

JURIDISM IMPLEMENTATION LAW NUMBER 9 OF 2017 AS A INDONESIAN COMMITMENT IN AUTOMATIC EXCHANGE OF INFORMATION

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ABSTRACT

This paper aims to determine a legal issues on taxpayer financial information by the Directorate General of Taxes (DGT). This study is normative legal research. This method is used to conduct analysis of laws and regulations, jurisprudence, and legal literature. The research approach used is the approach of the Act (statute approach) and the conceptual approach. The conclusion of this research is Law Number 9 of 2017 gives authority to the Director General of Taxes in terms of management of financial records that is submitted or deposited by financial services institutions, especially banking institutions. Sanctions given by law for banks and tax officers who leak customer records to third parties or who are not interested will be punished in accordance with the provisions in Article 41 of Law Number 6 of 1983 concerning General Provisions and Tax Procedures.

Key words: Law, Openness, Access to Financial Information.

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1. INTRODUCTION

Tax is a compulsory contribution to the state owed by an individual or an entity that is a force based on the Law, by not getting direct compensation and used for state needs for the greatest prosperity of the people (vide Article 1 number 1 Law No. 28 of 2007 regarding General Provisions and Tax Procedures. Payment of taxes is an embodiment of state obligations and the role of taxpayers to directly and jointly implement tax obligations for state financing and national development. In accordance with the philosophy of tax law, paying taxes is not only

an obligation, but is the right of every citizen to participate in the form of participation in state funding and national development.

According to Safri Nurmantu, there are several main elements in taxation, namely as follows: [1]

Fees or levies;

Viewed in terms of the direction of the tax fund flow, if the direction of the tax comes from the taxpayer, then the tax is referred to as the contribution while the direction of the activity to realize the tax comes from the government, then the tax as a levy

Tax is collected under the Act

Tax collection is essentially a burden on the people. In giving this bebean, the people's approval is needed. Obtaining the people's agreement on this burden is used the mechanism of a representative institution, namely in the House of Representatives. Therefore, each tax collection must be based on the agreement of the people through the People's Representative Council, where this agreement is technically passed through the Law.

Tax Can Be Forced

The Fiscal Authority is authorized by law to compel taxpayers to comply with their tax obligations. This power can be seen by the provisions of administrative sanctions and fiscal criminal sanctions in the Taxation Law, specifically in Law No. 28 of 2007. The fiscal authorities also obtain the authority of the law to carry out actions to force Taxpayers in the form of confiscation of property, both fixed assets and movable assets. Even in the history of tax law in Indonesia, there are known institutions of hostage or gijzeling, namely taxpayers who are basically able to pay taxes, but always avoid with various excuses for not paying taxes, the tax authorities can take the taxpayer hostage in putting it into confinement.

Not Receiving or Obtaining Direct Contraception

Taxpayers who pay taxes do not receive or obtain reciprocal services or counter-achievements from the Government (without receipt of special benefit of equal value, without reference to special benefits conferred).

To Fund Government General Expenditures

Tax is used as a source of funding for the general expenditure of the government in running the government.

Taxes greatly affect economic development in a country in an effort to prosper society, for which taxes have several functions, namely:

- a. Budget function or receipt (budgetair): tax is one source of funds used by the government and is useful for financing expenses. State revenue from the taxation sector is included in the domestic revenue component in the APBN.
- b. The function regulates (rutinend): tax as a tool to regulate or implement government policies in the social and economic fields. An example is the imposition of higher taxes on luxury goods and liquor.
- c. Stability function: tax as state revenue can be used to carry out government policies. An example is a price stability policy with the aim of reducing inflation by regulating the circulation of money in the community through more efficient and effective collection and use of taxes.

d. Equity function (distribution tax): state revenue from tax is used to finance general expenditure and national development so that it can open employment opportunities with the aim of increasing people's income.

Law No. 9 of 2017 concerning the Establishment of PERPU No. 1 of 2017 concerning Access to Financial Information for Taxation Interests, has been established on August 23, 2017. Access to the intended financial information includes access to receive and obtain financial information in the context of implementing tax laws and international agreements in the field of taxation, Islamic banking and capital markets and other laws and regulations. This access is needed to support the tax authorities in strengthening the taxation database to meet tax revenue requirements and maintain the effectiveness of the tax amnesty policy.

