

## The Constitutionality of Coercive Measures in The Preliminary Investigation of Tax Offense

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**Abstract.** This study aims to analyse the implications of coercive measures in the investigation of preliminary evidence regulated by Article 43A paragraph (1) and paragraph (4) of Article 2 number 13 of the HPP Law on the principle of the rule of law and legal certainty in the enforcement of tax criminal law. Using a normative-dogmatic legal approach, this study examines relevant legal norms and doctrines, focusing on positive law and the Constitutional Court's decision Number 83/PUU-XXI/2023. This methodology allows for an in-depth analysis of the applicable legal framework and its impact on taxpayer rights. The results of the study show that there is no legal mechanism for taxpayers to challenge coercive efforts to create legal uncertainty, contrary to the principles of justice, equality before the law, and the protection of human rights. This undermines trust in the legal system and requires clarity on legal remedies available to taxpayers. This research highlights the importance of integrating human rights into tax legislation, in accordance with international standards and the 1945 Constitution, to ensure that tax regulations are aligned with the principles of justice, equality before the law, and legal certainty. The conclusion of this study emphasizes the need for a clear, fair, and consistent legal framework to strengthen public trust in the tax system and the government, as well as to support the active participation of taxpayers in tax policy making.

**Keywords:** Taxation, Investigation of Preliminary Evidence, Tax Offences

**Abstrak.** Penelitian ini bertujuan untuk menganalisis implikasi dari upaya paksa dalam pemeriksaan bukti permulaan yang diatur dalam Pasal 43A ayat (1) dan ayat (4) Pasal 2 angka 13 UUU HPP terhadap prinsip negara hukum dan kepastian hukum dalam penegakan hukum pidana perpajakan. Penelitian ini menggunakan pendekatan yuridis normatif-dogmatik, yang mana mengkaji norma-norma hukum dan doktrin yang relevan, berfokus pada hukum positif dan putusan Mahkamah Konstitusi Nomor 83/PUU-XXI/2023. Metodologi yang digunakan memungkinkan analisis mendalam terhadap kerangka hukum yang berlaku serta implikasinya terhadap hak-hak para wajib pajak. Hasil penelitian menunjukkan ketiadaan mekanisme hukum bagi wajib pajak untuk menantang upaya paksa menciptakan ketidakpastian hukum, bertentangan dengan prinsip-prinsip keadilan, kesetaraan di hadapan hukum, dan perlindungan hak asasi manusia. Hal ini menggerogoti kepercayaan terhadap sistem hukum dan membutuhkan kejelasan tindakan hukum yang dapat diambil oleh wajib pajak. Penelitian ini menyoroti pentingnya integrasi hak asasi manusia dalam peraturan perpajakan, sesuai dengan standar internasional dan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, memastikan bahwa peraturan perpajakan selaras dengan prinsip keadilan, kesetaraan di mata hukum, dan kepastian hukum. Kesimpulan penelitian ini menekankan perlunya kerangka hukum yang jelas, adil, dan konsisten untuk memperkuat kepercayaan publik terhadap sistem perpajakan dan pemerintahan, serta mendukung partisipasi aktif wajib pajak dalam pembuatan kebijakan perpajakan.

**Kata kunci:** Perpajakan, Pemeriksaan Bukti Permulaan, Tindak Pidana Perpajakan

Submitted: 13 March 2024 | Reviewed: 15 May 2024 | Revised: 15 June 2024 | Accepted: 16 January 2025

## INTRODUCTION

Law enforcement is a process aimed at translating the ideas and concepts of law formulated by legislators into realities in society.<sup>1</sup> This process not only relies on *repressive enforcement* against violations of the law but also involves preventive efforts to encourage compliance with legal provisions (also known as *preventive enforcement*)<sup>2</sup>. In this context, law enforcement becomes an activity integral to the management and implementation of the legal strategy, since it involves a series of actions organized to achieve the legislative objectives set. The law enforcement in the tax sector as a part of law enforcement, plays an important role in the law Indonesia. The tax law enforcement plays a crucial role in ensuring the welfare of citizens, through optimizing fiscal power sourced from taxes.<sup>3</sup> The aim of this process is not only to deal with tax law violations in a repressive manner, but also to increase taxpayers' awareness and compliance with their obligations in a preventive manner. In this way, tax enforcement serves as a means of ensuring a fair distribution of the state's financial burden among all segments of society.<sup>4</sup> Legal compliance with the tax regulations reflects the social responsibility of citizens and business entities in supporting public financing and national development.

