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PRELIMINARY EVIDENCE AUDIT AND TAX ASSESSMENT NOTICE IN THE RESPONSIVE LAW PERSPECTIVE (Part 1 of 2)

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Abstract

The establishment and enforcement of law in the preliminary evidence examination in the field of taxation do not yet reflect the objective of the law, namely based on justice, legal certainty, and public benefit, and do not yet reflect the primary function of taxation, namely the function of budgeting and regulation. Based on the normative juridical method using primary, secondary, and tertiary legal materials, 2 (two) conclusions are produced. First, there are no tax laws and regulations regarding issuing tax assessment letters in preliminary evidence audits in Indonesia, thus ignoring the objective of tax collection, which must be fair, specific, and beneficial. Second, the ideal legal concept in issuing tax assessment letters in preliminary evidence examinations in Indonesia in the future is to apply provisions for repairing preliminary evidence that is functionally oriented, pragmatic, purposeful and rational, and competent in their implementation.

*Disclaimer: This article is a private scientific study of the researcher and does not reflect the institution's opinion/policy.

1. INTRODUCTION

Examination of preliminary evidence as referred to in Article 1 number 26 of Law Number 6 of 1983 concerning General Provisions and Tax Procedures as amended several

times, most recently by Law Number 7 of 2021 concerning Harmonization of Tax Regulations (KUP Law) is a condition, an act , and/or evidence in the form of statements, writings, or objects that can provide indications that there is a strong allegation that a criminal act in the field of taxation is being committed or has been committed by anyone that can cause losses to state revenues. The definition of preliminary evidence examination in the field of taxation shows that preliminary evidence examination is a series of activities carried out by preliminary evidence examiners, against anyone, both individuals and/or entities, related to a situation, action, and/or evidence that can provide indications of strong allegation that a criminal act in the field of taxation is taking place or has occurred which could cause losses to state revenues.[1]

Preliminary evidence examination can only be carried out by Civil Servant Investigators (PPNS) within the Directorate General of Taxes (DGT), where some of the solutions can be in the form of investigation proposal reports, use of Article 8 paragraph (3) KUP Law, issuance of tax assessment letters (until before Law No. 7 of 2021 or HPP Law applies), summary reports, and minutes of findings. The preliminary evidence audit performance data for 2021,[2] 2020,[3] 2019,[4] 2018,[5] and 2017,[6] d tax years are presented in Chart 1 below.

[1] Henry D. P. Sinaga, and Denny Irawan, Reformulation of the Preliminary Evidence Audit Type in Taxation: When Legal Hermeneutics meets the Rule of Law (Part 1 of 2), Scientium Law Review, Vol. 1, No. 2, 2022, pp. 33-40.

[2] Directorate General Taxes, 2022, Annual Report 2021, available at https://pajak.go.id/sites/default/files/2022-11/Laporan%20Tahunan%20DJP%202021%20-%20English.pdf, accessed on November 20, 2022, p. 85.

