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REFORMULATION OF THE PRELIMINARY EVIDENCE AUDIT TYPE IN TAXATION: WHEN LEGAL HERMENEUTICS MEETS THE RULE OF LAW (PART 2 OF 2)

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Abstract

The existence of facts in the form of two pretrial decisions decided that the two preliminary evidence examinations were invalid and declared null and void, indicating the need to address the shift in meaning that led to this type of preliminary evidence examination. Two conclusions can be drawn based on the legal hermeneutics method, which is framed within the framework of the rule of law. First, there has been a shift in the meaning of preliminary evidence examination contained in the KUP Law, namely the existence of a closed type of preliminary evidence examination in Government Number 74 of 2011 and PMK Number 239/PMK.03/2014. This meaning can be a problem in terms of tax enforcement that must be proportional to upholding legal certainty, public benefits, and justice, and in terms of administering government administration which must be based on the principle of legality, the focus of protection of human rights, and the general principle of good governance. Second, the reformulation of preliminary evidence examination must be carried out by eliminating the type of preliminary evidence examination securely, as the understanding and explanatory side of legal hermeneutics has defined preliminary evidence examination as a series of activities carried out by preliminary evidence examiners against individuals and or entities related to circumstances, actions, and/or evidence that can provide indications of a strong suspicion that a crime in the taxation sector is being or has occurred and can cause losses to state revenue, it is necessary to delete the legal text related to the type of

	preliminary evidence examination in a secure manner.

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4. ANALYSIS AND DISCUSSION

a. Critical Review Open and Close Preliminary Evidence Examination

Several provisions must be criticized in connection with the existence of written legal texts relating to the type of preliminary evidence examination openly and privately.

First, the expansion of the meaning of preliminary evidence examination as referred to in Article 1 number 26 and number 27 of the KUP Law into the definition of open and closed preliminary evidence examination as referred to in Article 60 paragraph (4) Government Regulation Number 74 of 2011 and Article 4 paragraph (3) of PMK Number 239/PMK.03/2014 shows that the state's attributes based on law have not been fulfilled in the form of clarity, non-contradictoriness, capability of compliance, stability, and the congruence between declared rules and the acts of administrators, including any inconsistencies application of the hierarchy of laws and regulations in force in Indonesia as referred to in Article 7 and Article 8 paragraph (2) of Law Number 12 of 2011 concerning the Establishment of Legislation as last amended by Law Number 13 of 2022, namely the Constitution NRI of 1945, Decree of the People's Consultative Assembly (Tap MPR), Law or Government Regulation in Lieu of Law g (Perpu), Government Regulations, Presidential Regulations, Provincial and Regency/Municipal Regulations, and Legislations which are recognized to exist and have binding legal force as long as they are ordered by a higher Legislative Regulation or formed based on authority. Examination of preliminary evidence based on Article 1 number 26, and number 27 of the KUP Law can be interpreted as an examination carried out to obtain conditions, actions, and/or evidence in the form of statements, writings, or objects that can provide indications of a strong suspicion that an act is or has occurred criminal offenses in the field of taxation committed by anyone who can cause losses to state revenues. Meanwhile, the emphasis on closed preliminary examination of evidence based on Article 60 paragraph (4) of Government Regulation Number 74 of 2011 and Article 4 paragraph (3) of PMK Number 239/PMK.03/2014 implies that it is sufficient to obtain conditions, actions, and/or evidence in the form of statements, writings, or objects that can indicate a strong suspicion that a criminal act in the taxation sector is being or has been committed by anyone that can cause a loss to state revenue, without written notification to the individual or entity that was committed preliminary evidence check.

Second, there are multiple interpretations of the meaning of preliminary evidence openly between Article 60 paragraph (4) of Government Regulation Number 74 of 2011 and Article 4 paragraph (3) of PMK Number 239/PMK.03/2014. Even if there are similarities in terms of being carried out with written notification, open