Taxes play a crucial role in ensuring the sustainability of government in Indonesia, as reflected in its significant contribution to the State Budget (APBN).<sup>5</sup> Taxes serve as the country's primary source of revenue, enabling the government to fund a wide range of public needs, including infrastructure, education, and health care.<sup>6</sup> Thus, the effectiveness of tax collection directly affects the ability of the state to fulfill its obligations and promote public welfare. Article 23A of the 1945 Constitution of the

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<sup>1</sup> M Gazali Rahman and Sahlan Tomayahu, "Penegakan Hukum Di Indonesia," *Jurnal Al Himayah* 4, no. 1 (2020): 142–59.

<sup>2</sup> Y Sri Pudyatmoko, *Penegakan Dan Perlindungan Hukum Di Bidang Pajak* (Salemba Empat, 2007).

<sup>3</sup> Fatma Ulfatun Najicha, "Peranan Hukum Pajak Sebagai Sumber Keuangan Negara Pada Pembangunan Nasional Dalam Upaya Mewujudkan Kesejahteraan Rakyat," *Ius Civile: Refleksi Penegakan Hukum Dan Keadilan* 6, no. 1 (2022): 169–81.

<sup>4</sup> Yehonatan Givati and Andrew T Hayashi, "Tax Law Enforcement and Redistributive Politics," *Virginia Public Law and Legal Theory Research Paper*, 2023.

<sup>5</sup> Amin Isnanto, Istiqomah Istiqomah, and Suharno Suharno, "Faktor-Faktor Yang Mempengaruhi Penerimaan Pajak Penghasilan Dalam APBN," *Jurnal Ilmiah Universitas Batanghari Jambi* 21, no. 2 (2021): 832–36.

<sup>6</sup> Lucie Gadenne, "Tax Me, but Spend Wisely? Sources of Public Finance and Government Accountability," *American Economic Journal: Applied Economics*, 2017, 274–314.

Republic of Indonesia (hereinafter referred to as the 1945 Constitution) explicitly states that "taxes and other compulsory levies for state purposes shall be regulated by law". This provision emphasizes the importance of legal certainty in the tax system to ensure that any tax levy is based on clear and transparent regulations.<sup>7</sup> This not only ensures that taxpayers understand their obligations but also provides a strong legal basis for the government to carry out its duties. Legal certainty in taxation is very important because it involves aspects of justice and equality before the law.

The tax authority in Indonesia (in this case, the Directorate General of Taxes) seeks to increase taxpayers' voluntary compliance through socialization, extension and tax education, with the aim of changing people's perceptions from fear of taxes to awareness of the importance of taxes. These activities are designed to create an understanding that paying taxes is an obligation that supports the country's development. In line with these preventive initiatives, the Directorate General of Taxes also implements strict supervisory measures, including audits, preliminary evidence checks and tax investigations, to ensure compliance with tax regulations. These repressive enforcement measures are necessary to impose fiscal discipline on taxpayers who ignore their obligations.

One of the problems in tax enforcement is the coercion in the preliminary evidence examination in Article 43A (1) and (4) in Article 2 (13) of Law No. 7 Year 2021 on the Harmonisation of Tax Regulations (hereinafter referred to as the HPP Law). Although Article 43A (1) of the HPP Law states that the preliminary examination of evidence has the same purpose and status as an investigation under the Criminal Procedure Code (hereinafter referred to as KUHAP), there is still uncertainty regarding the coercive measures that can be taken in the preliminary examination of evidence. This raises questions about the protection of individual rights, especially in the context of legal uncertainty and constitutional harm that may arise from such coercive measures. There are also research gaps in understanding the principles of the rule of law and fair legal certainty in the context of criminal tax enforcement. Further research is needed

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<sup>7</sup> Bustamar Ayza, *Hukum Pajak Indonesia* (Kencana, 2016).

to understand how these principles are implemented and upheld in the practice of tax law enforcement, as well as their impact on the rights of individuals and legal entities as taxpayers.

The purpose of this study is to analyse and understand the implications of coercive measures in the examination of preliminary evidence regulated in Article 43A paragraph (1) and paragraph (4) in Article 2 number 13 of the HPP Law. This research will fill the knowledge gap on how the principles of the rule of law and fair legal certainty are applied in the context of criminal tax law enforcement, particularly in relation to the protection of the rights of individuals and legal entities in the process. Through a case-based approach to Constitutional Court Decision No. 83/PUU-XXI/2023 on the Material Review of Law No. 7 of 2021 on the Harmonisation of Tax Regulations, this research will examine the impact of legal uncertainty and potential constitutional harms arising from coercive measures in the preliminary examination of evidence. This research provides theoretical and practical contributions to the understanding and implementation of tax law. Theoretically, this research enriches the tax law and constitutional law literature by providing an in-depth analysis of the principles of the rule of law and fair legal certainty, and their implications for the protection of the rights of individuals and legal entities in the context of criminal tax enforcement. From a practical perspective, the results of this study have the potential to serve as a guide for the government, particularly the tax authority, in formulating and implementing policies that not only improve the efficiency of tax law enforcement but also ensure fairness and protection of taxpayers' rights.

