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Criminalisation of Abuse of Authority in Indonesia: A Lesson from Tax Beschikking in the Field of Taxation

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Abstract

Cases of criminalisation of policies and or criminalisation of positions that still occur in Indonesia are still being debated in legal circles. In fact, the criminalisation of policies and or beschikking has also occurred in the taxation sector, one of which is the criminalisation of the results of PT SAT's tax objection decision. It is necessary to conduct a normative juridical study or review of the formulation of the problem which questions how the legal construction of a beschikking in the field of taxation can be punished for abuse of authority. It is concluded that a beschikking in the field of taxation can be punished for abuse of authority if the beschikking has been tested for abuse of authority to the State Administrative Court and/or there is sufficient preliminary evidence that the beschikking contains elements of unlawful (criminal) acts that cause losses to the state finances or economy (for example, extortion, corruption, or bribery). It is recommended that the Tax Authority has an ideal policy in handling the challenges of beschikking criminalisation, both in terms of pre and post criminalisation of a beschikking.

A. INTRODUCTION

There have been many cases of criminalisation of policies and/or criminalisation of positions that have occurred in Indonesia, which have always been debated in legal circles.[1] The debate can reach many things, including the phenomenon of the emergence of allegations of unlawful acts by state officials,[2] court decisions that can differ at each court level. For example, one of the decisions of the Supreme Court (MA) in relation to the Logistics Agency (Bulog) case stated that the Cassation Petitioner/Defendant never deviated or exceeded, let alone abused his authority as one of the ministers, because all of them only implemented the President's policy (*beleid*). The President is the policy maker (*beleid*), the determinant of policy. *Descretionary*

* This article is a private scientific study of the researcher and does not reflect the institution's opinion/policy.
[1] Ujang Suratno, Kriminalisasi Kebijakan Pejabat Negara dalam Perspektif Tindak Pidana Korupis, Jurnal Yustitis, Vol. 2, No. 1, 2011, p. 22.
[2] *Loc.cit.*

power (commonly called *Freies Ermessen*) carried out by ministers is within the scope of implementing the President's policy (*beleid*), not in the quality of determining policy.[3]

The criminalisation of policies and/or *beschikking* has also occurred in the taxation sector. For example, in the handling of tax objections of PT SAT, HSLN and MPM[4], sentenced to prison for violating Article 3 jo. Article 18 of Law No. 31/1999 and Article 3 of Law No. 20/2001. The Panel of Judges of the South Jakarta District Court (PN) assessed that HSLN, who together with GT handled PT SAT's tax objection, was proven to be careless and considered to have violated their authority by accepting PT SAT's tax objection for the 2004 tax year. The objection should not have been granted because the tax value determined by the Regional Office of DGT JBT was in accordance with the provisions so that the objection decision was considered to have benefited certain corporations, which should have been tax revenues for the state.[5]

There is still the potential for abuse of authority in the field of state administration and there are different decisions between court levels in terms of criminalisation of policies and / or *beschikking*, it is necessary to study how the legal construction of a *beschikking* in the field of taxation can be punished for abuse of authority?

B. ANALYSIS AND DISCUSSION

1. About the Authority of the State Administration

Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD NRI Tahun 1945) clearly states that the State of Indonesia is a state of law where a state based on law must be based on basic elements and principles, namely[6] the principle of recognition and protection of human dignity and freedom, the principle of legal certainty, the principle of equality, the principle of democracy, and the principle of government and its officials carrying out the function of serving the people.

Talking about the state and its policies and governance means that it cannot be separated from the discussion of state administrative law (HAN). Referring to the description of several experts on State Administration and in line with the welfare state as stated in the fourth paragraph of the Preamble of the 1945 Constitution of the Republic of Indonesia which states that the Indonesian Government promotes public welfare, State Administration is expected to increase the prosperity of all people. However, in connection with the inherent function of promoting public welfare in the welfare state, it cannot be denied that it can have some consequences in the administration of government.