Determination of Law No. 9 of 2017, also to fulfill our commitment to implement Automatic Financial Exchange Information (Automatic Exchange of Financial Account Information), as a follow-up of the ties of international agreements in the field of taxation. This is done to avoid the declining credibility of Indonesia as a member of the G20, the weakening of foreign investor confidence, and not to make Indonesia a destination for illegal funds, which has the potential to disrupt national economic stability. From the description above, the legal problems that arise are the legal consequences of misuse of taxpayer financial information by the Directorate General of Taxes (DGT).

2. METHOD

This research is legal research using statute and conceptual approach. Normative legal research is a legal research that places law as the norm system. [2] Legal materials used include primary, secondary [3] and tertiary materials. [4] The norm system consists of principles, norms, laws, court judgments, agreements and doctrines or teachings. The method used in legal research conducted by examining the legal materials as existing library. [5] The main legal research material, namely by analyzing the articles in the legislation relating to the costumers of financial institutions and Automatic Exchange of Information [6]. Analysis of legal materials on the issues under the study is using interpretation or legal construction. [7]

3. DISCUSSION

A. Reasons for Setting up Self Assessment Systems and Automatic Exchange of Information (AEoI)

In Indonesia, even though taxes have become state revenues, new taxes became the main source of income in 1983. In that year, Indonesia was subject to tax reform because several new tax laws came into effect governing the new Indonesian tax system, namely, the "self assessment ". According to the explanation of Law Number 6 of 1983 concerning General Provisions and Tax Procedures, what is meant by self assessment is that members of the taxpayer's community are given the trust to be able to carry out national cooperation through a system of calculating, calculating, and paying their own tax payable. While tax administration, plays an active role in carrying out administrative control of tax collection which includes the tasks of coaching, research, supervision, and the application of administrative sanctions.

The self assessment system is a breakthrough for the Indonesian taxation system, but this is also a source of new problems because taxpayers are required to be aware of the obligation to pay taxes while not everyone understands how to regulate their own taxes. As for those who understand, sometimes the awareness of paying taxes becomes a problem in itself. Many taxpayers actually do various ways to get away from the obligation to pay taxes. One type of tax that is easiest to play with taxpayers is income tax because it is difficult for the state to calculate the income of each individual in his country especially with the very large condition

of the Indonesian population and spread to various regions. The difficulty of calculating individual taxpayers' income is compounded by the lack of data and information about assets owned by taxpayers. This makes it difficult to verify the data provided by taxpayers to the government.

Resistance to tax can be in the form of active resistance covering all efforts and actions, which are directly shown to fiscus and aim to avoid taxes, among which can be distinguished as follows: [8]

- a. Avoidance of taxes, namely payment of taxes easily can be avoided by not doing an act that gives a reason to be taxed.
- b. Avoidance / smuggling of taxes is an effort to break away from taxes or reduce the base. The act done is hiding the real situation by giving incorrect data.
- c. Neglecting taxes is to refuse to pay taxes that have been set and refuse to fulfill the formalities that must be fulfilled.

Automatic Exchange Of Information is a plan of the G20 countries and is initiated by the Organization for Economic Cooperation and Development (OECD) regarding a system that supports the exchange of taxpayer accounts between countries. With this system, taxpayers who have opened accounts in other countries will be able to be tracked directly by the tax authorities of their home countries. AEOI is a new global standard that will be useful to reduce the opportunity for tax evaders to avoid paying taxes. [9]. Automatic Exchange Of Information itself has a purpose, namely:

1. Prevent the practice of tax evasion or tax avoidance by taxpayers, who hide their income or financial assets abroad.
2. Improve international tax compliance.
3. To recover lost tax revenues for non-compliance taxpayers.
4. Strengthening international efforts to increase transparency, cooperation and accountability between financial institutions and tax administration.

The Automatic Exchange Of Information work system is the exchange of financial data of foreign nationals living in a country. Exchange of financial data is not carried out in an arbitrary manner, but is carried out between the authorized tax authorities in each country. In short, every country that has joined the AEOI system will send and receive pre-agreed information every year without having to submit a special request. There are 3 (three) conditions that must be met in order to be able to participate in the exchange of data and information, namely: [10]

1. The government must issue rules to facilitate the DGT (Directorate General of Tax) in obtaining data from anywhere, including in the financial sector. At present conventional and sharia banking, capital markets and insurance apply the principle of data confidentiality, thus the Directorate General of Taxes must take a long process to obtain the data, so it is necessary for the banking, sharia banking, capital market and general provisions on taxation laws (COUP).
2. Conformity of tax reporting systems by taxpayers with the format and content of other countries. It is important to be responsible for tax reporting.
3. Conformity of strong and standard database information technology, to maintain confidentiality and information management.