examination of preliminary evidence, as referred to in Article 60 paragraph (4) of Government Regulation Number 74 of 2011, is carried out on Taxpayers, while open examination of preliminary evidence as referred to in Article 4 paragraph (3) PMK Number 239/PMK.03/2014 is carried out against individuals or entities for whom preliminary evidence is examined. There are several understandings related to these multiple interpretations, among others: (a) Open examination of preliminary evidence as referred to in Article 60 paragraph (4) of Government Regulation 74 of 2011 is only carried out on Taxpayers. The definition of a Taxpayer based on Article 1 number (1) of the KUP Law is "an individual or entity, including taxpayers, tax cutters, and tax collectors, who have tax rights and obligations following the provisions of tax laws and regulations." This means that preliminary evidence checks are only carried out on individuals or entities, including taxpayers, tax cutters, and tax collectors, who have met the objective and subjective requirements to have a Taxpayer Identification Number (NPWP). (b) An open examination of preliminary evidence, as referred to in Article 4 paragraph (3) of PMK Number 239/PMK.03/2014, is carried out against individuals or entities, both those who have fulfilled and who have not had NPWP. As an individual or entity is defined following Article 1 point (3) of the KUP Law and Article 2 paragraph (1) of Law Number 7 of 1983 concerning Income Tax as last amended by Law Number 7 of 2021 concerning Harmonization of Perpa- tation Regulations income (PPh Law).

Third, the follow-up to the results of the preliminary evidence examination in a secure manner in the form the Preliminary Evidence Examination being able to be re-done if new Evidence Materials are obtained after the Preliminary Evidence Examination is completed, which may lead to different conclusions from the conclusions in the Preliminary Evidence Examination Report, as referred to in Article 34 paragraph (1) PMK Number 239/PMK.03/2014, has the potential to cause injustice to Taxpayers and or Individuals or Entities whose preliminary evidence is examined.

Fourth, the definition of Preliminary Evidence in Article 1 number 26 of the UU KUP has the right of taxpayers to self-disclose their SPT as referred to in Article 8 paragraph (3) of the KUP Law, indicating that the context of examining evidence must still comply with the ultimum remedium principle. Article 1, number 26 of the KUP Law formulates that "Preliminary Evidence is a condition, action, and/or evidence in the form of information, writing, or objects that can indicate a strong suspicion that a criminal act in the field of taxation is being or has been committed by anyone which can cause losses to state revenue." In contrast, Article 8 paragraph (3) of the KUP Law affirms that a taxpayer (whose preliminary evidence has been examined) can voluntarily disclose using a written statement the untruth of his actions if he does not submit SPT or submitting an SPT whose contents are incorrect or incomplete or attaching information whose contents are incorrect as long as the start of the investigation has not been notified to the Public Prosecutor through an official investigator of the State Police of the Republic of Indonesia.

Fifth, preliminary evidence audit activities in a secure manner are redundant with tax intelligence activities, as stated in Article 1 point 1 of the Director General of

Taxes Regulation Number PER-15/PJ/2019 concerning the Implementation of Tax Intelligence Activities and Observations and the Director General of Taxes Circular Letter Number SE- 18/PJ/2019 concerning Procedures for the Implementation of Tax Intelligence Activities and Observations defines tax intelligence activities as a series of activities in the intelligence cycle which include planning, collecting, processing, and presenting data and/or information to obtain an intelligence product that can be used for tax purposes. The activities of closed preliminary evidence examination and tax intelligence activities are both carried out without written notification to the individual or entity that carried out the activity. Then, PMK Number 239/PMK.03/2014 stipulates that IDLP received or obtained by the Director General of Taxes is developed and analyzed through intelligence activities or observations carried out without notification to the relevant individual or agency. Furthermore, IDLP itself is the basis for conducting preliminary evidence examinations, which should be carried out through written notice to appropriate individuals or entities because preliminary evidence examination is one of law enforcement in the field of taxation, which must apply for justice, legal certainty, and benefit proportionally considering the imperfection of applicable statutory regulation.

Sixth, the implementation period between the initial open and closed examination of evidence and its extension is the same. Meanwhile, the results of the preliminary evidence examination in a secure manner may be re-performed by the Preliminary Evidence Examination if new Evidence Materials are obtained, which may lead to different conclusions from the conclusions in the Preliminary Evidence Examination Report. This is not in line with Article 5 of Law Number 30 of 2014 concerning Government Administration which emphasizes that the administration of government must be based on the principle of legality.,[1] the principle of protection of human rights (HAM),[2] and general principles of good governance (AUPB).[3] and general principles of good governance (AUPB)

b. The Legal Hermeneutics Reviews on the Meaning of Preliminary Evidence Audit Types

Preliminary Evidence Examination conducted based on IDLP is a condition, action, and/or evidence in the form of information, writing, or objects that can indicate

[1] Penjelasan Pasal 5 huruf a Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan menegaskan bahwa yang dimaksud dengan "asas legalitas" adalah bahwa penyelenggaraan Administrasi Pemerintahan mengedepankan dasar hukum dari sebuah Keputusan dan/atau Tindakan yang dibuat oleh Badan dan/atau Pejabat Pemerintahan.