## **METHODOLOGY**

The approach used in this study is Normative-Dogmatic Juridical, which allows an in-depth analysis of legal norms in the Indonesian legal system. The focus of this research is on positive law and legal doctrine related to the enforcement of tax criminal law, particularly regarding coercive efforts in the preliminary examination of evidence as regulated by the HPP Law. The primary legal sources used are Law Number 7 of 2021

concerning the Harmonization of Tax Regulations and the Constitutional Court Decision Number 83/PUU-XXI/2023. Deductive and idealistic approaches are applied to draw conclusions based on existing norms and doctrines without directly relating them to practice in society. In addition, secondary legal sources such as literature, articles, and related academic studies will be analysed to support the understanding and interpretation of the legal issues at hand. This method ensures that the research takes place systematically and conceptually, with the aim of achieving a comprehensive understanding of the applicable legal principles and their implications for the protection of taxpayers' rights in the process of tax law enforcement.

## **RESULT AND DISCUSSION**

### **Study Case**

The applicants in Case No. 83/PUU-XXI/2023 were Surianingsih and Budiyanto Pranoto (in this case as representatives of PT Putra Indah Jaya). Surianingsih and Budiyanto Pranoto filed a judicial review petition with the Constitutional Court in relation to the examination of preliminary evidence in tax crimes committed against them. The articles submitted in the judicial review petition were Article 43A paragraph (1) and (4) in Article 2 paragraph (13) of the HPP Law, which were tested against the provisions of Article 1(3) and Article 28D (1) of the 1945 Constitution. The applicant claims to have suffered constitutional damage due to the legal uncertainty in the control mechanism over the examination of preliminary evidence of tax offences. The examination of preliminary evidence is carried out with coercive measures that may violate individual rights, without the possibility of appeal to the pre-trial stage, as in the case of general criminal offences. This causes legal uncertainty and constitutional loss for them, which is contrary to the principles of the rule of law and fair legal certainty as guaranteed by the 1945 Constitution of the Republic of Indonesia.

Article 43A paragraph (1) and paragraph (4) in Article 2 number 13 of the HPP Law does not regulate the legal remedies available to taxpayers against coercive measures taken by officials of the PPNS during the investigation of preliminary evidence. This

creates legal uncertainty for taxpayers aiming to protect their rights during the examination of preliminary evidence. In this context, the relationship with the Criminal Procedure Code is that the Criminal Procedure Code, as a formal law in the enforcement of criminal law in Indonesia, contains provisions that protect against possible human rights violations. The Criminal Procedure Code provides a control mechanism for the possibility of arbitrary actions by investigators through a pre-trial institution. This pre-trial mechanism provides protection and guarantees the balance of rights, including for taxpayers who are still under investigation and have not been designated as suspects but have been subjected to various coercive measures. Therefore, it is important to ensure that there is a control mechanism over the actions of the investigators in the use of coercive measures during the investigation of preliminary evidence against taxpayers in order to provide a guarantee of fair legal certainty for taxpayers as guaranteed by Article 28D paragraph (1) of the 1945 Constitution.

In the context of pre-trial proceedings, KUHAP regulates legal procedures that allow a person to petition the court to assess the legality of a legal action taken by law enforcement agencies before criminal proceedings are initiated. The purpose of the preliminary investigation is to protect the rights of individuals from arbitrary action or abuse of authority by law enforcement agencies before criminal proceedings are initiated. In cases related to the examination of preliminary evidence in tax crimes, pre-trial investigation is important because it provides taxpayers with an opportunity to protect their rights before the investigation process begins. In the decision of the Constitutional Court No. 83/PUU-XXI/2023 on the examination of Article 43A (1) and (4) in Article 2(13) of the HPP Act, the pre-trial investigation becomes one of the control mechanisms used by taxpayers to determine whether a letter issued by an official conducting a pre-trial investigation of their documents or letters is valid.