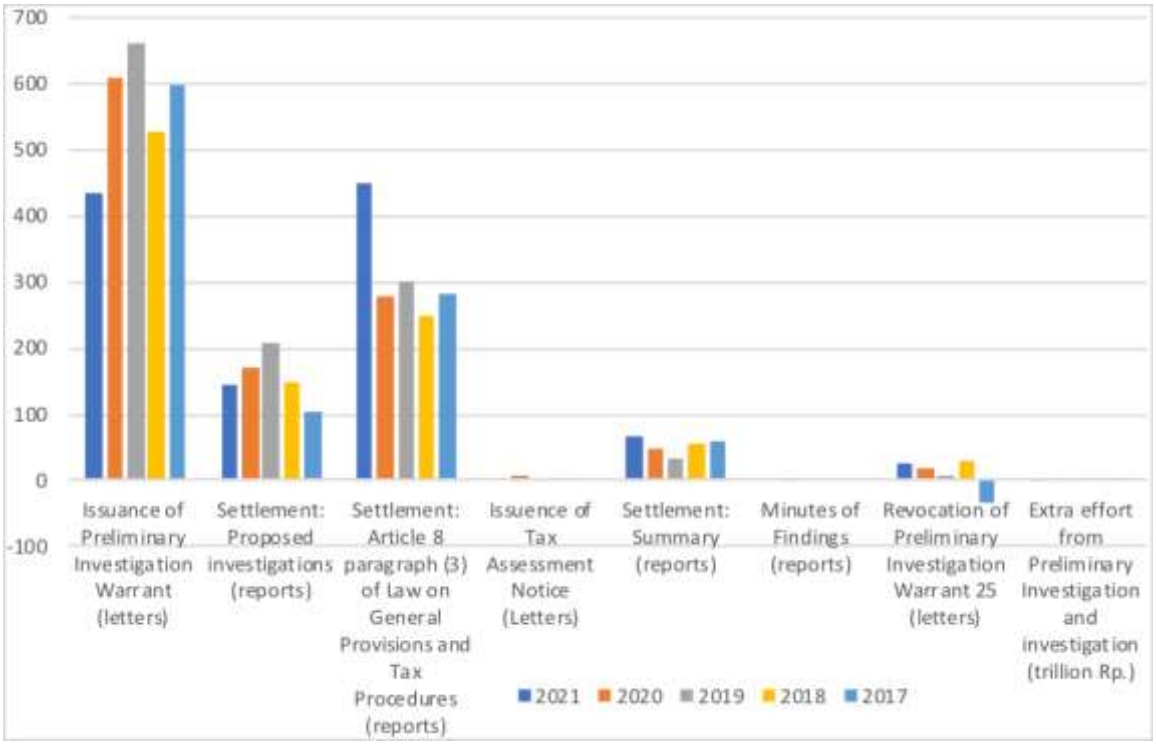
[3] Directorate General Taxes, 2021, Annual Report 2020, available at https://pajak.go.id/sites/default/files/2021-10/Laporan%20Tahunan%20DJP%202020%20-%20Bahasa.pdf, accessed on November 20, 2022, p. 82.

[4] Directorate General Taxes, 2020, Annual Report 2019, available at https://pajak.go.id/sites/default/files/2020-12/Laporan%20Tahunan%20DJP%202019%20-%20INDONESIA.pdf, accessed on November 20, 2022, p. 75.

[5] Directorate General Taxes, 2019, Annual Report 2018, available at https://pajak.go.id/sites/default/files/2019-11/Laporan%20Tahunan%20DJP%202018%20-%20bahasa%20Indonesia.pdf, accessed on November 20, 2022, p. 83.

[6] Directorate General Taxes, 2018, Annual Report 2017, available at https://pajak.go.id/sites/default/files/2019-03/DJP%20AR-2017%20Fullpages%20-%20Indonesia%20%28Lowres-Compressed%29.pdf, accessed on November 20, 2022, p. 74.

Chart 1
Preliminary Evidence Examination Performance in Indonesia 2017-2021.



Based on the data in Chart 1, it is known that the extra effort from Preliminary Evidence audits from 2017 to 2021 is Rp. 2.49 trillion, Rp. 1.98 trillion, Rp. 2.5 trillion, Rp. 2.00 trillion, and Rp. 1.62 trillion. Several existing terms can be explained from each performance indicator of the preliminary evidence examination. Article 8 paragraph (3) KUP Law is a disclosure of untruthful acts committed by taxpayers. Issuance of a Tax Assessment Letter (SKP) is carried out if the initial evidence audit report states the result, among other things, that there is no indication of a crime but that there is an underpayment of taxes. Sumir is a preliminary evidence examination report which is closed in cases where, among other things, there is no indication of a crime or the individual taxpayer has died. The Minutes of Findings is a summary report, but there is a potential tax payable. Meanwhile, the cancellation of an initial evidence examination warrant is a cancellation of an order that has been issued, among others, due to a change in the initial evidence examination from closed to open, changes in the Preliminary Evidence Examination Executing Unit due to reorganization, administrative errors such as writing names, Taxpayer Identification Number (NPWP), or suspected criminal activity.[7]

