

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

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Article	Abstract
<p>Keywords: Preliminary Evidence Audit; Tax Assessment Notice; Responsive Law</p> <p>History of Article Received: November 01, 2022; Reviewed: November 12, 2022; Accepted: December 07, 2022; Published: December 30, 2022;</p> <p>DOI:</p>	<p>The formation and enforcement of law in preliminary evidence examination in the field of taxation have not reflected the legal objectives, namely justice, legal certainty, and public welfare, and have not reflected the primary functions of taxation, namely budgetary and regulatory functions. Two conclusions are drawn based on normative juridical methods using primary, secondary, and tertiary legal materials. Firstly, there needs to be tax legislation regarding the issuance of tax assessment notices in preliminary evidence examination in Indonesia, thus disregarding the fair, certain, and beneficial purposes of tax collection. Secondly, the ideal legal concept for issuing a Tax Assessment Decision (SKP) in future preliminary evidence examinations in Indonesia would be to apply a functional, pragmatic, purposeful, and rational approach to preliminary evidence examination and competence in its implementation.</p>

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

4. ANALYSIS AND DISCUSSION

A. Prevailing Law of Tax Assessment Notice and Preliminary Evidence Audit

Tax assessment notice and preliminary evidence audit have been regulated under the framework of the Law and Minister of Finance regulations. In the framework of the Law, the tax assessment notice, which includes determinations and decisions, is governed by Article 12 paragraph (3), Article 13 paragraph (1), Article 14 paragraph (1), Article 17 paragraph (1), Article 17A paragraph (1), Article 17B paragraph (1), Article 17C paragraph (4), and Article 17D paragraph (4) of the General Provisions and

Taxation Procedures Law (KUP Law). Article 43A and Article 8 paragraph (3) of the KUP Law regulates the preliminary evidence audit. On the other hand, in the framework of Minister of Finance regulations, the tax assessment notice is regulated by Minister of Finance Regulation No. 183/PMK.03/2015 regarding Amendments to Minister of Finance Regulation No. 145/PMK.03/2012 concerning Procedures for Issuing Tax Assessment Letters and Tax Bills (STP), while provisions regarding the preliminary evidence audit are formulated in Minister of Finance Regulation No. 177/PMK.03/2022 and several provisions of Minister of Finance Regulation No. 17/PMK.03/2013.

Based on the provisions regarding the Tax Assessment Decision (SKP) in the KUP Law, it can be said that the SKP is a determination letter that includes the Underpaid Tax Assessment (SKPKB), Additional Underpaid Tax Assessment (SKPKBT), Nil Tax Assessment (SKPN), or Excessive Tax Payment Assessment (SKPLB). Then, Article 1 of Minister of Finance Regulation No. 183/PMK.03/2015 defines each type of SKP. SKPKB is defined as a tax assessment letter that determines the amount of the principal tax, tax credits, underpayment of the principal tax, the amount of administrative sanctions, and the remaining tax amount to be paid. SKPKBT is defined as a tax assessment letter that determines additional tax on the already determined amount. SKPN is defined as a tax assessment letter that determines the amount of the principal tax equal to the tax credits or no tax payable and no tax credits. Lastly, SKPLB is defined as a tax assessment letter that determines the excess tax payment due to the tax credits being more significant than the tax payable or should not be payable.

SKPKB, SKPKBT, SKPN, SKPLB, and STP can be issued within a period of 5 (five) years after the tax becomes due or the end of the Tax Period, Part of the Tax Year, or Tax Year, which are issued through examination procedures. SKPKB, SKPKBT, and SKPN must be issued through examination, SKPLB is issued through research and examination results, while STP is issued based on tax administration data or examination results. The term "examination" refers to a series of activities to collect and process data, information, and/or evidence carried out objectively and professionally based on an examination standard to test compliance with tax obligations and/or for other purposes within the framework of implementing tax laws and regulations, as formulated in Article 1 number 25 of the KUP Law.