[2] Penjelasan Pasal 5 huruf b Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan menegaskan bahwa yang dimaksud dengan "asas perlindungan terhadap hak asasi manusia" adalah bahwa penyelenggaraan Administrasi Pemerintahan, Badan dan/atau Pejabat Pemerintahan tidak boleh melanggar hak-hak dasar Warga Masyarakat sebagaimana dijamin dalam Undang- Undang Dasar Negara Republik Indonesia Tahun 1945.

[3] Pasal 1 angka 17 Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan menegaskan bahwa yang dimaksud dengan AUPB adalah prinsip yang digunakan sebagai acuan penggunaan Wewenang bagi Pejabat Pemerintahan dalam mengeluarkan Keputusan dan/atau Tindakan dalam penyelenggaraan pemerintahan.

a strong suspicion that a tax crime is being or has occurred by anyone who can cause a loss to state revenue.[4] The general understanding of this preliminary evidence examination has been formulated in the KUP Law, which is still in effect. However, the meaning of preliminary evidence examination has shifted with the regulation of the type of preliminary evidence examination in the form of open and closed preliminary evidence examination in the order of Government Regulations and PMK. Thus, the texts of these laws and regulations become the realm of interpretation, in which Ricoeur asserts that everyone may interpret the texts of laws and regulations.[5] In the process of reading the laws and regulations, a reader opens himself to the text, and the text also opens himself up so that in the process, what is called an explanation and understanding process occurs.[6]

Explaining and understanding the texts of laws and regulations relating to the examination of preliminary evidence must be within the framework of a state of law capable of revealing the truth and achieving legal justice in the field of taxation. Although in expressing the truth and reaching the fact, it is undeniable that there is a legal character as an unfair law, and it is also impossible to identify direction with justice. Still, truth and justice will be understood if they are positioned as conditions to be realized by law, which attempts to make happen is a dynamic process that takes time.[7]

The existence of types of preliminary evidence examinations in the form of open and closed preliminary evidence examinations in the order of Government Regulations and PMK becomes the center of the use of legal hermeneutics, which is an aid for preliminary evidence examiners and taxpayers as well as taxpayer representatives and/or other legal practitioners in explaining the language of legal texts that are used as objects of interpretation as well as in examining the relationship of a legal text or statutory regulation and the history of a legal provision in the past that is still in force[8] so that it can reveal the truth and achieve legal justice in the field of taxation. So that the interpretation of legal texts related to the type of preliminary evidence examination is correct

Departing from the definition of preliminary evidence examination as "an examination carried out to obtain preliminary evidence regarding an alleged crime in the taxation sector," the overall meaning of the initial evidence examination is similar to the purpose of investigation in Law Number 8 of 1981 concerning Procedural Law. In its full definition, crime is "a series of investigators' actions to seek and find an event that is suspected of being a criminal act to determine whether or not an investigation can be carried out according to the method regulated in Law Number 8 of 1981". However, in

[4] Henry Dianto Pardamean Sinaga, and Anis Wahyu Hermawan, *Op.cit.*, hlm. 63.
[5] Anthon F. Susanto, 2010, Dekonstruksi Hukum: Eksplorasi Teks dan Model Pembacaan, Yogyakarta: Genta Publishing, hlm. 68
[6] *Loc.cit*.
[7] Carl Joachim Friedrich, 2010, Filsafat Hukum: Perspektif Historis, Bandung: Penerbit Nusa Media, hlm. 239.
[8] Fajar Sugianto, Tomy Michael, dan Afdhal Mahatta, *Op.cit.*, hlm. 309.

terms of etymology, examination of preliminary evidence comes from the words examination and insufficient evidence. The definition of these two words is contained in Article 1 number 25, and number 26 of the KUP Law, where "inspection" is defined as 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 fulfillment of tax obligations and/or for other purposes in the context of implementing the provisions of tax laws and regulations. In contrast, the definition of "preliminary evidence" is defined as circumstances, actions, and/or evidence in the form of statements, writings, or objects that can provide clues to the existence of an allegation strong that there is or has been a criminal act in the field of taxation carried out by anyone that can cause losses to state revenues. Thus, the definition of preliminary evidence examination based on its etymology is a series of activities to seek, find, collect, and process a condition, act, and/or evidence carried out objectively and professionally to provide clues to the existence of a strong suspicion that a crime is being or has occurred, in the field of taxation carried out by anyone who can cause losses to state revenues. Then, the definition of preliminary evidence examination based on its etymology is related to the meaning of tax as referred to in Article 1 number (1) of the KUP Law. Their criteria are related to community welfare activities.[9]

