



Obligation to Submit Tax Data and Information From Agencies, Institutions, Associations, and Other Parties To Maintain The Authority of Law and The State

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Keywords

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Abstract

Law Number 28 of 2007 concerning the Third Amendment to Law Number 6 of 1983 concerning General Provisions and Procedures for Taxation and Government Regulation Number 31 of 2012 concerning the Provision and Collection of Data and Information relating to Taxation have regulated that every government agency, institutions, associations and other parties (ILAP), are obliged to provide data and information relating to taxation to the Directorate General of Taxes (DJP), the provisions of which are regulated by Government Regulations. Even though Article 41C of Law No. 28 of 2007 regulates a maximum prison sentence of 1 year and a fine of 1 billion for people who deliberately do not carry out obligations as regulated in Article 35A, in practice the provision of submission of tax data and information from ILAP does not work properly. To realize the implementation of these obligations, the DJP took another approach through the creation of a Memorandum of Understanding/ Agreement/MoU to a Cooperation Agreement in order to obtain tax data and information from the ILAP. The research study used in writing research methods focuses on and examines the application of rules and norms in positive law. Using Legal Certainty Theory by Gustav Radbruch. The results of the research, what was found was that the implementation of the obligation to submit tax data and information from ILAP did not run in accordance with positive law, namely Article 35A of Law Number 28 of 2007 concerning the Third Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures. . Researchers suggest changes to norms in Article 35A of Law Number 28 of 2007 concerning the Third Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures to include a mechanism for signing a Memorandum of Understanding/Memorandum of Understanding (MoU)./Cooperation Agreement (PKS) as an alternative solution for collecting tax data and information so that legal and state authority can be maintained.



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1. Introduction

Every country in the world needs a steady source of funding (Sawir, 2004) to realize its economic development and social development. One of the main sources of development finance is revenue from taxes, both direct and indirect taxes. In Indonesia, state revenue from the tax sector supports 70-80% of state revenue. Realizing the important role of taxation for the administration of the State, the Government of Indonesia in accordance with its functions is obliged to carry out guidance, services and supervision of the fulfillment of tax obligations based on the provisions outlined in tax laws and regulations. On the other hand, community members as taxpayers are given the trust to be able to participate in carrying out national cooperation through a system of calculating, calculating, paying and self-reporting taxes owed (*Self Assessment System*) (Candini, Marditia, Kwannaka, & Liany, 2022).

Given the important role of tax revenue in national development, the Directorate General of Taxes as a government agency or strategic unit under the institution of the Ministry of Finance tasked with handling tax issues has tried to carry out the main duties and functions as well as possible, especially through the implementation of tax intensification and extensification programs. The implementation of the program is sought to run in an integrated manner, which can run smoothly and continuously. The success of this effort is determined by two interrelated things, namely public awareness to fulfill their tax obligations, and a conducive tax system supported by the attitude and ability of qualified tax officials in carrying out their duties (Monitor, 2019).

Self Assessment System is a replacement of the old tax collection system, the *Official Assessment System*. In the *Official Assessment*, the amount of tax liability owed by the taxpayer is determined entirely by the fiscus (designation to the tax officer) (Ridwan, Heryansyah, & Pratiwi, 2018). The legal basis for self-assessment is regulated in Article 12 paragraph (1) of the KUP Law which states "Every taxpayer must pay the tax owed in accordance with the provisions of tax laws and regulations, without relying on the existence of a tax assessment letter." And paragraph (2) which states "The amount of tax payable according to the Notification Letter submitted by the Taxpayer is the amount of tax payable according to the provisions of tax laws and regulations". In other words, this system is more likely to focus on the active role of taxpayers in tax collection, namely the Taxpayer himself who calculates, deposits and reports taxes owed to the Tax Service Office where he is registered (Rosdiana & Irianto, 2012). The change in the tax collection system puts the participation of the taxpayer community very important and decisive in supporting financing and the course of development through tax payments.

Taxpayer compliance is a reflection of the implementation of *the self-assessment system* in force in Indonesia. The procedure for collecting with a self-assessment system *is considered successful if the community has high tax knowledge and discipline, where the characteristics of a successful self-assessment system* are legal certainty, simple calculation, easy implementation, more fair and equitable, besides of course tax calculations carried out by taxpayers (Soekanto, 2010). In this system, the initiative and activities of calculating and collecting taxes are entirely in the hands of taxpayers. Taxpayers are considered to be able to calculate their own taxes, have high honesty, realize the importance of paying taxes, and can understand the current tax laws (Littlewood & Elliffe, 2017).