Article 43A paragraph (1) of the General Provisions and Taxation Procedures Law (KUP Law) has regulated that before conducting a criminal investigation in the field of taxation, the Director General of Taxation, through tax investigators within the Directorate General of Taxation (DJP), issues an order for a preliminary evidence audit. The preliminary evidence audit is conducted based on information, data, reports, and complaints. Furthermore, Article 4 of Minister of Finance Regulation No. 177/PMK.03/2022 stipulates that the preliminary evidence audit is conducted for the tax period, part of the tax year, or tax year, both for cases that have or have not issued a Tax Assessment Decision (SKP). In cases where an SKP has been issued, the preliminary evidence audit can only be conducted on data that includes allegations of Tax Crimes other than those mentioned in the SKP. The preliminary evidence audit is conducted as long as it does not exceed the statute of limitations for prosecuting Tax Crimes, as regulated in Article 40 of the KUP Law, which is within 10 (ten) years from the due date of the tax, the end of the Tax Period, the end of the Part of the Tax Year, or the end of the relevant Tax Year.

Article 5 of Minister of Finance Regulation No. 177/PMK.03/2022 states that the preliminary evidence audit can be conducted openly or covertly. An open preliminary evidence audit is an audit that must be preceded by the submission of a Preliminary Evidence Audit Notification Letter (SPPBP) to the individual or entity subject to the audit. In contrast, a covert preliminary evidence audit is conducted without an SPPBP being sent to the individual or entity subject to the audit. The open or covert preliminary evidence audit is carried out within a maximum period of 12 (twelve) months from the date the Preliminary Evidence Audit Order Letter is received by the Preliminary Evidence Auditor and can be extended for a maximum period of 12 (twelve) months from the expiration of the initial set period, taking into account the statute of limitations for prosecuting Tax Crimes and/or the time limit for processing tax refund applications as regulated in the KUP Law.

During the process of the preliminary evidence audit until the issuance of a criminal investigation order in the field of taxation and as long as the Notification of the Commencement of Investigation (SPDP) has not been submitted to the Public Prosecutor through the investigating officer of the Police, the Taxpayer can voluntarily and in writing disclose the inaccuracies in their Tax Returns as regulated in Article 8 paragraph (3) of the KUP Law and Article 20 paragraph (1) of Minister of Finance Regulation No. 177/PMK.03/2022. The disclosure of such inaccuracies is considered to be following the actual circumstances if the amount of the disclosure payment for the inaccuracies is equal to or more outstanding than the amount of tax payable according to the results of the preliminary evidence audit. The results of the preliminary evidence audit are documented in the Preliminary Evidence Audit Report (LHPBP). The LHPBP includes the implementation of the preliminary evidence audit, conclusions regarding the presence or absence of preliminary evidence, and follow-up actions to be taken based on the preliminary evidence audit, which is prepared based on the Preliminary Evidence Audit Working Paper (KKPBP). The LHPBP also includes the potential taxes that are not considered Tax Crimes in the field of taxation.

Several provisions regulate the relationship between an examination and a preliminary evidence audit. **First**, the authority to conduct an examination and a preliminary evidence audit can only be carried out by the Director General of Taxation through the team assigned to receive the examination order. **Second**, during an examination, there is a suspicion of tax crimes. In that case, the examination will be suspended and followed up with a preliminary evidence audit as regulated in Article 12 of Government Regulation No. 74/2011 in conjunction with Article 12 of Government Regulation No. 9/2021 regarding Taxation Treatment to Support Ease of Doing Business. The suspension of the examination will continue if: a) the preliminary evidence audit is stopped due to the absence of preliminary evidence of tax crimes, the event is not a tax crime, or the taxpayer who is subjected to the preliminary evidence audit has passed away; b) the investigation is halted due to insufficient evidence, the event is not a tax crime, or the investigation is legally stopped due to *nebis in idem* or the death of the suspect, or c) there is a court decision regarding a tax crime that has obtained a permanent legal force and has resulted in acquittal or release from all legal claims, and a copy of the court decision has been received by the Director General of Taxation. However, the suspended examination will be terminated if: a) the preliminary evidence audit is stopped because of the disclosure of inaccuracies by the taxpayer as referred to in Article 8 paragraph (3) of the General Provisions and Taxation Procedures Law (KUP Law) is following the actual circumstances; b) the investigation is