Application of Bank Secrecy Principles After the Implementation of Law No. 9 of 2017 concerning Access to Financial Information for Taxation Interests

After the enactment of Law No. 9 of 2017 concerning the Establishment of government regulation in lieu of law (PERPPU) No. 1 of 2017 concerning Access to Financial Information for Taxation Interests, the public has become anxious, especially as the banking world is accustomed to the bank's secret principle, which is then forced to open the secrets of its customers. The emergence of these unrest is the threat of sanctions both criminal and fines for banks that try to protect their customers' data.

Banks as a financial institution, banks have activities both funding and financing or collecting and channeling funds. So as an intermediary institution a bank has a role as an intermediary between parties who have excess funds and those who need funds. One factor to be able to maintain and increase the level of public trust in a bank in particular and banking in general is the bank's compliance with the bank's secret obligations.[7]

Referring to the provisions of attachment to Article 1 of Law No. 9 of 2017, it is stated that access to financial information for tax purposes includes access to receive and obtain financial information in the context of implementing the provisions of legislation in the field of taxation and implementation of international agreements in the field of taxation.

One of the basic considerations is the issuance of Law No. 9 of 2017 is to strengthen the tax base to realize the target of state revenue from the tax sector and the most important thing is to increase state revenues so that it can impact on the achievement of Government programs in terms of national development and the achievement of maximum economic growth. [11]

In the provisions of attachment to Article 2 paragraph (3) Law No. 9 of 2017 states that the report submitted by the Financial Institution to the tax authority at least contains a) the identity of the account holder; b) account number; c) identity of financial service institutions; d) balance or account value; and e) income related to financial accounts. The formulation is the same as the formula stipulated in Article 19 paragraph (1) PMK No. 73 / PMK.03 / 2017, in this case related to the Financial Information Report that must be submitted by the Financial Services Institution in one calendar year. The formulations in these provisions apply to legal subjects in the form of a) Indonesian Citizens; b) Private Foreign Citizens; and c) Entities domiciled in Indonesia. Referring to the aforementioned provisions, the Tax Authority cannot access the entire financial system managed by banks directly, cannot see the flow of funds in and out of the customer's account, and even cannot at any time see the customer's account balance due to time periodization reporting. Apart from that, there are also other restrictions regarding the number of financial account values or the minimum required balance to be reported, namely financial accounts held by individuals, balances or values from one financial account or more with a minimum amount of Rp. 1,000,000,000.00 (one billion rupiahs) or with a foreign currency of equivalent value.

With regard to the availability of several components of banking customers' financial information which are also taxpayers by the taxation authority - as stipulated in Law No. 9 of 2017 and PMK No. 73 / PMK.03 / 2017, is nothing but the application of legal principles that generally apply in the Indonesian positive law system, namely: *Lex Specialis Derogat Legi Generalis*. The principle interprets that specific rules / norms will override / exclude regulations / norms that are more general in nature. The application of this principle can be applied as long as the two norms (both more specific and more general) are in one hierarchical degree of regulation and the same legal (regime) environment. Bearing in mind that 2 (two) conflicting norms (legal norms related to banking secrecy in the Banking Law and legal norms related to data disclosure of banking customers) are in the same hierarchical degree and legal environment, then the legal principle of *Lex Specialis Derogat Legi Generalis* can be applied to prioritize the enforcement of norms regulated in Law No. 9 of

2017 - and therefore override the norms related to banking secrecy stipulated in the Banking Law.

So, even though the principle of *Lex Specialis Derogat Legi Generalis* applied in resolving conflicts between norms, Law No. 9 of 2017 does not fully exclude norms related to banking secrecy as stipulated in the Banking Law, but only imposes an obligation on banking financial institutions to open a small portion of their customer data to the tax authority. In other words, even though the regulation has been issued, it does not solely eliminate the principle of prevailing banking secrecy, so that outside of tax interests, the articles related to bank secrecy are still running and are valid as far as outside what is regulated in Law No. 9 of 2017 and PMK No. 73 / PMK.03 / 2017 as described above.

Responsibilities For Tax Officers When Bank Customer Data Is Misused That Cause Losses To The Bank's Customers.