## The Protection of Taxpayer's Rights as Citizens

Indonesia has very strong constitutional guarantees for human rights, reflected in the Second Amendment to the 1945 Constitution.<sup>8</sup> This demonstrates the State's commitment to recognising and protecting the fundamental rights of every individual. The material contained in this Constitution is essentially derived from the previously enacted Law No. 39/1999 on Human Rights (hereinafter referred to as the Human Rights Law).<sup>9</sup> This confirms that the recognition of human rights is not a new concept in Indonesian legislation. The inclusion of human rights provisions in the Constitution marks the importance of human rights protection as the foundation of the state and guarantees that all policies and laws enacted by the government will not deviate from internationally recognised human rights principles.<sup>10</sup> The inclusion of human rights in the 1945 Constitution also reflects Indonesia's efforts to meet international standards in the protection of human rights<sup>11</sup>, while at the same time emphasising Indonesia's position in the international community as a state that respects and protects the rights of the individual.<sup>12</sup>

One of the human rights enshrined in the 1945 Constitution is the right to equal treatment before the law. This is further enshrined in Article 28D (1) of the 1945 Constitution, which states that "Everyone has the right to the recognition, guarantees, protection and security of a just law and to equal treatment before the law". The right to equal treatment before the law is a fundamental principle aimed at ensuring justice, truth and equality for all individuals in society.<sup>13</sup> The concept of equal treatment before the law is a central pillar of human rights law and has been enshrined in numerous international treaties, declarations and national constitutions.<sup>14</sup> This

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<sup>8</sup> Majda El-Muhtaj, *Hak Asasi Manusia Dalam Konstitusi Indonesia* (Prenada Media, 2017).

<sup>9</sup> Jimly Asshiddiqie, *Konstitusi Dan Konstitusionalisme Indonesia* (Sinar Grafika, 2021).

<sup>10</sup> Retno Kusniati, "Sejarah Perlindungan Hak Hak Asasi Manusia Dalam Kaitannya Dengan Konsepsi Negara Hukum," *INOVATIF | Jurnal Ilmu Hukum* 4, no. 5 (2011); See Tony Yuri Rahmanto, "Tony Yuri Rahmanto, "Prinsip Non-Intervensi Bagi ASEAN Ditinjau Dari Perspektif Hak Asasi Manusia," *Jurnal HAM* 8, no. 2 (2017): 13–24.

<sup>11</sup> Harison Citrawan, "Analisis Dampak Hak Asasi Manusia Atas Regulasi: Sebuah Tinjauan Metodologi," *Jurnal HAM* 8, no. 1 (2017): 13–24.

<sup>12</sup> Dinah Shelton, "Protecting Human Rights in a Globalized World," *BC Int'l Comp. L. Rev.* 25 (2002): 273; See Fred Dallmayr, "'Asian Values' and Global Human Rights," in *Theories of Rights* (Routledge, 2017), 393–409.

<sup>13</sup> Christopher Ake, "Justice as Equality," in *Justice* (Routledge, 2017), 121–41.

<sup>14</sup> M Ridha Saleh, *Menghijaukan Ham* (PT. Rayyana Komunikasindo, 2020).

principle prohibits discrimination based on characteristics such as race, gender, religion, nationality, disability or other status, and requires that all individuals be treated equally before the law.<sup>15</sup> Adherence to this principle ensures that no individual or group is subjected to discriminatory treatment.<sup>16</sup> This principle of equality strengthens the foundations of social justice by ensuring that everyone, regardless of background or socio-economic status, has equal access to legal protection.<sup>17</sup>

An important international instrument on equal treatment before the law is the Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly in 1948. Article 7 of the UDHR states that 'all human beings are equal before the law and are entitled without discrimination to the equal protection of the law'. This provision emphasises the importance of equal treatment before the law as a fundamental human right that should be guaranteed to all individuals, regardless of their background or status. In addition to the UDHR, the International Covenant on Civil and Political Rights (ICCPR), which was adopted in 1966 and has been ratified by many countries, contains provisions relating to equal treatment before the law. Article 26 of the ICCPR states:

*"All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".*

Article 7 of the UDHR and Article 26 of the ICCPR aim to eliminate all forms of discrimination and to ensure that everyone has equal access to justice.<sup>18</sup> This is very important in the context of law enforcement where discrimination is still common, whether based on race, ethnicity, gender, religion, or other factors.<sup>19</sup> By ensuring

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<sup>15</sup> Daniel Moeckli, "Equality and Non-Discrimination," in *Equality and Non-Discrimination under International Law* (Routledge, 2017), 53–70.

<sup>16</sup> Michael P Foran, "Equality before the Law: A Substantive Constitutional Principle," *Public Law*, 2020, 287–306; See Neil Thompson, *Anti-Discriminatory Practice: Equality, Diversity and Social Justice* (Bloomsbury Publishing, 2020).

<sup>17</sup> Dyann Ross, "Social Justice," in *Encyclopedia of Sustainable Management* (Springer, 2020), 1–4.