halted because the taxpayer has disclosed inaccuracies as regulated in Article 44A of the KUP Law, or the taxpayer or suspect has made payment as referred to in Article 44B paragraph (1) of the KUP Law; c) the preliminary evidence audit or investigation is terminated due to expiration as regulated in Article 40 of the KUP Law; or d) there is a court decision regarding a tax crime that has obtained a legal force but does not result in acquittal or release from all legal claims, and a copy of the court decision has been received by the Director General of Taxation. **Third**, concerning examinations related to applications for a tax refund of overpayments, as referred to in Article 17B paragraph (1) of the KUP Law, the time limit for processing such applications must be considered. Article 65 paragraph (3) of Minister of Finance Regulation No. 17/PMK.03/2013 stipulates that a suspended examination will continue if there is still a tax overpayment based on the preliminary evidence audit or investigation results. The testing period or extension period will be extended for a maximum period of 4 (four) months as regulated in Article 67 paragraph (1) of Minister of Finance Regulation No. 17/PMK.03/2013. However, the Director General of Taxation can still examine if data was discovered after the examination was terminated, other than what is disclosed in Article 8 paragraph (3) or Article 44B of the KUP Law.

B. Preliminary Evidence Audit in *Lex Specialist* and *Ultimum Remedium* Principle Perspectives

The term "Preliminary Evidence Audit" is derived from the words "examination" and "preliminary evidence," although its definition refers to an examination conducted to obtain preliminary evidence of strong suspicion that a tax crime is taking place or has occurred. The definition of "examination," according to Article 1 number 7 of Minister of Finance Regulation No. 177/PMK.03/2022, is a series of activities to collect and process data, information, and/or evidence carried out objectively and professionally based on examination standards to test compliance with tax obligations and/or for other purposes in implementing tax laws and regulations. Meanwhile, the definition of "preliminary evidence" according to Article 1 number 8 of Minister of Finance Regulation No. 177/PMK.03/2022 is the state, act, and/or evidence in the form of information, writing, or object that can provide strong indications that a Tax Crime in the field of taxation is being or has been committed by anyone that may cause loss to state revenue.

The definitions based on the origins of these words indicate that a preliminary evidence audit should ideally be a series of activities to objectively and professionally gather and process data, information, and/or evidence to obtain information, acts, and/or evidence in the form of information, writing, or object that can provide strong indications that a Tax Crime in the field of taxation is being or has been committed by anyone that may cause loss to state revenue. This definition emphasizes that a preliminary evidence audit is an examination action to obtain indications of the occurrence or existence of a Tax Crime in the field of taxation committed by anyone that may cause loss to state revenue.¹ This examination action should be carried out with administrative and criminal mechanisms, both oriented towards restorative justice, which is related to restoring the resulting losses. It is crucial to acknowledge considering the tendency of criminal sanctions to fail in meeting the needs of victims or perpetrators, thus requiring a restorative justice approach that views crime as a

¹ Edward Omar Sharif Hiariej, *Ibid*.

violation against individuals and their obligations to "make things right" and achieve fairness through reparative, reconciliatory, and convincing solutions.²

Certainly, the preliminary evidence audit, which has been formulated in the legal framework under Article 1 numbers 25, 26, and 27, Article 8 paragraph (3), and Article 43A of the General Provisions and Taxation Procedures Law (KUP Law), must be implemented within the framework of the self-assessment system applied in the tax collection system in Indonesia. 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, which serves as the basis for the implementation of the self-assessment system, are mandatory provisions, while Article 12 paragraph (3) is a directory provision for the tax authority, as the tax authority is only obligated to determine the actual tax liability for tax returns that are not properly, completely, and clearly filled out and submitted by the taxpayer. The explanation of Article 3 paragraph (1) of the KUP Law states that "correct" means "correct in the calculation, including the correct application of tax laws and regulations, in writing, and following the actual circumstances." "Complete" means "including all elements related to the tax object and other elements that must be reported in the tax return," and "clear" means "reporting the origin or source of the tax object and other elements that must be reported in the tax return."