The definition of preliminary evidence examination based on its etymology and based on this tax definition results in the meaning of preliminary evidence examination in the field of taxation, the scope of which includes:

a) a series of activities carried out by the preliminary evidence examiner,
b) against anyone, both individuals and/or entities,
c) related to a situation, action, and/or evidence that can indicate a strong suspicion that a tax crime is being or has occurred, and
d) may cause losses to state revenues.

The meaning of examination of preliminary evidence in the field of taxation shows that these four requirements are the basis for whether or not there is a type of examination of insufficient evidence in the field of taxation. The next stage in interpreting whether or not it is appropriate or necessary or whether or not the preliminary evidence examination is closed is to conduct a study of the texts of the laws and regulations on the attributes of the rule of law, which in this case is sufficient to compare them with the clarity principle: non-contradictoriness, the capability of compliance, and the congruence between declared rules and the acts of administrators.

The clarity principle is in line with legal certainty, which means that the meaning of the sentence and the meaning of the term must be precise, firm, and not ambiguous or contain multiple meanings or provide the opportunity to be interpreted differently than what was intended by the legislator.[10] Clarity of prevailing law requires

[9] Yudha Pramana, Legal Reconstruction on Domestic Related Party Transactions, Journal of Tax Law and Policy, Vol. 1, No. 1, 2022, pp. 23-28.
[10] Rochmat Soemitro dan Dewi Kania Sugiharti, 2004, Asas dan Dasar Perpajakan 1, Bandung: PT. Refika Aditama, hlm. 15-16.

that the definition and role of a closed preliminary examination of evidence must be clear and in writing, every practice or activity is supervised, and the resulting decisions have legal certainty.[11] However, the interpretation of the legal texts of preliminary evidence examination in a closed manner shows that the clarity principle has not been fulfilled, both in the internal and external scope of DGT. The ambiguity of the initial fast examination of evidence within the inner area of the DGT itself can be seen from the redundancy in tasks between tax intelligence and the closed preliminary examination of evidence. The implementation of preliminary evidence checks in a secure manner and tax intelligence activities are both carried out without written notification to the relevant individual or entity. Whereas Article 43A of the KUP Law requires that the basis for conducting preliminary evidence examinations is IDLP, one of which is the result of tax intelligence activities carried out in secret. This means that the prohibition of notification of preliminary evidence examinations against individuals or entities as referred to in Article 60 paragraph (4) of Government Regulation Number 74 of 2011 and Article 4 paragraph (3) of PMK Number 239/PMK.03/2014 is a reflection of tax intelligence activities and operations whose scope reaches to the investigation and raising in the field of taxation. The ambiguity in the outer area of the DGT is reflected in the preliminary evidence examiner's activities without the knowledge of the individual or entity for whom the preliminary evidence examination was conducted. This means that a condition, action, and/or evidence that can provide legal certainty in producing indications of a strong suspicion that a crime is being or has occurred in the taxation sector is an effort to fulfill several facts which at least illustrate: 1) the alleged article suspects, 2) modus operandi, 3) tempus delicti, 4) locus delicti, 5) alleged perpetrators of tax crimes, 6) prospective witnesses, 7) evidence material and 8) there is a loss in state revenue, as referred to in Circular Letter of the Director General of Taxes Number SE-23/PJ/2015 concerning Technical Instructions for Auditing Evidence of Preliminary Crimes in the Taxation Sector.[12] Of course, efforts to reveal the facts in the form of alleged articles, modus operandi, tempus delicti, locus delicti, alleged perpetrators of criminal acts in the field of taxation, prospective witnesses, evidence material, and the existence of losses in state income in the preliminary examination of evidence in a secure manner will difficult to implement. So that it only creates the potential for repeated examination of initial evidence against the same Periodic or Annual SPT as referred to in Article 34 of PMK Number 239/PMK.03/2014.