The issuance of Law No. 9 of 2017 authorizes the Directorate General of Taxes to obtain access to financial information from banking institutions for the benefit of national taxation. This indirectly raises legal consequences as a logical consequence of the enactment of these rules. A number of legal consequences that could potentially arise as a result of the enactment of Law No. 9 of 2017, among others are:

- a) The Directorate General of Tax of the Ministry of Finance has the authority and flexibility in making efforts to access financial information on banking customers who are taxpayers;
- b) Business competition between financial institutions in the banking sector has a new legal corridor, so that it will have an impact on company policy in its service to customers;
- c) Law No. 9 of 2017 indirectly leads to the reform of the banking system based on information technology, so that in the future more comprehensive arrangements are needed regarding the management of the electronic banking system; and
- d) Banking activities are open and transparent.

Openness and transparency of banking activities in this case refers to the ease of tax authorities in participating in overseeing and accessing financial information of customers who are also taxpayers.

In carrying out its authority, the tax officer in charge of managing taxes has a lot of knowledge about the taxpayer's taxation, both because the taxpayer himself notifies or reports directly or confidentially the taxation that is not notified directly by the taxpayer. The confidentiality of the taxpayer and the person in charge is guaranteed not to be leaked or unknown by third parties. Therefore, the law provides legal protection by preparing legal instruments for that. The legal instruments in question have been determined as follows: [12]

1. Every official is prohibited from notifying other parties everything that is known or notified to him by the taxpayer in the framework of his position or job to carry out the provisions of tax laws and regulations;
2. The above prohibition, also applies to experts appointed by tax officials to assist in the implementation of the provisions of tax laws and regulations;
3. exempted from the above prohibition are:
 - a. officials and experts who act as witnesses or expert witnesses in court hearings, and
 - b. officials and experts who provide information to other parties determined by the Minister of Finance;
4. For the benefit of the state, the Finance Minister has the authority to give written permission to officials and the relevant experts to provide information, show written evidence from or about the taxpayer to the appointed party;

5. For the purposes of a court examination in a criminal case or civil case at the request of a judge in accordance with the law of criminal and civil methods, the Minister of Finance can give written permission to ask the bank officials and experts concerned, written evidence and information on the taxpayer ;

6. The request of the judge above, must mention the name of the suspect or the name of the defendant, the information requested and the relation of the criminal or civil case concerned with the information requested.

In addition to the above reasons, tax officers cannot open data on taxpayers because this includes actions that can harm taxpayers. The act of a tax official who tries to divulge data on taxpayers can be subject to sanctions in accordance with the provisions in the Republic of Indonesia Law Number 6 of 1983 concerning General Provisions and Tax Procedures as amended several times, the latest by Law No. 16 of 2009 (Law KUP) in Article 41 stipulates that:

(1) Officials who, because of their negligence, do not fulfill the obligation to keep the confidentiality of the matter as referred to in Article 34 punished with a maximum of 1 (one) year imprisonment and a maximum fine of Rp. 25,000,000.00 (twenty five million rupiah).

(2) An official who deliberately does not fulfill his obligations or someone who does not fulfill the obligations of the official as referred to in Article 34 shall be punished with a maximum imprisonment of 2 (two) years and a fine of a maximum of Rp. 50,000,000.00 (fifty million rupiah)

(3) The closure of a criminal offense as referred to in paragraph (1) and paragraph (2) is only carried out on the complaint of a person whose confidentiality is violated.

With the enactment of Law no. 9 of 2019, the Director General of Taxes has the authority to manage customer data submitted or deposited by financial services institutions, especially banking institutions, meaning that the authority of the Directorate General of Taxes is also related to customer data deposited by the banks.

If we compare sanctions given by law to banks and tax officials who divulge customer data to third parties or those who are not interested, then the witnesses received by tax officials are very light compared to the banks. This certainly raises a new legal problem because with the authority of the new tax officer, sanctions received if it violates the obligation to maintain customer confidentiality do not change.

In Law no. 9 of 2019 is not regulated regarding sanctions if the tax officer divulges the confidentiality of financial information, in the implementing regulations namely REGULATION OF THE MINISTER OF FINANCE Number 70 / PMK.03 / 2017 concerning Technical Officers Regarding Access to Financial Information for Taxation Interests (LAW PMK) also does not regulate sanctions directly, but only regulated in Article 30 paragraph (3), namely: "Every official, both tax officer and party who performs duties in the field of taxation, and experts appointed by the Director General of Taxes to assist in implementing the provisions of tax laws and regulations, are prohibited from divulging, disseminating, and / or notify financial information and / or information and / or evidence or information to unauthorized parties in accordance with the provisions of legislation in the field of taxation. "

Every official, both a tax officer and a party who performs duties in the field of taxation, and experts appointed by the Director General of Taxes to assist in the implementation of the provisions of tax legislation that do not fulfill the confidentiality obligations as referred to in Article 30 paragraph (3) are punished in accordance with the provisions in Article 41 of Law Number 6 of 1983 concerning General Provisions and Tax Procedures as amended several times, the latest by Law Number 16 of 2009 concerning the Establishment of Government

Regulations in lieu of Law Number 5 Year 2008 concerning the Fourth Amendment Law Number 6 of 1983 concerning General Provisions and Procedures for Taxation Becomes Act.