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² Daniel W. Van Ness dan Strong, Karen Heetderks. 2015, *Restoring Justice: An Introduction to Restorative Justice*, Fifth Edition, Waltham, MA: Elsevier Inc.

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The mandatory requirement for correct, complete, and precise submission and filling of tax returns (SPT) and the directory nature for the tax authority to determine the amount of tax payable only for unreported or incorrectly filled SPT (based on applicable tax laws and not based on evidence and/or fiscal data) emphasize that any matters related to SPT where the tax authority can prove that the amount of tax payable is incorrect should go through a determination process. The issuance of any tax assessment must be conducted through a tax audit.

In practice and based on applicable tax laws, any unreported or incorrect, incomplete, and unclear SPT can also be examined by the tax authority not through the tax audit mechanism but directly through preliminary evidence audit. The basis for conducting the preliminary evidence audit is solely based on information, data, reports, and complaints, as regulated in Article 43A paragraph (1) of the General Provisions and Taxation Procedures Law (KUP Law). Furthermore, the definition of information, data, reports, and complaints related to the preliminary evidence audit is formulated in the provisions found in Article 1 of Minister of Finance Regulation No. 177/PMK.03/2022. Based on the review, information, data, reports, and complaints processed in the preliminary evidence audit must fulfill obligations, including providing a Preliminary Evidence Audit Result Notice (PHPBP), a notice of follow-up to the preliminary evidence audit, or notice of changes to the follow-up of the preliminary evidence audit to individuals or entities subject to the preliminary evidence audit. The PHPBP, as defined in Article 1 number 29 of Minister of Finance Regulation No. 177/PMK.03/2022 refers to information containing the preliminary evidence audit results provided to individuals or entities subject to the preliminary evidence audit. According to Article 19 of Minister of Finance Regulation No. 177/PMK.03/2022, the Preliminary Evidence Auditor submits the PHPBP openly to individuals or entities subject to the preliminary evidence audit based on the evidence obtained. The PHPBP must be submitted 1 (one) month before the end of the preliminary evidence audit period, containing the results after clarifying the potential loss to state revenue to the taxpayer. The clarification regarding

the potential loss to state revenue is preceded by the issuance of summons by 2 (two) months before the end of the preliminary evidence audit period. Furthermore, the Preliminary Evidence Auditor must disclose the follow-up actions taken in the Preliminary Evidence Audit Report (LHPBP), including the results of the PHPBP, clarification regarding the potential loss to state revenue, and potential tax that is not a Tax Crime in the field of taxation.

The following section (within Indonesian) briefly depicts the relationship between the preliminary evidence audit and the ultimum remedium principle as the *lex specialis* of tax law.



C. Developing a Responsive Preliminary Evidence Audit

Several considerations in the applicable tax laws and regulations include provisions regarding preliminary evidence audits. One of the considerations of PMK No. 177/PMK.03/2022 is to provide legal certainty regarding the implementation of preliminary evidence audits for tax-related criminal acts and to comply with Article 43A paragraph (4) of the General Taxation Law. One of the considerations of Government Regulation No. 74 of 2011 is to provide greater convenience and clarity for the public in understanding and fulfilling their tax rights and obligations. One of the considerations of Government Regulation No. 9 of 2021 is in line with Tax Treatment to Support Ease of Doing Business. These considerations indicate that preliminary evidence audits must provide legal certainty, ease, and support for the public in understanding and fulfilling their tax rights and obligations. Of course, these considerations must still be based on the provisions of the self-assessment system and Article 1 numbers 25, 26, and 27, Article 8 paragraph (3), and Article 43A of the General Taxation Law.