The non-contradictoriness principle demands that there be no conflict between two things or between one thing and another being contradictory in nature. [13] in the texts of laws and regulations governing the types of preliminary evidence examinations.

[11] Dawn Elizabeth Rehm dan Taryn R. Parry, 2007, Manual on Fiscal Transparency, International Monetary Fund, avalaible at https://www.elibrary.imf.org/view/book/9781589066618/ch001.xml, accessed on March 20, 2022, p. 19.
[12] Henry D. P. Sinaga, Loss (of Revenue) of State within Taxation Crimes in Indonesia, Mimbar Hukum, Vol. 30, No. 1, 2018, p. 149.
[13] Kamus Besar Bahasa Indonesia, "kontradiksi", available at https://kbbi.web.id/kontradiksi, accessed on May 3, 2022.

Preliminary evidence examination in the context of Article 8 paragraph (3) of the KUP Law has stipulated that "although an audit has been carried out, no investigation has been carried out regarding the existence of untruths committed by the Taxpayer as referred to in Article 38, the tale of the Taxpayer's actions is not correct. An investigation will be carried out if the Taxpayer voluntarily discloses the untruth of his actions, accompanied by the settlement of the underpayment of the amount of tax owed along with administrative sanctions in the form of a fine of 150% (one hundred and fifty percent) of the amount of underpaid tax. So that the existence of a closed preliminary evidence examination in Article 60 paragraph (4) of Government Regulation Number 74 of 2011 and Article 4 paragraph (3) of PMK Number 239/PMK.03/2014 is a deviation from the formulation of Article 8 paragraph (3) of the KUP Law which creates legal uncertainty and injustice to the legal rights of taxpayers in utilizing the right to disclose untruths. The existence of a closed examination of preliminary evidence in the taxation sector will also be contradictory to the ultimum remedium principle in taxes, the purpose of the law itself (which consists of justice, legal certainty, and public benefit), the definition of tax based on Article 1 point 1 of the KUP Law, and the benefits of implementing tax enforcement in addition to filling the state treasury,[14] which is expected not to cause unrest in the community. This means that the implementation of preliminary evidence examination without notification to the Individual or Entity being audited will be in contradiction with the definition of tax which is the mandatory contribution of the Individual or Entity to the state which has the right to reveal the untruth of its actions in the taxation sector, and the manifestation of meaning the ultimum remedium principle, legal values, and principles in the administration of government towards the rights of every citizen in the form of the right to life, the right to improve oneself, the right to actively participate in developing the state, and good faith to recover state losses originating from taxes—experienced by the country[15].

The capability of compliance principle requires that the initial examination of evidence in a secure manner can generate returns and, at the same time, become a continuous motivation for the individual or entity being examined to have the capability to comply in the future.[16] Of course, an individual or entity subj to a closed preliminary examination of evidence will not be able to comply if there is no active and interactive corrective action. This can be learned from the pyramid of the relationship between the level of compliance with law enforcement practices implemented by the Australian Tax Office (ATO) through the Responsive Regulation Model.[17] One of the relationships can be described in the basic pyramid consisting of obedient taxpayers whose enforcement

[14] Reuven S. Avi-Yonah, The Three Goals of Taxation, Tax Law Review, Vol. 60, No. 1, 2006, p. 3.
[15] Andhy H. Bolifaar, Access to Justice of Plea Bargaining in Addressing the Challenge of Tax Crime in Indonesia, Scientium Law Review, Vol. 1, No. 1, 2022, pp. 1-12.
[16]Organisation for Economic Co-operation and Development, 2004, Compliance Risk Management: Managing and Improving Tax Compliance, available at https://www.oecd.org/tax/administration/33818656.pdf, accessed on May 25, 2022, p. 63.
[17] Kristina Murphy, "Moving Towards a more Effective Model of Regulatory Enforcement in The Australian Taxation Office," *Centre for Tax System Integrity of the Research School of Social Sciences of Australian National University*, Working Paper No. 45, November 2004, hlm 11.

strategy is in the form of education and service delivery, while the motivational posture is commitment.[18] The relationship between the level of compliance in the practice of law enforcement confirms that it is proper that the examination of preliminary evidence in the field of taxation is the ultimum remedium for every individual and entity whose insufficient evidence is examined.[19]