The data in Chart 1 above shows that one of the solutions for examining preliminary evidence is the recovery of losses on state revenues, including disclosure of unrighteous acts by taxpayers as referred to in Article 8 paragraph (3) KUP Law and issuance of SKP. As for the issuance of Tax Assessment Letter in terms of examining preliminary evidence

[7] Directorate General Taxes, 2020, *Op.cit.*, 82.

so far, it has been based on the provisions of Article 13A of Law Number 6 of 1983 concerning General Provisions and Tax Procedures as amended several times by Law No. 28 of 2007, as the complete formulation is:

> *"A taxpayer who, because of his negligence, does not submit a tax return or submits a tax return, but the contents are incorrect or incomplete or attaches information whose contents are incorrect so that it can cause losses to state revenues, will not be subject to criminal sanctions if the taxpayer first commits the mistake. The tax and the said taxpayer are obliged to pay off the underpayment of the amount of tax payable along with administrative sanctions in the form of an increase of 200% (two hundred percent) of the underpaid tax determined through the issuance of an Underpaid Tax Assessment Letter".*

The issuance of SKP in the form of Underpaid Tax Assessment Letters (SKPKB), as referred to in Article 13A of Law No. 28 of 2007, is based on the formulation of Article 38 of Law no. 28 of 2007. Article 38 Law no. 28 of 2007 regulates that against any person who does not submit a tax return (SPT) or submits an SPT because of his negligence. However, the contents need to be corrected or completed, or attaching information whose contents are incorrect can cause losses to state revenues, and the action is an act after the first act as referred to in Article 13A, shall be fined at least 1 (one) time the amount of unpaid or underpaid tax and a maximum of 2 (two) times the amount of unpaid or underpaid tax, or sentenced to imprisonment for a minimum of 3 (three) months or a maximum of 1 (one) year. However, Article 13A and Article 38 of Law no. 28 of 2007 have been deleted since the enactment of Law Number 11 of 2020 concerning Job Creation and the HPP Law. Even though during the 2018-2020 tax year, there were 3 Tax Assessment Notices, 5 Tax Assessment Notices, and 8 Tax Assessment Notices in each year.

Apart from the abolition of Article 13A and Article 38 of Law no. 28 of 2007 from the Tax Regulations Harmonization Law, Tax Assessment Letters, especially in the case of Underpaid Tax Assessment Letters, can only be issued after an Audit action is carried out as referred to in Article 13 paragraph (1) of the KUP Law. However, the Audit action taken may not issue a Tax Assessment Letter if the audit is suspended because it is followed up with an investigation as a follow-up to the Preliminary Evidence Audit as referred to in Article 22 paragraph (1) letter f of Minister of Finance Regulation (PMK) Number 17/PMK.03/2013 Concerning Examination Procedures Amended By Regulation of the Minister of Finance Number 184/PMK.03/2015 (hereinafter referred to as PMK No. 17/PMK.03/2013) and Regulation of the Minister of Finance Number 18/PMK. 03/2021 concerning the Implementation of Law Number 11 of 2020 concerning Job Creation in the Field of Income Tax, Value Added Tax, and Sales Tax on Luxury Goods, as well as General Provisions and Tax Procedures. Furthermore, for an Audit that is followed up with a Preliminary Evidence Audit and a Sumir Examination Report (LHP) has been prepared, an Audit may be carried out in the context of issuing tax assessment letters as long as the results of the Preliminary Evidence Audit do not contain any indication of a crime in the field of taxation, as stipulated in Article 94 letter b PMK No. 17/PMK.03/2013. Of course,

the back-and-forth examinations carried out on the same Taxpayer, Tax Year, and Tax Object due to the absence of authority to examine the initial evidence of issuing Tax Assessment Letters has created a philosophical and juridical gap.