These considerations actually embody the principle of ultimum remedium and are rooted in responsive law, as responsive law heavily relies on the following two doctrines: functional, pragmatic, purposeful, and rational law, and competence as the

benchmark for evaluating all legal implementations.³ Competence as a goal functions as a norm of critique. Thus a responsive legal framework emphasizes substantive justice as the basis of legal legitimacy, and regulations are subordinated to principles and policies, legal considerations should be goal and consequence-oriented for the benefit of society, the use of discretion is highly encouraged in legal decision-making while staying goal-oriented, fostering a system of obligations as a replacement for coercion, fostering cooperative morality as a moral principle in implementing the law, utilizing power to support the vitality of the law in serving society, rejection of the law should be seen as a challenge to legal legitimacy, and broad access to public participation in order to integrate legal and social advocacy.⁴ . The outline of the design of preliminary evidence audits is briefly explained in the following concepts:

- a. The preliminary evidence audit, which should be functional, pragmatic, purposeful, and rational

As an act of examination aimed at obtaining evidence of the occurrence of a criminal offense in the field of taxation that can cause losses to state revenue, it is appropriate to refer to the rational functions of taxation, such as the budgetary function and regulatory function. However, these functions need to be aligned with the terminology of the preliminary evidence audit. It can be seen from one of the core aspects of the preliminary evidence audit, namely the requirement of loss to state revenue, which refers to criminal offenses that are resolved only through two methods: the taxpayer's voluntary disclosure of wrongdoing as stated in Article 8 paragraph (3) of the UU KUP or escalation to the investigation of tax crimes. These resolutions must fully reflect the functionality, pragmatism, and rationality of the preliminary evidence audit that should fulfill taxation's budgetary and regulatory functions, which are essentially achieved through gradual and sequential stages. In other words, a responsive regulation-compliant preliminary evidence audit should be conducted from a dialogic level to a more punitive preventive level, with escalation based on the taxpayer's response, ultimately leading to their commitment to sustained tax compliance based on the applicable tax laws and regulations.

- b. Substantive justice as the basis for legitimizing the preliminary evidence audit

The tax authority conducting the preliminary evidence audit should not only work based on laws and procedures without interpretation. However, it should also consider whether they have maximized the common good and justice for society and the state. It indicates that every legal action in the preliminary evidence audit should be driven by substantive justice or a sense of justice closely related to certainty and benefit. However, some provisions of the preliminary evidence audit overlook the sense of justice related to certainty and benefit. Firstly, the duration of the preliminary evidence audit, which is 12 months and can be extended for another maximum of 12 months, only results in the issuance of LHPBP (Preliminary Evidence Audit Report) without directly contributing to the budgetary function of taxation. This is further reinforced by the provision in PMK No. 117/PMK.03/2022, which states that the termination of preliminary evidence audit is done in cases

³ Sulaiman, Responsive Law: Law as a Social Institutions to Service of Social Need in Transition, available at <https://repository.unimal.ac.id/1744/1/Hukum%20Responsif%20Sulaiman.pdf>, accessed on November 13, 2022, p. 12.

⁴ *Loc.cit.*

where the taxpayer has voluntarily disclosed their wrongdoing following Article 8 paragraph (3) of the UU KUP, the taxpayer under audit has passed away, the event is not a criminal offense in the field of taxation, no criminal offense in the field of taxation is found, or when the statute of limitations as referred to in Article 40 of the UU KUP has expired. Secondly, the optimization of available regulations in the legislation should prioritize substantive justice through efforts to provide rehabilitation, compensation, and restitution for victims, including victims of human rights violations, as emphasized in Appendix 1 of the Indonesian Presidential Regulation No. 18/2020 on the Medium-Term National Development Plan 2020-2024.