In the process of implementing *the Self Assessment System*, all obligations submitted by the Taxpayer in the tax return will be considered correct until the DGT finds that the data or information in the tax return shows the opposite or incorrect. Data that can be used by DGT to test the correctness of tax returns submitted by taxpayers can be collected from anywhere (Husdanah, Saidi, Ruslan, & Ilmar, 2022). Realizing this, the government has issued Law Number 28 of 2007 concerning the Third Amendment to Law Number 6 of 1983 concerning General Provisions and Procedures for Taxation and Government Regulation Number 31 of 2012 concerning the Provision and Collection of Data and Information related to Taxation has regulated that every government agency, institution, association, and other party (ILAP), must provide data and information related to taxation to the Directorate General of Taxes (DGT) whose provisions are regulated by Government Regulations (Kurnia, 2016).

2. Materials and Methods

Research studies used in writing research methods that focus and examine the application of rules and norms in positive law. Using the Theory of Legal certainty by Gustav Radbruch. Based on the type of research used, namely normative legal research, an approach to legal problems is needed that will be investigated further. Because the type of research used is normative legal research, the approach used is a statutory approach, which is carried out by compiling, classifying, and analyzing all existing laws and regulations, ranging from regulations with the highest position in laws and regulations to regulations whose position is lowest in the hierarchy of laws and regulations, especially regulations of good substance directly or indirectly related to the obligation to provide tax data and information from third parties/State institutions, associated with the order of legislation as stipulated in Law Number 12 of 2011.

3. Results and Discussions

Gustav Radbruch's Theory of Legal Certainty

In deepening and researching the problem as described earlier, theoretical aspects related to this research problem are related to the theory of legal certainty from Gustav Radbruch, where in this theory emphasizes that the law must provide certainty and guarantee of one's rights and obligations. According to this theory, the law must be clear, certain, and understandable by all parties so as to avoid confusion, uncertainty, and injustice in the implementation of the law (Isra, Amsari, & Tegnan, 2017). The Theory of Legal Certainty also emphasizes the need for respect for individual rights and protection against arbitrary actions on the part of the authorities (Bintan, 2014).

In the context of modern law, Legal Certainty Theory means that law must be produced through a clear and transparent process, and that law must be implemented in a clear and consistent way. This allows people to plan their actions better and with more confidence, because they know what is expected of them and what will happen if they break the law.

Clarity and certainty in laws and regulations are important because they can help prevent uncertainty and confusion in society, as well as prevent abuse of power by those who have the authority to interpret or implement the law. Gustav Radbruch stated 4 (four) basic things related to the meaning of legal certainty, namely: First, that law is positive, meaning that positive law is legislation. Secondly, that the law is based on facts, that is to say, it is based on reality. Third, that facts must be formulated in a clear way so as to avoid errors in meaning, in addition to being easy to implement. Fourth, positive law should not be easily changed.

Gustav Radbruch's opinion is based on his view that legal certainty is certainty about the law itself. Legal certainty is a product of law or more specifically of legislation. Based on his opinion, according to Gustav Radbruch, positive laws that regulate human interests in society must always be obeyed even though positive laws are less fair. **Implementation of the obligation to submit tax data and information from agencies, institutions, associations, and other parties**

Regarding tax data and information, Article 35A of Law Number 16 of 2009 concerning General Provisions and Tax Procedures (KUP Law) stipulates that every government agency, institution, association and other party (ILAP) must provide tax data and information. If DGT's tax data is deemed insufficient, DGT has the right to collect data and information to secure state revenue. The provisions of the KUP Law are then further regulated in Government Regulation Number 31 of 2012 concerning the Provision and Collection of Data and Information Related to Taxation, and derived again through the Minister of Finance Regulation Number 228 / PMK.03 / 2017 concerning Details of Data and Information and Procedures for Submitting Tax Data and Information.

Overall, DGT actually needs data and information related to economic activities carried out by the community. This is important because with the *Self Assessment* system, only data from third parties can validate tax calculations and reporting by taxpayers. However, in its implementation, intense communication with various parties involved is needed to provide tax data to DGT, as well as having to see the latest conditions and developments in community economic activities.

Thus, the *Self Assessment System* mechanism will run if and only if tax data is available that can be used for supervision and (Satjipto, 2009) *law enforcement* efforts. Like a coin, the *Self Assessment System* is one side of a coin, while *law enforcement* is the other. Taxpayers have no choice but to carry out the *Self Assessment* mechanism correctly or accept *law enforcement*. Data that can be utilized is a prerequisite for the fiscus in conducting law enforcement. (Rahardjo, 1994) stated that: "Law Enforcement is a process to make legal wishes come true." The so-called legal desires in this case are none other than the thoughts of the law-making body formulated in these legal regulations.