The philosophical gap when examining preliminary evidence on the absence of authority to issue Tax Assessment Letters can cause injustice and legal uncertainty and not benefit the taxpayer and the state. This is in line with Rahardjo's criticism and Mertokusumo's and Pitlo's thoughts, which essentially emphasize that the handling of legal issues does not only use juridical logic, but also philosophical and social logic.[8] Rahardjo emphasized that the law should be seen as the result of human struggles to create justice in their society,[9] so that the law does not exist for itself but for humans and society.[10] Then, Mertokusumo and Pitlo emphasized that law enforcement with legal certainty, expediency, and justice makes the law a reality.[11] The philosophical gap in law enforcement in taxation through initial evidence examination that is not authorized to issue Tax Assessment Letters can be seen from the business processes that still need to reflect legal certainty, benefits, and fairness. Some of them are seen in the following:

a) The tax audit was postponed due to an increase in the preliminary evidence examination. Then the initial evidence examination was not followed up with an investigation. Hence, the absence of preliminary evidence audit authority caused the preliminary evidence examination to be continued with a tax audit for the issuance of Tax Assessment Letters.
b) Challenges and problems in terms of ambiguity (uncertainty, lack of clarity) of justice and legal certainty in the context of tax law as a penal administrative law, as an investigation into tax crimes, should be a final effort (ultimum remedium).[12]
c) Statement of Legal Expert on State Budget and Public Finance in Supreme Court Cassation Decision No. 2583 K/PID.SUS/2016 confirms that the spirit of the state financial regime, including taxes, is an administrative settlement because the state prioritizes state revenues.[13]
d) Statement of Criminal Experts in the Supreme Court's Cassation Decision No. 2583 K/PID.SUS/2016 states that the crime is carried out if the administrative element cannot be fulfilled by the taxpayer and causes state financial losses, considering the nature of tax law is part of civil law and the nature of the tax authorities (tax officers) is to collect tax as much as -amount and arrange in order to maximize tax collection.[14]

The juridical gap can be seen from the neglect of the systematic interpretation of several tax laws and regulations as penal administrative law, including the meaning of the

[8] Satjipto Rahardjo, 2008, Biarkan Hukum Mengalir: Catatan Kritis tentang Pergulatan Manusia dan Hukum, Jakarta, Penerbit Buku Kompas, p. 87
[9] *Ibid.*, p. 20.
[10] *Ibid.*, p. 87.
[11] Sudikno Mertokusumo and Pitlo, 2020, Bab-Bab Tentang Penemuan Hukum, Bandung: PT. Citra Aditya Bakti, p. 1.
[12] Denny Irawan, Restorative Justice Aspect in Strengthening Preliminary Evidence Audit in Indonesian Taxation, Journal of Tax Law and Policy, Vol. 1, No. 2, 2022, p. 2.
[13] *Loc.cit.*
[14] *Ibid.*, pp. 2-3.

self-assessment system in the KUP Law, which should be in harmony with the principle of ultimum remedium from the initial examination of evidence. This can be seen, among others, from the following considerations:

a) There is an explanation of Article 43A paragraph (1) KUP Law which states that the examination of initial evidence has the same purpose and position as an investigation, even though Article 1 point 4 of Law Number 8 of 1981 concerning Criminal Procedure Law has stated that investigators are state police officials of The Republic of Indonesia which is authorized by this law to conduct an investigation.[15]
b) There are two types of initial evidence examination, namely open and closed initial evidence examination), which can be a problem considering the role of the tax is to continue to encourage sustainability and social justice for all taxpayers in Indonesia while still paying attention to the rights of taxpayers in the form of the right to life, the right to self-improvement, the right to actively participate in developing the country, and the right to recover and overcome the loss of tax revenues suffered by the state.[16] Closed preliminary examination of evidence in Government Regulation Number 74 of 2011 concerning Procedures for the Implementation of Rights and Fulfillment of Tax Obligations (which revoked Government Regulation Number 80 of 2007) and PMK Number 239/PMK.03/2014 raises ambiguity in several respects, such as the period carrying out an initial evidence examination for 12 months with a maximum extension of 12 months which in the end is not escalated to an investigation but proceeds to a tax audit will be unfair to the taxpayer, and a closed preliminary evidence examination which has been completed which can be carried out again closed preliminary evidence examination or examination of preliminary evidence openly.