<sup>18</sup> Valesca Lima and Miriam Gomez, "Access to Justice: Promoting the Legal System as a Human Right," in *Peace, Justice and Strong Institutions* (Springer, 2019), 1–10; See Dorothy Estrada-Tanck, "Article 7—Equality before the Law and Equal Protection of the Law," in *The Universal Declaration of Human Rights* (Brill Nijhoff, 2023), 152–74.

<sup>19</sup> Hadar Aviram and Daniel L Portman, "Inequitable Enforcement: Introducing the Concept of Equity into Constitutional Review of Law Enforcement," *Hastings LJ* 61 (2009): 413; See Wira Purwadi et al., "Application Of



equality before the law, the UDHR and ICCPR help build a just and inclusive society where everyone's fundamental rights are respected and protected.

Article 23A of the 1945 Constitution provides a strong legal foundation for the tax system in Indonesia, stating that all forms of taxes and other compulsory levies must be regulated by law.<sup>20</sup> This provision emphasises the importance of legal certainty in tax collection, ensuring that every taxpayer is clear about his or her obligations under the applicable legal provisions.<sup>21</sup> This principle thus protects the rights of taxpayers against arbitrary taxation, while ensuring that the State has a clear legal basis for collecting revenue.<sup>22</sup> The involvement of the DPR in the determination of taxes and compulsory levies reflects the principles of democracy and checks and balances in the tax system.<sup>23</sup> It allows for public oversight and participation in the tax policy-making process, ensuring that policy reflects the interests of the general public and not just a few parties.<sup>24</sup> Tax enforcement based on legal certainty means that any enforcement action must be based on laws that are clear, unambiguous and consistently applied to all taxpayers.<sup>25</sup> Legal certainty in the context of taxation not only protects taxpayers from arbitrary actions but also increases tax compliance by enabling taxpayers to clearly understand their obligations and rights. This creates a fair and efficient tax environment where taxpayers feel that the tax system is based on principles of fairness and transparency.

Legal certainty is one of the fundamental pillars of Indonesia's legal system, which is characterised by clarity, predictability and consistent application of the law.<sup>26</sup> This

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The Principle Of Equality Before The Law To Law Enforcement For The Realization Of Justice In Society,” *Jurnal Legalitas* 15, no. 1 (2022): 59–75.

<sup>20</sup> Tjia Siauwan Jan, *PENGADILAN PAJAK: Upaya Kepastian Hukum Dan Keadilan Bagi Wajib Pajak. Edisi Ke II Tahun 2022* (Penerbit Alumni, 2022).

<sup>21</sup> Tjip Ismail, “Peradilan Pajak Dan Kepastian Hukum Di Tengah Globalisasi Ekonomi,” *Jurnal Hukum IUS QULA IUSTUM* 17, no. 2 (2010): 271–94.

<sup>22</sup> I Nengah Suastika, “Tata Cara Pemungutan Pajak Dalam Perpektif Hukum Pajak,” *Jurnal Komunikasi Hukum (JKH)* 7, no. 1 (2021): 326–35.

<sup>23</sup> Syofyan Hadi, “Prinsip Checks And Balances Dalam Struktur Lembaga Perwakilan Rakyat Di Indonesia (Studi Terhadap Usulan Perubahan Kelima UUD NRI Tahun 1945),” *Mimbar Keadilan*, 2015, 240088.

<sup>24</sup> John E Jackson and David C King, “Public Goods, Private Interests, and Representation,” *American Political Science Review* 83, no. 4 (1989): 1143–64. Lihat juga; B Guy Peters, “The Politics of Taxation,” *A Comparative Perspective*, Cambridge, 1991, 58–64.

<sup>25</sup> Imam Nashirudin, *POLITIK HUKUM PENYELESAIAN SENGKETA PAJAK* (Uwais Inspirasi Indonesia, 2023); Lihat juga Muhammad Farouq, *Hukum Pajak Di Indonesia* (Jakarta: Prenada Media, 2018).

<sup>26</sup> Asshiddiqie, *Konstitusi Dan Konstitusionalisme Indonesia*.

principle, enshrined in the 1945 Constitution, ensures that every regulation, policy and government action is not arbitrary but based on clear and measurable laws. The rule of law asserts the supremacy of the law over the actions of individuals and institutions, it also ensures that all government actions take place within the framework of established law.<sup>27</sup> Equality before the law ensures that everyone, without exception, is treated equally before the law, minimising discrimination and reinforcing social justice. The principle of legality, which requires all legal actions to have a clear legal basis, prevents abuse of power by limiting government actions to those expressly authorised by law.<sup>28</sup> This protects individuals from arbitrary decisions and strengthens public confidence in the legal system. The limitation of power, manifested in the separation of powers and the mechanism of checks and balances, avoids the concentration of power that could threaten individual freedoms and maintains a balance between government authorities.<sup>29</sup>

Taxpayer participation in the tax administration process is an integral part of citizens' constitutional rights. The underlying principle of taxpayer participation is the principle of 'no taxation without representation'.<sup>30</sup> It is a concept that emphasises that the government should not impose taxes on individuals without giving them representation or a voice in the policy-making process that determines the amount of taxes they have to pay.<sup>31</sup> This principle originated in the history of the United States in the 18th century and became one of the foundations of the struggle for the independence of the United States from British colonial rule.