The fact that is happening today, although Article 35A of Law Number 16 of 2009 concerning General Provisions and Tax Procedures (KUP Law) stipulates that every government agency, institution, association and other party (ILAP) is obliged to provide tax data and information from Government Agencies, Institutions, Associations, and Other Parties (ILAP) to DGT, there are still many third parties, both government and private, who have not or have not correctly submitted tax data and information as required in the KUP Law are then further regulated by Government Regulations and Minister of Finance Regulations. In addition to regulating the mechanism for providing data, consequences have also been regulated for third parties who do not provide data and information as stipulated in Article 41C of the KUP Law.

However, the regulation of consequences or sanctions still does not necessarily make third parties (including government agencies) carry out obligations in the form of submitting data and information related to taxation to DGT.

Various arguments were submitted by third parties, as reasons for the non-implementation of the obligation to submit data and information related to taxation to DGT. Facts on the ground do show, there was a vacuum or a long time lag between the issuance of Law Number 16 of 2009 concerning General Provisions and Tax Procedures which regulates the obligation of every government agency, institution, association and other parties to provide tax data and information, with implementing

regulations under it. Law Number 16 of 2009 was passed in 2009, while Government Regulation Number 31 of 2012 concerning the Provision and Collection of Data and Information Related to Taxation, was only issued in 2012 or there was a gap of about 3 (three) years from the period of the issuance of the Law.

This will create obstacles for tax authorities to collect financial information of taxpayers and create difficulties, one of which is in determining the right amount of tax that must be charged to the taxpayer. In addition, it can also have an impact on the emergence of injustice for fellow taxpayers, because some taxpayers can use technological and financial resources in order to avoid taxes that should be imposed on them (Macinko, Starfield, & Shi, 2003).

The steps taken by DGT to meet the data and information needs of government agencies, institutions, associations and other parties (ILAP) include conducting socialization and communication with various parties who have the obligation to provide data and information to DGT, both general socialization (in groups) and special in nature to certain parties (usually related to the urgency of data and information needed from related parties). Another effort made is communication or approach at the leadership level (*high level meeting*) which is intensively carried out by DGT leaders with leaders of third parties (private and government agencies) which in principle is to inform about the obligation to submit data and information along with the consequences that will be imposed if these obligations are not implemented.

From the socialization and communication activities carried out, there are several important points obtained and become the attention of DGT regarding the reasons and expectations that are the background of non-compliance from third parties. Among them are expectations or rather prerequisites desired by third parties, namely in the form of making a *Memorandum of Understanding* (MoU) and / or Cooperation Agreement (PKS) between third parties and DGT, before carrying out the obligation to provide data and information to DGT.

Following up on these expectations or prerequisites, DGT takes a stance to follow and coordinate the implementation of the MoU and/or PKS. Data obtained by researchers shows that the implementation of the MoU and / or PKS between DGT and third parties has begun since June 3, 2002, namely in the form of signing an MoU between DGT and the Capital Market Supervisory Agency (Bapepam) through KEP-293 / PJ / 2002 and 02 / PM / 2002 concerning a Memorandum of Understanding between the Directorate General of Taxes of the Ministry of Finance of the Republic of Indonesia and the Capital Market Supervisory Agency. Finally, a Memorandum of Understanding was signed between the Ministry of Finance of the Republic of Indonesia and the Central Java Provincial Government Number PRJ-04/PJ/2023 dated April 14, 2023 concerning Synergy of Optimization of Central Tax and Regional Tax. This method turned out to be quite effective, where third parties became willing to convey data and information. **Reconstruction of the obligation to submit tax data and information from agencies, institutions, associations, and other parties to realize legal certainty**

It is interesting that government agencies (even some law enforcement agencies) that should be very familiar with legal construction and even legal consequences, apparently do not necessarily fulfill the obligation to submit tax data and information from the relevant agencies to the DGT, as stipulated in the KUP Law. In addition, what is required or more likely by the agency is an MoU and/or PKS whose legal position is not clearly regulated or stated in the KUP Law.

Referring to Law Number 12 of 2011, it is clear that neither the MoU nor PKS are regulated in the order of legislation. However, again, referring to the findings in practice, the signing of the MoU and PKS turned out to have an effective impact, where third parties became willing to submit data and information to the DGT, the researcher made the basis for consideration of collaborating through the MoU and / or PKS as an alternative solution that could contribute significantly and was made the subject of discussion in this dissertation.

Obstacles that may arise, and need to be immediately found solutions, are mainly related to how to ensure the availability of tax data from Government Agencies, Institutions, Associations and Other Parties (ILAP) as an effort to secure state revenue from the tax sector, which has been provisionally regulated in Article 35A of Law Number 16 of 2009 and Government Regulation Number 31 of 2012 concerning the Provision and Collection of Data and Information Related to Taxation.