Given that the Government really needs law as coercion in enforcing its provisions, it is necessary to have power whose source is official authority for its implementation. However, the power must be determined by the limits of the law,[7] one of which is characterised by the supremacy of the law. So that the government really needs a source of authority for every action to perform legal acts. This means that State Administrative Law[8] which is a law that regulates the relationship between the government and citizens, so that every action taken by the government / state administration must be based on applicable laws and regulations or what is known as the principle of legality. The basis of this legislation is closely related to the issue of where the source of the law comes from, so that legitimacy is obtained for the formal implementation of the law

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[3] Supreme Court Decision Number 572K/PID/2003.
[4] Tempo Newspaper, *Bekas Atasan Gayus Dituntut 5 Tahun Penjara*, Thursday 10 February 2011, p. A6.

[5] Media Indonesia Daily Newspaper, *Rekan Gayus Divonis 2 Tahun Penjara*, Tuesday 22 February 2011, p. 4.
[6] Abd. Choliq, *Fungsi Hukum dan Asas-Asas Dasar Negara Hukum*, http://www.pa-cilacapkab.go.id/artikel/REFLEKSI-HUKUM.pdf accessed 21 April 2009.
[7] Mochtar Kusumaatmadja dan B. Arief Sidharta, *Pengantar Ilmu Hukum: Suatu Pengenalan Pertama Ruang Lingkup Berlakunya Ilmu Hukum*, Penerbit Alumni, Bandung, 2009, pp. 34-35.
[8] Bandingkan Black's Law Dictionary (Bryan A. Garner, *Black's Law Dictionary*, 2004, West Publishing Co, St. Paul, hlm. 48) yang mendefenisikan hukum administrasi dengan *"The law governing the organization and operation of the executive branch of government (including independent agencies) and the relations of the executive with the legislature, the judiciary, and the public".*

which is made intentionally by the authorised body of a State. This source of law is the most important source of law that produces substance that is undoubtedly wrong, *ipso jure*.[9] The source of law that can be used as a guide by the authorised body in exercising its authority can at least rely on the type and hierarchy of laws and regulations as stipulated in Article 7 paragraph (1) of Law Number 12 of 2011 concerning the Formation of Legislation as last amended by Law Number 13 of 2022 (Regulatory Formation Law). The types and hierarchy of laws and regulations applicable in Indonesia include the 1945 Constitution of the Republic of Indonesia, Decree of the People's Consultative Assembly (TAP MPR), Law / Government Regulation in Lieu of Law, Government Regulation, Presidential Regulation, Regional Regulation, and types of laws and regulations other than those referred to in Article 7 paragraph (1) which are recognised and have binding legal force as long as they are ordered by higher laws and regulations.

The existence of the principle of legality, it can be seen the source and / or method of obtaining authority for state administration in relation to the legal responsibility for the use of this authority, in accordance with one of the principles of the rule of law there is no authority without accountability. HAN in the context of authority attaches state administration as the bearer of public legal rights and obligations with the position. In contrast to private law, the basis for performing an act is the capacity to act of the legal subject (in this case, everything that can obtain, or bear rights and obligations and can take the form of humans and legal entities). A position is a fixed work environment that contains certain functions that as a whole reflect the objectives and work procedures of an organisation.[10] The position is a fixed work environment, while the position holder (official[11]) may change but does not affect the authority attached to the position.[12] Thus, in the synchronisation between HAN and private law, it can be said that the position is a legal subject, which is an inseparable supporter of the rights and obligations of the official who holds the position, who is given authority in order to ensure the continuity of rights and obligations. Government positions and officials receive duties and authorities based on public law so that in carrying out their various activities they are subject to the provisions of public law, especially state administrative law. Likewise, when legal issues or disputes arise, their resolution is based on the provisions of administrative law.[13]

An authorised official is an official who, because of his/her position or duties, is authorised to take legal action based on the applicable laws and regulations[14]. The authority that can be accounted for based on HAN practice can be exercised in 3 (three) ways, namely attribution, delegation, and mandate, as regulated in Law Number 30 of 2014 concerning Government Administration (UU AP). Attribution is an original authority derived from laws and regulations where government officials obtain authority directly from the wording of certain articles of legislation. In the case of attribution, the recipient of authority can create new authority or expand existing authority with internal and external responsibility for the implementation of the attributed authority resting entirely with the recipient of authority. In delegation, there is no creation of authority, but only delegation of authority from one official to another. The juridical responsibility is no longer with the delegator, but shifts to the delegatee. Meanwhile, in the mandate, the mandate recipient only acts for and on behalf of the mandate giver, the final responsibility for the decision taken by the mandate recipient remains with the mandate giver.[15]