Within the framework of Indonesia's rule of law, the principle of the rule of law, as formulated in Article 1(3) of the 1945 Constitution of the Republic of Indonesia,

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<sup>27</sup> Moh Anas Kholish and Ilham Fitra Ulumuddin, "Supremasi Hukum Dan Perubahan Sosial: Sebuah Tinjauan Hukum Barat Dan Hukum Islam," *Peradaban Journal of Law and Society* 1, no. 1 (2022).

<sup>28</sup> Hwian Christianto, "Pembaharuan Makna Asas Legalitas," *Jurnal Hukum & Pembangunan* 39, no. 3 (2009): 347–75; See Mohamad Khasan, "Analisis Yuridis Normatif Asas Legalitas RUU Hukum Pidana Dan Asas Legalitas Hukum Pidana Islam," *Jurnal Isti'dal* 5 (n.d.).

<sup>29</sup> Asshiddiqie, *Konstitusi Dan Konstitusionalisme Indonesia*.

<sup>30</sup> Pipih Ludia Karsa and Fatkhul Muin, "The Implication of Hotel Tax Collection towards the Increase of the Regional Original Revenue at Tangerang Regency Based on the Principle of Good Governance," *Legal Standing: Jurnal Ilmu Hukum* 3, no. 1 (2019): 56–88.

<sup>31</sup> Henry M Gladney, *No Taxation without Representation* (Xlibris Corporation, 2014); See Michael Herb, "Taxation and Representation," *Studies in Comparative International Development* 38 (2003): 3–31.

emphasises that every citizen is entitled to fair and equal legal treatment. This principle reflects the state's commitment to provide justice to all its citizens, including in taxation. The principle of 'no taxation without representation', which historically requires that taxes can only be imposed with political representation, strengthens the constitutional basis for citizens to obtain fair legal protection, particularly in the process of tax enforcement. This ensures that the tax policy implemented by the government is not only formally legal, but also fair and represents the interests of the people.

The implementation of this principle in the Indonesian tax system requires transparency, accountability and public participation in the tax policy-making process. Public participation in the tax policy-making process confirms that the policy reflects the principle of representation and avoids unfair or burdensome tax collection practices. In addition, fair legal certainty in the context of taxation also means that every taxpayer must be provided with clear information about his or her tax obligations and must have access to appeal against tax decisions that are considered unfair. Legal certainty in taxation thus encompasses not only aspects of legality in tax enforcement, but also aspects of fairness and representation in the process of making and enforcing tax laws. This is a manifestation of the principle of social justice for all Indonesians, as enshrined in the Constitution.

### **The Coercive Measures in Preliminary Investigation**

The Law Number 7 of 2021 on Harmonisation of Tax Regulations is an omnibus law.<sup>32</sup>

This law amends several provisions of tax legislation, including:

- a. Law Number 6 of 1983 on General Provisions and Taxation Procedures;
- b. Law Number 7 of 1983 on Income Tax;
- c. Law Number 8 of 1983 on the Value Added Tax on Goods and Services and Sales Tax on Luxury Goods;
- d. Law Number 11 of 1995 on Excise;

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<sup>32</sup> H Syafa'at Anugrah Pradana and Muh Andri Alvian, "Kompabilitas Mekanisme Omnibus Law Dalam Pengaturan Perpajakan," *Amanna Gappa*, 2021, 114–24; see Agnes Fitryantica, "Harmonisasi Peraturan Perundang-Undangan Indonesia Melalui Konsep Omnibus Law," *Gema Keadilan* 6, no. 3 (2019): 300–316.