- c. Regulations are subordinate to the principles and policies of the preliminary evidence audit

PMK No. 117/PMK.03/2022, PMK No. 17/PMK.03/2013, Government Regulation No. 74 of 2011, and Government Regulation No. 9 of 2021 are subordinate to the UU KUP (Article 1 numbers 25, 26, and 27, Article 8 paragraph (3), Article 12 paragraph (3), and Article 43A of the UU KUP) as well as the principles of *lex specialist* and *ultimum remedium*. Therefore, the preliminary evidence audit (especially in cases of incorrect tax returns reported by taxpayers based on the self-assessment system principle) that lacks sufficient evidence or involves events that are not criminal offenses in the field of taxation but still have potential non-criminal tax liabilities should be resolved directly by the preliminary evidence auditor by determining the actual amount of tax owed for an incorrect tax return.⁵

- d. Considerations of the initial evidence examination are goal and consequence-oriented for the benefit of society

The tax legislation will affect a sequence of events when the sanctions are certain and severe enough to outweigh the expected utility due to non-compliance with the law. The importance of goals and consequences for the benefit of society, in the form of public utility, is also reflected in the thinking of John S. Mill, who asserts that although justice stands higher in terms of social utility, in certain other critical social tasks, justice in terms of quality should not be considered a virtue if it does not take into account justice in terms of quantity, which is producing the greatest happiness for the most significant number of people.⁶ Therefore, an evidence

⁵ Article 3, paragraph (1) explains the functions of the tax return for individual taxpayers and taxable entrepreneurs (PKP). The function of the tax return for individual taxpayers is to serve as a means to report and account for the proper amount of tax payable and to report: (a) self-paid taxes or tax payments made through withholding or collection by other parties within one tax year or part of a tax year; (b) income that is subject to tax and/or not subject to tax; (c) assets and liabilities; and/or (d) payments from withholding agents or collectors regarding the withholding or collection of taxes from individuals or other entities within one tax period, following the provisions of tax regulations. On the other hand, the function of the tax return for PKP is to serve as a means to report and account for the proper amount of VAT and luxury goods sales tax (PPnBM) payable and to report: (a) the input tax credit against output tax; and (b) self-paid tax payments made by the taxable entrepreneur or through other parties within one tax period, following the provisions of tax regulations.

⁶ Aditya Wirawan dan Benny Rikardo P. Sinaga, 2020, Fair and Beneficial Tobacco Excise Sharing Funds Regulations for Tobacco Farmers in Indonesia, *Advances in Social Science, Education and Humanities Research, volume 499*, Proceedings of the 2nd International Conference of Law, Government and Social Justice (ICOLGAS 2020), <https://doi.org/10.2991/assehr.k.201209.346>, p. 637.

examination that is goal and consequence-oriented for the benefit of society fulfills the budgetary and regulatory functions of taxation, which can enhance voluntary compliance by taxpayers.

- e. The use of discretion in making decisions regarding the initial evidence examination while remaining goal-oriented.