From the provisions of the LAW PMK it can be seen that for tax officers sanctions that divulge financial information refer to the KUP regulations which when compared to the Banking Law Sanctions for banks there are inequalities. This is feared to cause injustice if there is a difference in the weight of sanctions between the LAW KUP and the Banking Act even though the authority of the tax officer is no less important than the banking party with Law no. 9 of 2019 was forced to give up the principle of banking secrecy.

Of course we do not expect the lightness of sanctions that will be received by tax officers if leaking customer financial information is made a gap for irresponsible parties to try to obtain the financial information. If through banking, the sanctions received are very heavy while those of the tax officer, the sanctions can be said to be much lighter so that it is made another alternative. Then what the government can do in an effort to safeguard or protect these secrets is by forming and issuing new laws to replace the LAW KUP, one of which is to aggravate sanctions received by tax officials if they divulge financial secrets. In addition to protecting the secrets of financial information, the new LAW KUP must also provide protection for the bank's secret principle so that the banking sector can still be a financial institution based on the principle of confidentiality and can still be trusted by the community as a place to store funds.

Applicability of Law no. 9 of 2019 results if there is a financial information leak caused by a tax official, the aggrieved parties can sue the tax officer related to the existing LAW KUP, and if the affected party feels dissatisfied with the sanctions in the LAW KUP, it can Lawsuits against the Law are carried out in accordance with the provisions of Article 1365 BW, which reads Every act that violates the law, which brings harm to another person, requires that the person who caused the wrongful issue of the loss compensates for the loss.

Unlawful acts are legal concepts known in treaty law. Unlawful deeds are legal concepts that are translated from the concept of *onrechtmatige daad* known in the Netherlands. The equivalent of the term *onrechtmatige daad* in English is *tort*. *Tort* means wrong. The purpose of the formulation of the legal formulation of the act against the law is to recover losses suffered by one party.

According to Munir Fuady, there are several other definitions that have been given to acts against the law as follows: [13]

1. Not fulfilling something that is an obligation other than a contractual obligation that issues the right to request compensation;
2. An action or not doing something that results in harm to another person without prior legal connection;
3. Not fulfilling an obligation imposed by law;
4. A civil error in which a compensation can be prosecuted that is not default;
5. An act that is detrimental to the rights of others.

What is meant by the concept of unlawful acts is an act that is unlawfully carried out by someone who because of his wrongdoing has caused harm to others. When viewed ontologically, the provisions of Article 1365 B.W. These are general and open norms where the elements do not provide restrictions on the parties involved in the litigation and the object in dispute. The Pasla 1365 BW provisions can be used by any person or legal entity, both public and private, to recover the losses suffered by the actions of others.

Under the provisions of Article 1365 B.W. the elements of illegal acts are as follows:

1. There is an act;
2. Acts that are against the law;
3. There is an error from the perpetrator;
4. There is a loss suffered by the victim, and
5. There is a causal relationship between actions and losses.

In Latin proverbs, namely *juris praecepta sunt luxec, honestevivere, non laedere alterum, suum cuique tribuere* (legal slogan is living honestly, not harming others, and giving others their rights). From these proverbs can be identified that those who do must also be responsible.

The provisions of article 1365 BW have accommodated 2 (two) models of accountability, namely:

1. Direct responsibility;

What is asked of the perpetrator is something that causes harm to the victim.

2. Indirect responsibility;

For responsibilities not directly related to responsibility for the actions of other people who are dependent and items that are under his supervision.

4. CONCLUSION

The conclusion of this study is Law Number 9 of 2017 gives authority to the Director General of Taxes in terms of management of financial records that is submitted or deposited by financial services institutions, especially banking institutions. Sanctions given by law for banks and tax officers who leak customer records to third parties or who are not interested will be punished in accordance with the provisions in Article 41 of Law Number 6 of 1983 concerning General Provisions and Tax Procedures.

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