- e. Law Number 39 of 2007 on the Amendment of Law Number 11 of 1995 on Excise;
- f. Law Number 36 of 2008 on the Fourth Amendment of Law Number 7 of 1983 on Income Tax;
- g. Law Number 16 of 2009 on Enactment of Government Regulation in lieu of Law Number 5 of 2008 on the Fourth Amendment of Law Number 6 of 1983 on General Provisions and Tax Procedures into Law;
- h. Law Number 42 of 2009 on the Third Amendment of Law Number 8 of 1983 on the Value Added Tax on Goods and Services and Sales Tax on Luxury Goods;
- i. Enactment of Government Regulation in lieu of Law Number 1 of 2020 on State Fiscal Policy and Financial System Stability for Managing the Corona Virus Disease 2019 Pandemic (COVID-19) and/or in the Context of Managing Threats that Endanger the National Economy and/or Financial System Stability; and
- j. Law Number 2 of 2020 on Enactment of Government Regulation in lieu of Law Number 1 of 2020 State Fiscal Policy and Financial System Stability for Managing the Corona Virus Disease 2019 Pandemic (COVID-19) and/or in the Context of Managing Threats that Endanger the National Economy and/or Financial System Stability.

The preliminary investigation according to the provisions of Article 1 point 27 of the Act No. 6 Year 1983 General Provisions and Procedures for Taxation (hereinafter referred to as the KUP Act), is "an investigation conducted to obtain preliminary evidence on the alleged criminal offences in the field of taxation". Article 43A of the KUP Law, which is submitted in this case as material in the judicial review of Case No 83/PUU-XXI/2023, reads in full as follows.

“(1) Based on information, data, reports and complaints, the Director General of Taxes is empowered to conduct a preliminary examination of evidence prior to the investigation of tax offences.

(1a) Preliminary Evidence Examination is carried out by Civil Servant Investigator Officials within the Directorate General of Taxes who receive a warrant for preliminary examination of evidence.

(2) Where there are indications of tax offences involving officials of the Directorate General of Taxes, the Minister of Finance may instruct an internal audit unit within the Ministry of Finance to carry out a preliminary examination of the evidence.

(3) If the preliminary evidence reveals elements of corruption offences, the employees of the Directorate General of Taxes involved will be dealt with in accordance with the provisions of the Law on Corruption.

(4) Procedures for the examination of preliminary evidence of tax offences referred to in paragraphs 1 and 2 shall be regulated by, or based on, a regulation of the Minister of Finance.”

Coercive measures in the examination of preliminary evidence are considered problematic because they may raise doubts about fair legal certainty. In the context of the case relating to the examination of Article 43A (1) and (4) of Act No. 7 of 2021 on the Harmonisation of Tax Regulations, coercion raises questions about the authority of the examiner to carry out such measures. According to the applicant's description of the case, there is a difference of opinion between the applicant II and the party carrying out the preliminary examination of the documents or letters belonging to the applicant. Applicant II filed a legal appeal against the threats and coercive actions, but the court rejected the pretrial application on the grounds that the pretrial institution does not have the competence to examine the authority of the examiner, as provided for in Article 12 of PMK No. 239/PMK.03/2014 on the procedure of preliminary evidence examination. In addition, it has not yet been determined whether the legal event is a tax offence, so no coercive measures can be taken. Thus, coercive measures in preliminary evidence examination are considered problematic, as they may lead to legal uncertainty and doubts about the fairness of the ongoing legal proceedings.

In case no. 83/PUU-XXI/2023, the DPR issued a statement on this issue. The DPR stated that the procedure for the examination of preliminary evidence could be carried out with various coercive measures against Applicant I in order to obtain data, documents and information relating to taxation. However, any such coercive measures may, in fairness, be detrimental to the rights of the 1st applicant. If there is a loss to Applicant I as a result of the coercive measures, then Applicant I cannot challenge the coercive measures in the pre-trial phase, as is generally the case in criminal proceedings. In this context, the constitutional loss of Applicant I will certainly occur if Applicant I is examined in the preliminary investigation of tax offences and coercive efforts are made. As a result, Applicant I has lost the right to

defend himself by means of a pre-trial challenge and has thus not obtained a fair guarantee of legal certainty as guaranteed by Article 28D (1) of the 1945 Constitution.

## DISCUSSION

In this case, Article 43A of the KUP Law does not provide a legal mechanism for taxpayers to challenge the coercive efforts of PPNS officials, thus creating legal uncertainty. Obviously, the principle of justice and equal treatment before the law, as guaranteed by Article 28D paragraph (1) of the 1945 Constitution and echoed in the international context by the Universal Declaration of Human Rights and the International Pact on Civil and Political Rights, should underlie every action in the law enforcement process, including in the tax sector. This uncertainty is contrary to the principle of legal certainty which is a fundamental pillar of the Indonesian legal system. There must be clarity on the legal remedies that taxpayers can take in the face of coercive efforts during the investigation of preliminary evidence. The principles of legal certainty, equality before the law, and protection of human rights must be the basis of tax enforcement to ensure that taxpayers do not feel treated arbitrarily or discriminatorily.