2. Criminalisation of Beschikking in Administrative Law and Criminal Law

Beschikking is a unilateral statement of will, issued by an organ of government, based on unilateral legal authority, aimed at specific matters or concrete and individual events, and with

[9] Satjipto Rahardjo, *Ilmu Hukum*, PT. Citra Aditya Bakti, Bandung, Sixth print, 2006, p. 83.
[10] Ridwan HR, *Hukum Administrasi Negara*, p. 73
[11] Pejabat yang dimaksud disini adalah yang sesuai dengan ketentuan Pasal 1 angka (3) UU Pokok-Pokok Kepegawaian yaitu Pejabat yang berwajib adalah pejabat yang karena jabatan atau tugasya berwenang melakukan tindakan hukum berdasarkan peraturan perundang-undangan yang berlaku.
[12] Ridwan HR, *op.cit* ., p. 80
[13] *Ibid*., p. 85
[14] Lihat Pasal 1 angka 3 UU Pokok-Pokok Kepegawaian.
[15] Ridwan HR, *op.cit*., pp. 108-109.

the intention of causing legal consequences in the field of administration.[16] In reviewing a State policy and or in the context of the process of issuing a *beschikking*, various possibilities often arise including unlawful acts by the state administration which are considered an abuse of authority, which is a discussion of HAN. However, related to *beschikking* and or policies taken by State Administrators issued in the public interest cannot be challenged. The Supreme Court affirmed that the act of discretion of the ruler does not include the competence of the court to judge it. Furthermore, in Supreme Court Circular Letter No. MA/Pemb/0159/77 dated 25 February 1977, the Supreme Court called on the heads of District Courts and the heads of High Courts throughout Indonesia. 'that ... in adjudicating cases where the Government is sued for unlawful acts, a balance should be struck between the protection of individuals and the interests of associations such as the authorities ...'[17]. As for the legal practice, abuse of authority can be a discussion of Criminal Law, as contained, among others, in the element of 'abuse of authority' in Article 3[18] of Law of the Republic of Indonesia Number 31 of 1999 concerning Eradication of the Criminal Act of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of the Criminal Act of Corruption (hereinafter PTPK Law), the element of 'against the law' in Article 2 paragraph 1[19] f the PTPK Law, and the element 'may harm the state finances or the economy of the State' in Article 2 paragraph (1) and Article 3 of the PTPK Law..

Discussing abuse of authority within the scope of criminal law means that it is known that criminal acts in terms of abuse of authority become clear, namely human actions and / or actions of legal entities that are included in the scope of the formulation of the offense, are against the law, and can be reproached (the existence of guilt). An act that is not included in the scope of the formulation of the offence cannot be sentenced, but an act listed in the scope of the formulation of the offence does not also mean that it can always be sentenced because to be convicted it must fulfil 2 (two) conditions, namely the act is against the law and can be reproached[20]. An unlawful act in this case is an act that shows the nature of the legality or illegality of an action or action or an intention where the action or action or intention refers to the factor of not harming the state, not disrupting legal order and not gaining profit in the act of abuse of authority. Meanwhile, what is meant by reprehensible is related to the matter of 'accountability for acts of abuse of authority' and also 'can be punished for abuse of authority' which then further the mistake in the criminal is seen from the presence or absence of elements of intent, trial or negligence.

Returning to the discussion of abuse of authority in the scope of criminal law where in the explanation of Article 2 paragraph (1) of the PTPK Law which explains 'What is meant by "unlawfully" in this Article includes unlawful acts in the formal sense as well as in the material sense, namely even though the act is not regulated in statutory regulations, but if the act is considered reprehensible because it is not in accordance with a sense of justice or the norms of social life in society, then the act can be punished' which turned out to have been judicial reviewed to the Constitutional Court (hereinafter referred to as MK) because it was considered not to have binding legal force. Thejudicial review has been decided in accordance with Decision Number 003/PUU-IV/2006 which, among other things, states that the explanation of Article 2 paragraph (1) of PTPK along with the phrase that reads 'What is meant by ... etc ... can be punished' is contrary to the 1945 Constitution and has no binding legal force.

