision that is not harmonious with the provisions of the Government Administration Law. The current General Provisions and Tax Procedure Law will be amended, already included in 2019 priority prolegnas, this opportunity is the right time to harmonize the resolution of authority disputes by: 1) entering the Government Administration Law as one of the evaluation materials and analysis of laws and regulations related to the substance of the Draft Law on General Provisions and Tax Procedures with the consideration that tax law is part of administrative law in one national legal system; 2) make rules in the torso of the Draft Law on General Provisions and Tax Procedures that for government agencies that do not submit tax data to the Directorate General of Taxes are settled based on administrative law, in this case Article 16 and Article 21 of Government Administration Law or amendments, in anticipation if the Administrative Law is amended later.

Conclusion

Indonesia is a legal state, all aspects of life must be based on law or law in a harmonious national legal system. The Law on General Provisions and Tax Procedures regulate the links between administrative law and criminal law as a subsystem of national law which must also be harmonious. Article 35A The General Provisions and Tax Procedures Act stipulates that every government agency is obliged to provide tax information to the Directorate General of Taxes, if violated under Article 41C Law of the General Provisions and Tax Procedures shall be subject to criminal sanctions in the form of confinement or fine. Article 39 and Article 112 of the Draft Law on General Provisions and Tax Procedures. This provision is a non-harmonious regulation between articles in different laws, because the law is not dispute, so that the legal event is a dispute over

administrative authority must be settled by administrative law first. Known in Academic Manuscripts The Draft Law on General Provisions and Tax Procedures have not been evaluated by the General Provisions Act and Tax Procedures and Government Administration Laws. This situation raises disharmony in resolving the authority of disputes among government agencies in tax law because it is directly related to abuse, even though it is related to abuse of authority is decided by the State Administrative Court as a precondition imposition of criminal sanctions. In order to harmonize the tax law authority dispute resolution as a unit of the national legal system, it is recommended in the Academic Manuscripts of the General Provisions and Tax Procedures Act to include the Government Administration Act as a material for evaluating the dispute over authority so that resolutions of authority disputes in the Draft Law - The General Provisions and Procedures for Taxation will also take the mechanism in Article 16 or Article 21 of the Government Administration Law. In addition, in Article 39 of the General Provisions and Tax Draft Laws, procedures for government agencies that do not provide tax data and information to the Directorate General of Taxes will be settled based on administrative law as stipulated in the Government Administration Act.

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