The purpose of the law requires every tax regulation to embody principles of justice, public utility, and legal certainty. The existence of this legal purpose emphasizes that tax regulations under the law should have discretion that is oriented toward justice, public utility, and legal certainty. For example, in an initial evidence examination, issues may arise when a taxpayer undergoes an examination for overpaid VAT returns and annual corporate income tax returns for the same period. Based on the results of the initial evidence examination, it is found that the allegation of incorrect submission of VAT returns is not substantiated. However, there needs to be intentional compliance with submitting the annual corporate income tax return. However, no investigation is conducted as disclosing the incorrect act follows the actual circumstances. The resolution of the initial evidence examination for the VAT returns has exceeded 12 months since the VAT returns were filed for restitution and were fully received, as referred to in Article 17B, paragraph (1) of the General Provisions and Taxation Procedures Law (UU KUP). There is indeed Article 17B, paragraph (1a) of the UU KUP, which states that the provisions of Article 17B, paragraph (1) of the UU KUP do not apply to taxpayers undergoing an initial evidence examination for tax crimes. Additionally, Article 17B, paragraph (5) of the UU KUP states that interest calculated from the end of the 12-month period until the issuance of the SKPLB shall not be provided if the initial evidence examination for tax crimes is not continued with an investigation because the taxpayer voluntarily disclosed the incorrect act as referred to in Article 8, paragraph (3) of the UU KUP. There are several recurring issues in such cases. However, handling them based on responsive law has provided a solution based on the purpose of the law itself. A solution that reflects the fulfillment of the purpose of the law is for the examiner to issue a tax assessment for the VAT returns that lack sufficient evidence or do not constitute tax crimes. If the examination continued with subsequent tax audits, the taxpayer would have to go through the process from the beginning, despite already undergoing an initial evidence examination for the same tax period. On the other hand, the examiner would have to restart the examination procedures, which could result in different calculations between the initial evidence examination and the tax audit. Moreover, in cases where the 12-month period referred to in Article 17B, paragraph (1) of the UU KUP has been exceeded, there are two interpretations regarding the resolution of the examination. Article 17B, paragraph (4), letter a of the UU KUP states that if the initial evidence examination for tax crimes is not continued with an investigation and an SKPLB is issued to the taxpayer, the taxpayer shall be entitled to interest, while Article 60, paragraph (4) of PMK No. 17/PMK.03/2013 states that in the event of an examination of a claim for tax overpayment as referred to in Article 17B, paragraph (1) of the UU KUP, the examination shall continue with the issuance of: (a) a tax assessment following the Final Discussion of the Examination Results if the 12-month period referred to in Article 17B, paragraph (1) of the UU KUP has not been exceeded; or (b) an SKPLB following the Notification Letter if the 12-month period referred to in Article 17B, paragraph (1) of the UU KUP has been exceeded.

However, there is Article 67, paragraph (1) of PMK No. 17/PMK.03/2013, which states that if the examination continues as referred to in Article 65, paragraph (1) and paragraph (3), or Article 66, paragraph (4) and paragraph (6) of PMK No. 17/PMK.03/2013, the testing period as referred to in Article 15, or the extension of the testing period as referred to in Article 16 or Article 17 of PMK No. 17/PMK.03/2013 shall be extended for a maximum period of 4 (four) months. Therefore, following the purpose of the law, the examiner should be responsible for the results of the initial evidence examination and document them in the LHPBP, including issuing tax assessments when the examination reveals potential taxes subject to administrative penalties.

f. Nurturing an obligation system as an alternative to the coercion system

The obligation system within the initial evidence examination is still based on voluntary disclosure by taxpayers as referred to in Article 8, paragraph (3) of the UU KUP. In cases where the initial evidence examination is discontinued due to events that are not tax crimes and no tax crimes are found. However, a potential tax liability is not a tax crime, and the Initial Evidence Examiner will only disclose it in the LHPBP. It means that in cases where there is a potential tax liability that is not a tax crime, the initial evidence examiner will only recommend a tax audit to be conducted by the tax examination team as long as it is not expired, which will take several more months. It poses new challenges, such as the increased, inefficient, and ineffective compliance costs experienced by taxpayers and the tax authority (DJP).

g. Morality of cooperation in implementing the provisions of the initial evidence examination

The outcome of the initial evidence examination is tax compliance, especially voluntary compliance. Therefore, the initial evidence examination in Indonesia should prioritize dialogue and communication aimed at building commitment to moral values, addressing any unintentional injustices that may have occurred in implementing the objectives of the regulations, and developing a reasonably shared understanding of how and when taxpayers should conduct their activities without feeling intimidated by tax officials' control.⁷ The presence of the morality of cooperation initiated by the initial evidence examiner will bridge the tension between taxpayers and the tax authority, which fundamentally affects cooperation, solidarity, or morality. In this context, the morality of cooperation cannot be separated from the context of tax compliance, as tax morality reflects whether compliance with the law is a social norm. One form of the morality of cooperation in the initial evidence examination is providing legal certainty to taxpayers when the initial evidence examiner only finds potential tax liability that is not indicative of a criminal offense by issuing a Tax Assessment Letter (SKP). This way, taxpayers no longer need to undergo repeated examinations, considering that the law has clarified that the initial evidence examination and the issuance of SKP are the responsibilities of the Director-General of Taxation.

h. The authority of the initial evidence examination is utilized to support the vitality of the law in serving the community.