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[16] *Ibid*., p. 148.

[17] Erman Rajagukguk, *Perbuatan Melawan Hukum oleh Individu dan Penguasa serta Kebijaksanaan Penguasa yang tidak dapat Digugat*.

[18] Pasal 3 UU No.31 Tahun 1999 yang berbunyi: Setiap orang yang dengan tujuan menguntungkan diri sendiri atau orang lain atau suatu korporasi, menyalahgunakan kewenangan, kesempatan atau sarana yang ada padanya karena jabatan atau kedudukan yang dapat merugikan keuangan negara atau perekonomian negara, dipidana dengan pidana penjara seumur hidup atau pidana penjara paling singkat 1 tahun dan paling lama 20 tahun dan atau denda paling sedikit Rp. 50.000.000,00 dan paling banyak Rp.1.000.000.000,00.

[19] Pasal 2 ayat (1) UU No.31 Tahun 1999 yang berbunyi:Setiap orang yang secara melawan hukum melakukan perbuatan memperkaya diri sendiri atau orang lain atau suatu korporasi yang dapat merugikan keuangan negara atau perekonomian negara, dipidana dengan pidana penjara seumur hidup atau pidana penjara paling singkat 4 tahun dan paling lama 20 tahun dan atau denda paling sedikit Rp. 200.000.000,00 dan paling banyak Rp.1.000.000.000,00.

[20] D. Schaffmeister, N. Keijzer, dan PH. Sutorius, *Hukum Pidana*, Penerbit PT. Citra Aditya Bakti, Bandung, 2007, p. 26.

As state administrators who are citizens who are also protected by Article 28 D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, in carrying out their duties responsibly, it is necessary to understand the basis for the elimination of punishment in the Indonesian regulatory order regulated legality. In the Criminal Code (KUHP), there are articles that can exclude the perpetrator from the imposition of punishment. The exclusion of criminal imposition can be read as the exclusion of criminal responsibility and in certain cases it can mean the exclusion of guilt. The exception of criminal imposition is regulated in the provisions of Articles 44, 48, 49, 50, and 51 of the Criminal Code. [21]

The matter of state administrators who are the Government who carry out daily state power as the maker and implementer of HAN, cannot be separated from inter-institutional norms. In order to avoid friction between state administrators, the state has made a rule that the relationship between State Administrators must be carried out by complying with institutional norms, decency, morality, and ethics based on Pancasila and the 1945 Constitution of the Republic of Indonesia by adhering to the general principles of good governance (hereinafter referred to as AAUPB) and the provisions of applicable legislation.[22] o ensure the implementation of the rights and obligations of State Administration, in a good State Administration System, the Ministry of Finance of the Republic of Indonesia has also implemented a *check and balance* mechanism by creating a strict and layered supervisory institution in DGT which can be in the form of internal supervision and or external supervision. In terms of state administration law, supervision is a process of activities that compare what is carried out, implemented, or organised with what is desired, planned, or ordered. The Government's internal supervision mechanism towards DGT is conducted by, among others, the Directorate of Internal Compliance and Apparatus Resource Transformation (KITSDA), the Inspectorate General (Itjen), and the Financial and Development Supervisory Agency (BPKP). Supervision is applied to avoid the possibility of misappropriation or deviation of the objectives to be achieved so that the policies that have been set to achieve the planned objectives effectively and efficiently. Through supervision, an activity is created that is closely related to determining or evaluating the extent to which work implementation has been carried out and can minimise the emergence of obstacles so that corrective action can be taken. Meanwhile, the Government's external supervision mechanism towards DGT is conducted by, among others, the Supreme Audit Agency (BPK), Taxation Supervisory Commission (KPP)[23], Ombudsman of the Republic of Indonesia[24], public supervision, legislative supervision, judicial supervision, and others.