No legal study seeks to address the philosophical and juridical gaps in the authority to examine initial evidence for issuing Tax Assessment Letters in Indonesia. So it is necessary to answer 2 (two) existing problem formulations. First, why do we need provisions in tax laws and regulations regarding issuing Tax Assessment Letters in preliminary evidence audits in Indonesia. Second, what is the ideal legal concept for issuing Tax Assessment Letters in preliminary evidence examinations in Indonesia.

2. METHODS

Considering that the target or object of study in addressing the 2 (two) existing problem formulations is either the law or rules (norms), this study used a method which is a procedure or way of investigating the target or object, which applies systematic

[15] Henry D. P. Sinaga, and Denny Irawan, *Op.cit.*, p. 2.
[16] Henry Dianto Pardamean Sinaga, and Anis Wahyu Hermawan. (2020). Reconstruction Of The Ultimum Remedium Principle Of Administrative Penal Law In Building A Sociological- Opposed Tax Investigation In Indonesia. Ayer Journal, Vol. 27, No. 2, pp. 50,67.

steps.[17] As for the research method in this study, it is sufficient to use normative juridical methods as Mertokusumo emphasized that the objects of normative legal research, which include legal principles, vertical and horizontal synchronization levels, must examine the truth of the rules through descriptive studies, and also examine whether the law applies or not, namely about what should be done (prescriptive).[18] Descriptive studies provide as accurate data as possible about humans, conditions, or other phenomena, while prescriptive studies are intended to obtain suggestions for overcoming the problems raised in this article.[19]

There is indeed criticism of the use of normative juridical methods which tend to ideologically legislate certainty which is a derivative of the positivism paradigm, where according to legal positivism, legal norms may only be tested with customary legal norms, not with non-legal norms.[20] Furthermore, Susanto argued that positive norms would be accepted as an axiomatic doctrine as long as they followed "the rule systematizing logic of legal science" which contained principles of exclusion, derogation, and non-contradiction.[21] Thus, normative studies do not only reach an order, prescription or order, but also the granting of authority, permitting, and derogation.[22]

This normative juridical method uses data from indirect sources, secondary data, or library research.[23] The secondary data sources used in this study consist of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials are legal materials that have legally binding force, consisting of the 1945 Constitution of the Republic of Indonesia and the applicable laws and regulations. Secondary legal materials are legal materials that are closely related to analyzing and understanding primary legal materials, which include draft laws and regulations, statutory regulations that do not apply, research results, textbooks, and journals or articles. Meanwhile, tertiary legal materials complement primary and secondary legal materials, such as legal dictionaries, indexes, encyclopedias, and bibliographies.[24]

The legal materials obtained during the study will be discussed and analyzed so that conclusions and suggestions can be drawn. As for concluding using the normative juridical method in this study using deductive logic, namely concluding general matters to individual (particular) cases.[25] Concluding is very important in this study, considering that this study departs from tax laws and regulations that apply as positive knowledge in

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[17] Jujun S. Suriasumantri, 1995, Filsafat Ilmu: Sebuah Pengantar Populer, Jakarta: Pustaka Sinar Harapan, p. 119.
[18] Sudikno Mertokusumo, 2020, Penemuan Hukum: Sebuah Pengantar, Yogyakarta: CV. Mahakarya Pustaka, p. 33.
[19] Soerjono Soekanto, 2010, *Pengantar Penelitian Hukum*, Jakarta : Penerbit Universitas Indonesia, pp. 9-11.
[20] Anthon F. Susanto, 2010, Ilmu Hukum Non Sistematik: Fondasi Filsafat Pengembangan Ilmu Hukum Indonesia, Yogyakarta: Genta Publishing, p. 71.
[21] *Loc.cit*.
[22] Hans Kelsen, 2006, Hukum dan Logika, Bandung: Penerbit Alumni, pp. 1-2.
[23] Suteki, and Galang Taufani, 2020 *Metodologi Penelitian Hukum: Filsafat, Teori, dan Praktik*. Depok: PT. RajaGrafindo Persada, p. 214.
[24] *Ibid*., p. 216.
[25] Jujun S. Suriasumantri, *Op.cit*., p. 48.