⁷ Valerie Braithwaite, Kristina Murphy, and Monika Reinhart, *Ibid.*

The initial evidence examination serves as a gateway to determining whether a criminal investigation will be conducted in taxation. However, it should be realized that this authority must consider criminal policy, which fundamentally should be able to influence the community, be applicable, and have non-penal preventive measures, considering certain facts such as overcapacity in correctional facilities, increasing case backlogs, an imbalance in the number of law enforcement officials compared to case developments, and the cost of cases that cannot support an increase in cases. Instead, the initial evidence examination (which has a statute of limitations of 10 years as regulated in Article 40 of the UU KUP) should not be used to pursue potential taxes that cannot be assessed through a Tax Assessment Letter (SKP) anymore due to exceeding the 5-year statute of limitations as referred to in Article 13, paragraph (1) of the UU KUP, by forcing taxpayers to voluntarily disclose their inaccuracies using Article 8, paragraph (3) of the UU KUP.

- i. Wide access to public participation in integrating legal and social advocacy.

According to Black's Law Dictionary, this access aligns with the definition of justice as the fair and proper administration of laws. It means that it is necessary to provide the most significant possible access to participation and justice for all taxpayers, including taxpayers who undergo the initial evidence examination, to disclose their inaccuracies voluntarily and also to criticize the findings of the initial evidence examination. Certainly, the voluntary disclosure of intentional wrongdoing by taxpayers should be respected as a level of voluntary compliance. Similarly, the findings (primarily related to incorrect data, information, or content in the tax returns) which the initial evidence examiner deems as indicative of a criminal offense but the taxpayer considers as an administrative violation and is willing to pay if a Tax Assessment Letter (SKP) is issued, must be addressed by providing the highest possible access to participation and justice for the taxpayer.

5. CONCLUSIONS

This study constructs two conclusions. First, there currently needs to be a provision in the tax regulations regarding the issuance of Tax Assessment Letters (SKP) in the initial evidence examination in Indonesia, thus failing to achieve the legal and tax objectives of fair, legal certainty, and beneficial tax collection. It poses several challenges, such as the initial evidence examination (with a statute of limitations of 10 years) seemingly being used as a means to pursue potential taxes that cannot be assessed through SKP anymore due to exceeding the 5-year statute of limitations. It also leads to legal uncertainty for the same taxpayer and tax year, as they have to undergo repeated examinations, such as in cases of overpaid taxes under Article 17B of the UU KUP, where the examination is deferred to the initial evidence examination stage. However, the findings show no criminal events or suspicions of tax offenses. As a result, the deferred examination has to be conducted again until completion. Second, the ideal legal concept for issuing SKP in the initial evidence examination in Indonesia in the future is by implementing a responsive approach. This responsive approach to the initial evidence examination should be functional, pragmatic, goal-oriented, rational, and conducted with competence. To ensure that the responsive initial evidence examination achieves a balance of justice, legal certainty, and public benefit, the following is expected:

- a) Provision should be made to include the imposition of administrative sanctions in the initial evidence examination through the authority to issue Tax Assessment Letters, considering that the UU KUP stipulates that the Director General of Taxation has the authority to issue SKP and conduct the initial evidence examination.
- b) There should be a provision stating that the statute of limitations for Tax Assessment Letters in the initial evidence examination is ten years from the end of the tax period/year.
- c) The renewal of the UU KUP should include a provision stating that objections, appeals, and tax disputes cannot be filed against Tax Assessment Letters issued in the initial evidence examination.

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