3. Ideal Policy of Criminalisation of Beschikking in the Field of Taxation in Indonesia

In the framework of the rule of law, where DGT is one of the Government organs whose scope of issuance of tax assessment letter (SKP) is in the realm of HAN, the legal protection to taxpayers on the SKP is carried out in the corridor of state administration. The effort made by the

[21] Chairul Huda, *Dari Tiada Pidana Tanpa Kesalahan Menuju Kepada, Tiada Pertanggungjawaban Pidana Tanpa Kesalahan*, Kencana Prenada Media Group, Jakarta, 2008, p. 64.
[22] Pasal 7 UU Penyelenggaraan Negara Yang Bersih dan Bebas KKN.
[23] Sesuai dengan Pasal 36C UU KUP yang berbunyi: Menteri Keuangan membentuk komite pengawas perpajakan, yang ketentuannya diatur dengan Peraturan Menteri Keuangan.
[24] Berdasarkan Keppres No. 44/2000 telah dibentuk komisi Ombudsman dan ditindaklanjuti dengan UU No.37/2008 tentang Ombudsman Republik Indonesia yang bertujuan untuk melakukan pengawasan terhadap pelayanan publik yang dilakukan penyelenggara negara. Selanjutnya dalam Pasal 7 disebutkan bahwa Ombudsman bertugas menerima Laporan atas dugaan Maladministrasi dalam penyelenggaraan pelayanan publik, melakukan pemeriksaan substansi atas Laporan, dan menindaklanjuti Laporan yang tercakup dalam ruang lingkup kewenangan Ombudsman, melakukan investigasi atas prakarsa sendiri terhadap dugaan Maladministrasi dalam penyelenggaraan pelayanan publik, melakukan koordinasi dan kerja sama dengan lembaga negara atau lembaga pemerintahan lainnya serta lembaga kemasyarakatan dan perseorangan, membangun jaringan kerja, melakukan upaya pencegahan Maladministrasi dalam penyelenggaraan pelayanan publik; dan melakukan tugas lain yang diberikan oleh undang- undang.

taxpayer in this case is to take the path of objection[25], appeal[26] or lawsuit. Tax dispute resolution is through legal remedies, namely:

a) The objection legal remedy is submitted by the taxpayer to the DGT while the appeal legal remedy and lawsuit legal remedy are submitted by the taxpayer to the tax court.
b) Extraordinary legal remedies in the form of a request for judicial review by the Supreme Court.

In addition to justice to taxpayers, in terms of performing their duties, among others in issuing beschikking, the behaviour of tax officials is also limited by applying a strict reward and punishment system. In order to carry out their duties properly, it is necessary for tax officials to understand the regulations as has been affirmed *lex specialis* in Article 36A of the KUP Law[27] in addition to the AP Law which has guaranteed that government officials will not become victims of criminalisation of the policies taken. This means that one of the essence of state administrative law is 'protecting the state administration itself'[28] which can be interpreted that public policies made by the government will receive legal protection if the policy is made based on applicable laws and regulations in accordance with the principle of legality.

The principle of legality cannot be separated from the existence of the 1945 Constitution of the Republic of Indonesia as the foundation of legal validity in Indonesia, where in Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia it has been stated that 'All citizens are equal before the law and government and shall uphold the law and government with no exception'. Then in Article 28 D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, recognition, guarantees, protection and certainty of a just law and equal treatment before the law are given to everyone. In the field of criminal law, one of the forms of position, recognition, guarantee, protection, and legal certainty has been formulated in the form of recognition of the principle of legality which is stated in Article 1 paragraph (1) of the General Provisions of Criminal Law (hereinafter referred to as KUHP). However, in its development, the principle of legality in the field of criminal law has developed and become an interesting discussion due to the emergence of political influence and / or legal influence that must deal with

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[25] Keberatan diajukan sesuai dengan Pasal 25 ayat (1) UU KUP yang berbunyi: Wajib Pajak dapat mengajukan keberatan hanya kepada Direktur Jenderal Pajak atas suatu: Surat Ketetapan Pajak Kurang Bayar; Surat Ketetapan Pajak Kurang Bayar Tambahan; Surat Ketetapan Pajak Nihil; Surat Ketetapan Pajak Lebih Bayar; atau pemotongan atau pemungutan pajak oleh pihak ketiga berdasarkan ketentuan peraturan perundangundangan perpajakan.