Law Number 7 of 2021 concerning the Harmonization of Tax Regulations, as an omnibus law, should provide a clear and consistent legal framework that regulates not only tax obligations but also taxpayers' rights, including the right to fair treatment and legal certainty. The principle of "*no taxation without representation*" emphasizes the importance of taxpayer participation in tax policy-making, which must reflect fair and transparent representation. The Constitutional Court's Decision Number 83/PUU-XXI/2023 highlights the importance of the pretrial mechanism as a control over the possibility of arbitrary actions in the examination of preliminary evidence. This underscores the need for mechanisms that allow taxpayers to defend their rights, in accordance with the principles of justice and the protection of human rights.

In a broader context, the integration of human rights into the 1945 Constitution and other legislation demonstrates Indonesia's commitment to international standards of

human rights protection, including in the process of tax enforcement. Therefore, it is important for tax regulations to be aligned with these principles, ensuring that every taxpayer is given fair treatment, equality before the law, and legal certainty. In short, reconciling the need to impose taxes with the protection of human rights requires a clear, fair, and consistent legal framework that recognizes and protects the rights of taxpayers. This is important not only for legal certainty but also to strengthen public trust in the tax system and government.

## CONCLUSION

The purpose of this study is to examine the implications of coercive efforts in the examination of preliminary evidence regulated in Article 43A paragraph (1) and paragraph (4) in Article 2 number 13 of the HPP Law, highlighting the importance of applying the principle of the state of law and legal certainty in the enforcement of tax criminal law. The results of the study show that the absence of a legal mechanism for taxpayers to challenge coercive efforts creates legal uncertainty, contrary to the principles of justice, equality before the law, and the protection of human rights guaranteed by Article 28D paragraph (1) of the 1945 Constitution and international standards. This uncertainty undermines the fundamental pillars of Indonesia's legal system, requiring clarity on the legal actions that taxpayers can take in the face of coercive efforts. Law Number 7 of 2021 concerning the Harmonization of Tax Regulations should provide a clear and consistent legal framework, regulating taxpayers' obligations and rights, including fairness and legal certainty. The principle of "*no taxation without representation*" emphasizes the importance of taxpayer participation in making tax policies, supporting fair and transparent representation.

The Constitutional Court's ruling highlights the need for a pretrial mechanism to control arbitrary actions, emphasizing the need for a mechanism that allows taxpayers to defend their rights. The integration of human rights in the 1945 Constitution and other legislation shows Indonesia's commitment to international standards in the protection of human rights in tax law enforcement. Tax regulations must be aligned

with the principles of fairness, equality in the eyes of the law, and legal certainty, ensuring fair treatment for every taxpayer. Harmonization between taxation and human rights protection requires a clear, fair, and consistent legal framework, essential for legal certainty and strengthening public confidence in the tax system and governance. In conclusion, the expansion of the principle of justice and legal certainty in tax law enforcement not only strengthens the legal pillar but also strengthens public trust and participation in the tax system.

This study makes an important contribution to understanding the implications of coercive efforts in the examination of preliminary evidence under Article 43A paragraph (1) and paragraph (4) in Article 2 number 13 of the HPP Law, with a focus on the principle of the rule of law and fair legal certainty in the enforcement of tax criminal law. Through this analysis, it was revealed that the absence of a legal mechanism for taxpayers to challenge coercive efforts creates legal uncertainty, contrary to the principles of justice, equality before the law, and the protection of human rights guaranteed by the constitution and international standards. This study highlights the urgent need for legislative revisions that integrate taxpayers' rights in the process of examining preliminary evidence, strengthening legal certainty and fairness in tax law enforcement. The implication of these findings is the urgency for policymakers to revise the KUP Law and other related laws, such as Law Number 7 of 2021 concerning the Harmonization of Tax Regulations, in order to provide a clear and consistent legal framework that guarantees the rights of taxpayers. This includes the pretrial mechanism as a control over arbitrary actions, which is affirmed by the Constitutional Court Decision, as well as the active participation of taxpayers in making tax policies that reflect the principle of "no taxation without representation".

The limitation of this research lies in its limited focus on normative analysis of legislation without involving extensive empirical studies regarding its application in practice. Therefore, the next research agenda should involve the collection of empirical data and case studies to evaluate the real impact of legal uncertainty on taxpayers and tax law enforcement in more depth. Future research may also explore



innovative ways to strengthen taxpayer participation in the tax legislative process, as well as its impact on tax compliance and public trust in the tax system.

## ACKNOWLEDGMENTS

The author would like to thank the entire *academic community* of Universitas Pelita Harapan for their support in writing this article. In writing this article, the support in the form of guidance in writing the article, access to literature, and constructive input is very helpful.

## COMPETING INTEREST

There is no conflict of interest in the writing of this article.

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