In addition to efforts to ensure the security of state revenues from the tax sector, another thing that is no less important is that there must be a way out to ensure the authority of the state / power and the authority of the law can be enforced. This is considered important, considering that with the non-fulfillment of statutory obligations on the submission of tax data and information by Government Agencies, Institutions, Associations and other Parties, this behavior can be interpreted as having "undermined" the authority of the State and the law.

The authority of power is an important thing to learn because it involves character and justice. Authority is very influential in several ways, both in state and organization. Authority is not only a matter of State power. Authority is also needed in the power of law. Looking at the phenomena and facts that occur as described above, researchers argue that it is

necessary to reconstruct the obligation to submit tax data and information from agencies, institutions, associations, and other parties (ILAP) as an important step in realizing legal certainty in the future in the context of taxation. This is also in line with the theory of authority presented by Max Weber, where authority is the legal power of the right to rule or act; the right or power of public officials to comply with the rule of law within the scope of carrying out public obligations. F.P.C.L. Tonnaer said that the authority of the Government is defined as the ability to carry out positive laws, thus creating a legal relationship between the Government and citizens. In Law Number 30 of 2014, it is stated that authority is the right possessed by Government Agencies and/or Officials or other State Administrators, to make decisions and/or actions in the administration of government. Government authority or authority is the power of government bodies and / or officials or other state administrators to act in the realm of public law.

Later in the theory of taxation by (Smith & Soemitro, 1992) Conceptually, taxes can be interpreted as mandatory contributions to the state owed by individuals or entities that are coercive based on the Law by not getting direct compensation and used for state purposes for the greatest prosperity of the people.

In the implementation of taxes there is an Adam Smith Theory that provides guidelines that in order for tax regulations to be fair, four conditions must be met, namely *Equality and Equity, Certainty, Convenience and Simplicity, and Economic of Collection or Cost Effectiveness*. Associated with aspects of justice and legal certainty, some literature expresses the principle of tax collection as a manifestation of the morally ideal truth about something in the context of social justice, redistribution and legal certainty.

The reconstruction of Article 35A of Law Number 28 of 2007 concerning the Third Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures according to the researcher is something that must be done as a continuation of the implementation of alternative solutions to collect tax data and information through the means of MoU and / or PKS, where it has not been accommodated in the hierarchy of laws and regulations. MoU and/or PKS can be included in the hierarchy of laws and regulations, especially added to the Law on General Provisions and Tax Procedures.

The researcher views that a concrete step that can be taken in this case is to propose that the prerequisites of the MoU and / or PKS can be added to Article 35A of the KUP Law, especially into a separate paragraph (third paragraph), which becomes an alternative solution regulated by the State and can be an agreed solution option that brings more benefits to both parties. In addition, referring to the Theory of Legal Certainty and the Theory of Authority described earlier, reconstruction is a solution that ensures that State power and laws are still enforced and not "undermined" by their authority.

Thus, it is clear that the urgency of the MoU and PKS is used as one of the effective and efficient solution options to increase the exchange and utilization of data and / or information between tax information by Government Agencies, Institutions, Associations and other Parties (ILAP), and will become more crucial and optimal and can maintain the authority of the law and the state if the implementing rules are stipulated in the provisions of laws and regulations. Not only the Ministry of Finance, especially the Directorate General of Taxes, which needs and benefits, but also tax information by Government Agencies, Institutions, Associations and other Parties (ILAP), one frequency in considering the importance of MoU and PKS is included in the Law, especially the KUP Law, more specifically added in Article 35A as paragraph 3 (three)

4. Conclusion

The researcher concluded that the implementation of the obligation to submit tax data and information from government agencies, institutions, associations, and other parties (ILAP) is very necessary for the effectiveness of tax revenue in Indonesia. Because of this cooperation, the risk of tax evasion and tax avoidance can be minimized. In practice so far, ILAP carries out the obligation to submit tax data and information after making a Memorandum of Understanding / Agreement / MoU until the Cooperation Agreement by DGT with ILAP, which is required by ILAP which has the obligation to submit tax data and information to DGT. Thus, the legal certainty that has been regulated in Law Number 28 of 2007 concerning the Third Amendment to Law Number 6 of 1983 concerning General Provisions and Procedures for Taxation and Government Regulation Number 31 of 2012 concerning the Provision and Collection of Tax Data and Information has not been realized.

Reconstruction of the obligation to submit tax data and information from government agencies, institutions, associations, and other parties (ILAP) is necessary to be carried out in order to realize legal certainty. The reconstruction that needs to be done is to add to Article 35A, number (3), to be able to include a mechanism for signing a Memorandum of Understanding (MoU) / Cooperation Agreement (PKS) as an alternative solution for collecting data and information, so that legal certainty can be enforced and in order to increase significance and contribution to

increasing state revenue and matters This is a solution to ensure the authority of the state/power and the authority of the law can be enforced.

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