[26] Banding diajukan sesuai dengan Pasal 27 ayat (1) dan UU KUP yang berbunyi:

(1) Wajib Pajak dapat mengajukan permohonan banding hanya kepada badan peradilan pajak atas Surat Keputusan Keberatan sebagaimana dimaksud dalam Pasal 26 ayat (1).
(2) Putusan Pengadilan Pajak merupakan putusan pengadilan khusus di lingkungan peradilan tata usaha negara.

[27] Pasal 36A UU KUP:

(1) Pegawai pajak yang karena kelalaiannya atau dengan sengaja menghitung atau menetapkan pajak tidak sesuai dengan ketentuan undang-undang perpajakan dikenai sanksi sesuai dengan ketentuan peraturan perundang-undangan.
(2) Pegawai pajak yang dalam melakukan tugasnya dengan sengaja bertindak di luar kewenangannya yang diatur dalam ketentuan peraturan perundang-undangan perpajakan, dapat diadukan ke unit internal Departemen Keuangan yang berwenang melakukan pemeriksaan dan investigasi dan apabila terbukti melakukannya dikenai sanksi sesuai dengan ketentuan peraturan perundang-undangan.
(3) Pegawai pajak yang dalam melakukan tugasnya terbukti melakukan pemerasan dan pengancaman kepada Wajib Pajak untuk menguntungkan diri sendiri
(4) secara melawan hukum diancam dengan pidana sebagaimana dimaksud dalam Pasal 368 Kitab Undang-Undang Hukum Pidana.
(5) Pegawai pajak yang dengan maksud menguntungkan diri sendiri secara melawan hukum dengan menyalahgunakan kekuasaannya memaksa seseorang untuk memberikan sesuatu, untuk membayar atau menerima pembayaran, atau untuk mengerjakan sesuatu bagi dirinya sendiri, diancam dengan pidana sebagaimana dimaksud dalam Pasal 12 Undang- Undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi dan perubahannya.
(6) Pegawai pajak tidak dapat dituntut, baik secara perdata maupun pidana, apabila dalam melaksanakan tugasnya didasarkan pada iktikad baik dan sesuai dengan ketentuan peraturan perundang-undangan perpajakan.

[28] I Wayan Suandi, Eksistensi Kebijakan Publik dan Hukum dalam Penyelenggaraan Pemerintah Daerah, website: http://ejournal.unud.ac.id/abstrak/2pdf.pdf, last downloaded on 13 March 2011.

criminal policy issues.[29] One of the interesting things in the discussion of the principle of legality is the use of authority which is generally attached to State Administrators. Basically, the act of abuse of authority is an unlawful act committed by the authorities/officials/state administrators which initially constitutes an act of unlawful acts that can result in the prosecution of compensation by other parties.

Beschikking issued by Fiskus (tax officials) is a state administrative authority as stipulated in the AP Law, so that the authority to receive, examine, and decide whether or not there is an element of abuse of authority in deciding and/or acting in issuing the beschikking has been attributed to the State Administrative Court (PTUN).[30] he granting of authority to the PTUN to examine the elements of abuse of authority arises as a result of the absence of a defence forum for Government Officials who are suspected of having committed abuse of authority other than in the realm of criminal law, so that the Tax Authority does not become a victim of criminalisation of the policies that have been made.[31] Considering that a good tax *beschikking* that is in accordance with the implementation of HAN in Indonesia is in accordance with state norms, based on the principle of legality as stated in Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Courts (PTUN Law), KUP Law, and AAUPB. Thus, it can provide a guarantee of legal protection for both authorised tax officials and taxpayers. The Decision Letter and/or Assessment Letter *(Beschikking*) issued by DGT cannot be punished, because:

a. Tax law or also known as fiscal law is part of public law, precisely HAN, in which the basis of the authorised official in DGT in issuing beschikking obtains the source of authority that must be obeyed (which *ip so jure*) is positive law in the form of UU attributes to DGT itself which is then delegated to the authorised official. The source of the attribute is clear which is based on the philosophy of Pancasila and Article 23 A of the 1945 Constitution which is attributed to the KUP Law, Income Tax Law, VAT Law, BPHTB Law, PBB Law, Tax Collection Law and then the legislation attributes to DGT. All legal bases of DGT's beschikking have referred to the type and hierarchy of laws and regulations as stated in Article 7 paragraph (1) of the Law on the Formation of Regulations.
b. Beschikking issued by DGT has fulfilled 2 (two) kinds of legal force on a valid matter, namely: formal legal force and material legal force. A beschikking has formal legal force if the beschikking can no longer be challenged by a legal instrument. A beschikking has material legal force when the beschikking can no longer be negated by the state instrument that made it.
c. Fiskus in DGT is positioned as an element of the state apparatus whose duty is to provide services to the public in a professional, honest, fair, and equitable manner in the implementation of state, government, and development tasks. In this position and duty, the Tax Authority must be neutral from the influence of all groups and political parties and not discriminate in providing services to the community. One of which is processing beschikking which is the right of taxpayers to receive services.
d. Obtaining public services organised by DGT should be seen as a citizen's right that should be based on legal norms that clearly regulate it.

Even if there is a dispute regarding a tax beschikking between the taxpayer and the Fiskus, the legal remedies taken by the taxpayer must be in accordance with the principle of legality in HAN. The means that can be used by taxpayers in their protection against unlawful acts of state administrative officials can be done through efforts:

a. To the superior of the issuing institution in the case of objection (to the one who issued the decision)

[29] Kabib Nawawi, *Refleksi Berlakunya Asas Legalitas dalam Penegakan Hukum Pidana di Indonesia*, Majalah Hukum Forum Akademika (ISSN:0854-789), Volume 17 Nomor 1 April 2008.
[30] Firna Novi Anggoro, Pengujian Penyalahgunaan Wewenang terhadap Keputusan dan/atau Tindakan Pejabat Pemerintahan oleh PTUN, *Fiat Justisia*, Vol. 10, No. 4, 2016, p. 648.
[31] *Loc.cit*.

b. To the relevant Supervisory Institution in the case of objection (to the one who issued the decision)
c. Through Ombusdman in the event of maladministration in carrying out its service functions.
d. Testing for abuse of authority to the PTUN as attributed in the AP Law and PTUN Law.
e. Through the Judiciary, is a procedure to resolve the dispute issue of beschikking issued by DGT if the taxpayer is not satisfied with the beschikking. The procedure is conducted in accordance with Article 27 of KUP Law and Tax Court Law.
f. Through the General Court (Criminal) when there are elements such as unlawful act, fault, loss, and causal relationship between the act of state administrator/official/state administration and the loss. Examples are in the event of extortion, corruption, bribery, and embezzlement. The party that can file a lawsuit is the aggrieved party (taxpayer or government institution that receives the complaint/report).

C. CONCLUSION

Based on the introduction, analysis, and discussion, it is concluded that a beschikking in the field of taxation can be criminalised for abuse of authority if the beschikking has been tested for abuse of authority to the State Administrative Court and/or there is sufficient preliminary evidence that the beschikking contains elements of unlawful (criminal) acts that cause losses to the state finances or economy (for example, extortion, corruption, or bribery). The Tax Authority must have efforts to deal with pre and post criminalisation of a beschikking. In the event of pre-criminalisation of beschikking, among others, it can be done by applying the issuance of beschikking in the field of taxation based on the principle of legality as stipulated in the PTUN Law, KUP Law, and AAUPB. In the event of post-criminalisation of beschikking, DGT can make several efforts, among others: a) implement Article 7 of the Law on Clean and Corruption-Free State Administration, which is to cooperate with related law enforcement institutions, as it is stipulated that the State Administration respects each other in institutional relations by complying with institutional norms, decency, morality, and ethics based on Pancasila and the 1945 Constitution of the Republic of Indonesia by adhering to AAUPB and the provisions of applicable laws and regulations, 2) consider reviewing the Supreme Court Circular Letter No. MA/Pemb/0159/77. Supreme Court Circular Letter No. MA/Pemb/0159/77 dated 25 February 1977, which allows for appeals and extraordinary legal remedies if the criminalisation of a beschikking continues to go to the general court, 3) request legal opinions from legal experts as experts who can explain or shed light on the criminalisation of a beschikking in the field of taxation.

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