The congruence between declared rules and the acts of administrators principle indicates that the provisions for examining preliminary evidence related to its type must be explicit, not ambiguous, do not cause conflict, and be enforceable.[20] This aims to guarantee the rights and obligations of the parties in the examination of preliminary evidence because taxes which are part of state administrative law, are state instruments in regulating, balancing and controlling the various interests of the community, regulating ways of taxpayer participation, protection, and certainty—a law against taxpayers, and as the basis for the implementation of good governance.[21] One of them is related to the performance of the preliminary evidence examination, which can be re-done to the closed preliminary evidence examination, which has been completed by the DGT as referred to in Article 34 paragraph (1) PMK Number 239/PMK.03/2014. This article creates injustice and legal uncertainty regarding 1) the ambiguity of the period for conducting the preliminary evidence examination, which should be completed for 12 months with a maximum extension of 24 months, and 2) the closed preliminary evidence examination that has been completed which can be re-examined preliminary evidence in a closed or open examination of preliminary evidence. Of course, the re-implementation of a closed preliminary evidence examination or a closed preliminary evidence examination of a closed preliminary evidence examination that has been carried out has the potential to eliminate tax revenue if it exceeds the expiration of the tax assessment letter as referred to in Article 13 paragraph (1) of the Law. KUP, if the results of the re-implementation of the initial closed examination of the evidence or the closed preliminary examination of the evidence do not meet the allegations of criminal acts in the taxation sector but only result in taxes that are subject to administrative tax sanctions. This shows that there has been a failure to implement the congruence between declared rules and the acts of administrators' principle against the preliminary examination of evidence in a secure manner. The main framework of preliminary evidence is to indicate a strong suspicion that a criminal act in the field of taxation is being committed or has occurred by anyone who can cause losses to state income while still giving him the right to make his disclosure of the untruth of his actions as referred to in Article 8 paragraph (3) KUP Law. Thus, it is not sufficient to shift the meaning of preliminary evidence examination without notification to the relevant individual or body.

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[18] Valerie Braithwaite, "Responsive Regulation and Taxation: Introduction," *Law & Policy*, Vol. 29, No. 1, January 2007, hlm 5, pp. 3-10.
[19] Henry Dianto Pardamean Sinaga and Anis Wahyu Hermawan, *Ibid*.
[20] Lon L. Fuller, 1973, *The Morality of Law*, Revised edition Ninth Printing, New Haven and London : Yale University Press, p. 39.
[21] Ridwan HR. 2006. Hukum Administrasi Negara. Jakarta: RajaGrafindo Persada, pp. 43-45.

5. CONCLUSION

This study yields two conclusions. First, there has been a shift in the meaning of examining preliminary evidence contained in the KUP Law since the enactment of Government Regulation Number 74 of 2011, which revoked Government Regulation Number 80 of 2007, and PMK Number 239/PMK.03/2014, which revoked PMK Number 18/PMK. .03/2013. Government Regulation Number 80 of 2007 itself does not regulate the existence of preliminary evidence examinations openly and privately. However, Government Regulation Number 80 of 2007 and Government Regulation Number 74 of 2011 are based on the same considerations, namely Law Number 28 of 2007. The existence of a closed preliminary examination of evidence in Government Regulation Number 74 of 2011 and PMK Number 239/PMK.03/2014 can be a problem in terms of tax enforcement which within the framework of the rule of law must be proportional in upholding legal certainty, public benefits, and justice. and within the framework of administering government administration which must be based on the principle of legality, the principle of protection of human rights, and AUPB. Based on the method of legal hermeneutics cascading to essential attributes in the rule of law, it was found that the examination of preliminary evidence in a secure manner ignored the principles of clarity, non-contradictoriness, the capability of compliance, and the congruence between declared rules and the acts of administrators. Second, legal reformulation of preliminary evidence examination in Indonesia in the future can be carried out by applying the legal hermeneutics method to the texts of laws and regulations that use within the framework of the rule of law. Based on the understanding and explanatory side of legal hermeneutics within the framework of the rule of law, it is recommended that the preliminary evidence examination must meet the following 4 (four) requirements: 1) a series of activities carried out by the preliminary evidence examiner, 2) against anyone, both individuals and/or entities, 3) related to a situation, action, and/or evidence that can indicate a strong suspicion that a tax crime is or has occurred, and 4) may result in losses on state income. The result of the interpretation of preliminary evidence examination in the form of the 4 (four) requirements confirms that the regulation on the type of preliminary evidence examination, which consists of an open and closed examination of preliminary evidence, is inadequate with several attributes of the rule of law.

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