society to be used as essence and facts to carry out in practical life and the theoretical thinking of society..[26]

3. LITERATURE REVIEW AND THEORETICAL FRAMEWORK

In producing ideal legal concepts for issuing Tax Assessment Letters in preliminary evidence examinations in Indonesia, it is necessary to prepare theoretical guesses that can describe theories, concepts, definitions, principles, or principles related to the existing problems.[27] Theoretical guessing is a tool for analyzing and discussing available primary, secondary and tertiary legal materials so that conclusions are produced that can answer the formulation of the problems and constructive suggestions. This study departs from the nature of taxes which are coercive payments based on applicable laws. Regarding the law passed, Asshiddiqie emphasized that there are norms that must be obeyed, namely, "mandatory" or "directory".[28] Furthermore, Asshiddiqie explained that if a law gives birth to rights and obligations by determining how both are implemented, then the provision is "mandatory", and the former wants the fulfillment of such provision to be made the main thing in the framework of the enforcement of the law in question.[29] However, suppose the law determines a particular time when implementing a provision or carrying out a certain task. In that case, the law is said to be "directory", the fulfillment of which does not need to be formal and absolute but sufficient to be substantive or material.[30]

a. When *Lex Specialist Derogate Legi Generali* Principle and *Ultimum Remedium* Principle Meet with Self-Assessment System

Article 23A of the Fourth Amendment to the 1945 Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia) has mandated that all collection of taxes and other forced levies be based on law. One of the manifestations of Article 23A of the 1945 Constitution of the Republic of Indonesia is the tax collection system in Indonesia which must be based on a self-assessment system. The definition of a self-assessment system based on Article 2 paragraph (1), Article 3 paragraph (1) and paragraph (2), Article 4 paragraph (1), Article 10 paragraph (1), and Article 12 paragraph (1) of the KUP Law is an obligation Taxpayers who have met the subjective and objective requirements in Indonesia to register themselves at the tax office, fill out correct, complete, and transparent tax return (SPT) themselves and sign and submit it to the tax office and pay or deposit the tax payable themselves by using a ltax payment slip (SSP) without relying on a tax assessment letter (SKP).

Of course, the implementation of the self-assessment system will have consequences for taxpayers and tax authorities, namely the need for compliance testing for fulfilling tax obligations that must be carried out by Fiskus (Tax Officers). This is regulated in Article 12, paragraph (2), and paragraph (3) of the KUP Law, which confirms that the amount of tax payable according to the SPT submitted by the taxpayer is the amount of tax payable following the provisions of the tax laws and regulations.

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[26] *Loc.cit.*
[27] Dumaria Simanjuntak, 2022, *Rancang Bangun Hukum Pengawasan Desa di Indonesia*, Jakarta: PT. Scientia Integritas Utama, p. 12.
[28] Jimly Asshiddiqie, 2020, *Perihal Undang-Undang*, Depok: PT. Rajagrafindo Persada, p. 19.
[29] *Ibid.*, p. 20.
[30] *Loc.cit.*

However, suppose the Director General of Taxes finds proof that the amount of tax payable according to the tax return is incorrect. In that case, the Director General of Taxes determines the amount of tax payable.

The authority of the Director General of Taxes in determining the amount of tax payable can only be exercised through law enforcement in the field of taxation. As for any law enforcement in the field of taxation, it must be carried out based on tax legislation which is a lex specialist of tax law. As for law enforcement in the field of taxation, it consists of tax audits, tax collection, preliminary evidence audits, and criminal investigations in the field of taxation, each of which is carried out in the process of the ultimum remedium principle.

The lex specialist derogate legi generale principle has been widely studied in legal literature. Observing the dialectic that occurs in how to interpret the Lex Specialis Derogat Legi Generali principle, Wicaksana concluded that there are 2 (two) perspectives, namely the container theory and the content theory, as the complete quote is

> *"The container theory views that when everything is regulated in a specific provision, the arrangement will override a general regulation. Then the content theory views that when looking at a criminal act, then the content/content of a criminal provision is more appropriate for the criminal act. The point is that when the criminal act is associated with the textuality of the sound of a particular formulation of criminal provisions, which formulation of the text is closer to the criminal act. That is the guideline for which one is more specific among several statutory products because legislation has hierarchical equality.*[31]

Then, Bagir Manan emphasized that the use of the lex specialis derogat legi generali principle must at least pay attention to the following 3 (three) things. First, the provisions in general regulations remain valid unless specifically regulated in special regulations. Second, special provisions (lex specialis) must be of the same hierarchical level as general provisions (lex generalis)—for example, law by law. And third, special provisions (lex specialis) must be in the same legal environment (regime) as general provisions (lex generalis). For example, the Commercial Code (KUH Dagang) is a lex specialis of the Civil Code (KUH Perdata) because it is within the exact scope of law, namely the civil law environment[32]

Furthermore, Hiariej argued that the principle of lex specialis derogat legi generali has developed theoretically; one of its derivations is the principle of lex specialis systematics, which is to resolve conflicts between two or more provisions in the special criminal law.[33] Hiariej emphasized that the tax law fulfills the lex specialis systematisitalic criteria because apart from having a specific address (namely the taxpayer and tax officer), both the material and the formal provisions deviate from the

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[31] Yonathan Aryadi Wicaksana, Dualisme Pemaknaan Asas Lex Specialis Derogat Legi Generali, *Jurnal Verstek*, Vol. 9, No. 3, 2021, p. 685.

[32] Maulana Fadillah, Dewi Kania Sugiharti, dan Holyness N. Singadimedja, Implikasi Putusan Mahkamah Agung yang Menyatakan Kontrak Karya sebagai Lex Specialis dari Undang-Undang Nomor 28 Tahun 2009 tentang Pajak Daerah dan Retribusi Daerah terhadap Keuangan Daerah, *Jurnal Sains Sosio Humaniora*, Vol. 6, No. 1, 2022, p. 531.

[33] Edward Omar Sharif Hiariej, Principle of Lex Specialist Systematic and Tax Criminal Law, Jurnal Penelitian Hukum De Jure, Vol. 21, No. 1, 2021, pp. 1, 10.

Criminal Code (KUHP) and the Procedure Code. Criminal Code (KUHAP) (so that when in court proceedings, the provisions used are criminal tax provisions)[34]

The existence of several ideas and understandings of the lex specialis principle and the ultimum remedium principle shows that the enforcement of criminal law in the field of taxation, including the examination of initial evidence, should still pay attention to the principle of ultimum remedium, which requires the application of criminal law enforcement as a last resort after the application of administrative law enforcement is unsuccessful. The imposition of criminal offenses in the field of taxation should only be made as a last resort against taxpayers who do not comply at all.

b. The Urgency of Responsive Legal Theory in Dissecting Preliminary Evidence Examination

Even though the initial evidence examination is an examination conducted to obtain preliminary evidence regarding a strong allegation that a criminal act in the field of taxation is being or has been committed as referred to in Article 1 number 27 of the KUP Law and Article 1 number 9 of the Minister of Finance Regulation Number 177/PMK.03 /2022 concerning Procedures for Examining Initial Evidence of Criminal Acts in the Taxation Sector (hereinafter referred to as PMK No. 177/PMK.03/2022), however, the law remains not as a servant of repressive power, but as a facilitator of various responses to social needs and aspirations.[35] This type of law is called responsive law, which shows an adaptive capacity that is responsible, selective, and not haphazard.[36] Furthermore, Nonet and Selznick put forward several propositions from responsive law, including the purpose of the law is competence, regulations are subordinate to principles and rules, have broad discretion but are still under the objectives, and have civil morality or cooperation morality[37]

Ideally, the latest tax laws adopt responsive laws, as so far, there have been several thoughts and ideas on responsive regulation. The implementation of responsive regulation in taxation can be seen from its efforts to influence people's commitment to pay taxes through respectful treatment, by paying attention to rejection and correcting wrong processes, through the disapproval of non-compliant behavior, through preparedness to impose sanctions, and the capacity to follow up to increase regulatory intervention in dealing with ongoing non-compliance.[38] Braithwaite *et al*. argue that an integral part of the responsive regulation approach is to provide opportunities for dialogue on tax issues through regulatory practices from the tax authorities (not due to compulsion or the taxpayer's initiative). A well-implemented responsive regulation intervention will enable taxpayers to express their views, overcome their objections and complaints, and move to a position where they are on a better footing to deal with the tax authorities.[39] Referring to practice, responsive regulation has several important elements in its implementation, namely:

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[34] *Ibid*., p. 10.
[35] Philippe Nonet and Philip Selznick, 2007, *Hukum Responsif*, Terjemahan Raisul Mutaqqien, Bandung, Penerbit Nusamedia, p. 18.
[36] *Ibid*., p. 87.
[37] *Ibid*., p. 19.
[38] Valerie Braithwaite, Responsive Regulation and Taxation: Introduction, Law & Policy, Vol. 29, No. 1, 2007, p. 3.
[39] Valerie Braithwaite, Kristina Murphy, and Monika Reinhart, Taxation Threat, Motivational Postures, and Responsive Regulation, Law & Policy, Vol. 29, No. 1, 2007, p. 154.

"(a) influencing the flow of events (b) through systematic, fairly directed and fully explained disapproval (c) that is respectful of regulatees, helpful in filling information gaps and attentive to opposing or resisting arguments, (d) yet firm in administering sanctions (e) that will escalate in intensity in response to the absence of genuine effort on the part of the regulatee to meet the required standards. Responsive regulation is a complex business".[40]

Then, Job et al. emphasize that responsive regulation is beneficial for compliance that does not run automatically and straightforwardly, which often happens with tax laws and policies. Responsive regulation provides a means of positive reinforcement through providing support, recognizing achievements, and seeking recognition, all of which can be integrated with law enforcement practices.[41] Furthermore, Baldwin and Black conclude that the essence of responsive regulation, which many governments and regulators have implemented, is a 'tit for tat' approach in which regulators enforce in the first instance by compliance strategies, such as persuasion and education, but implementing a more punitive preventive response whose response is escalated if regulated taxpayers do not behave as desired.[42]

The existence of responsive legal theory and the implementation of responsive regulation in taxation shows that tax law must be competency-oriented based on the morality of cooperation and discretion, which is adjusted to the goals of the tax itself. The implementation of responsive legal theory in the initial evidence audit is a tax goal that seeks to increase voluntary compliance of taxpayers through preliminary evidence audits carried out from a dialogic level to a more punitive level of prevention whose escalation depends on the taxpayer's response, so that the taxpayers are committed to paying taxes on an ongoing basis based on the applicable tax laws and regulations.

To be Continued...

[40] Valerie Braithwaite, *Op.cit.*, p. 5.
[41] Jenny Job, Andrew Stout, and Rachael Smith, Culture Change in Three Taxation Administrations: From Command-and-Control to Responsive Regulation, Law & Policy, Vol. 29, No. 1, 2007, p. 86.
[42] Robert Baldwin and Julia Black, Really Responsive Regulation, *The Modern Law Review*, Vol. 71, Issue 1, 2008, p. 62.