



CONFLICT OF LEGAL NORMS IN TAX LAWS AND THEIR SOLUTIONS

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Abstract

*The existence of conflicting legal norms in tax regulations that result in legal uncertainty for taxpayers, especially in the case of the Chevron Makassar Ltd VAT dispute related to Value Added Tax (VAT) for the January to February 2009 Tax Period which was decided by the Supreme Court in its decision Number 467/B/Pk/Pjk/2022 dated March 1, 2022. The difference in interpretation between Government Regulation (PP) No. 143 of 2000, which states that VAT is collected at the time of payment, and the Minister of Finance Regulation (PMK) No. 11/PMK.03/2005, which requires VAT to be collected at the time of delivery of goods or services without waiting for payment, creates inconsistencies in the application of the law. This inconsistency creates losses for taxpayers when the Directorate General of Taxes and the Supreme Court refer to PMK which is lower in hierarchy than PP. Through normative methods, this study examines the application of the principle of *lex superior derogat legi inferiori* to assess the need to prioritize regulations with a higher hierarchy in order to ensure legal certainty and justice. The results of the study indicate the need for harmonization of regulations so that differences in norms do not harm taxpayers and law enforcement runs consistently. It is recommended that the government and tax authorities clarify and harmonize VAT collection regulations in order to create a fairer and more certain taxation system for taxpayers.*

Keywords: Taxes, Government, Regulations, Judgments

A. Introduction

Tax is one of the sources of state revenue in financing government and development. Tax is also a mandatory contribution to the state owed by individuals or bodies that is mandatory based on applicable laws and regulations, without receiving direct compensation and is used for

state needs for the greatest prosperity of the people. This is regulated in Article 23A of the 1945 Constitution (which has been amended several times) and Article 1 number 1 of Law Number 6 of 1983 concerning General Provisions and Tax Procedures (as amended several times, hereinafter referred to as the KUP Law). Tax has a mandatory nature



because it contains legal sanctions in the form of administrative sanctions and criminal sanctions as also regulated in tax laws and regulations.¹

Although taxation has been specifically regulated in laws and regulations, this does not rule out the possibility of tax disputes. The tax disputes referred to are regulated in Article 1 number 5 of Law Number 14 of 2002 concerning the Tax Court. According to the Tax Court Law, a tax dispute is a dispute that arises in the field of taxation between Taxpayers and taxpayers with authorized officials as a result of the issuance of a decision that can be appealed or sued to the tax court based on tax laws and regulations including lawsuits for the implementation of collection based on tax collection laws with writs of compulsion.

In tax law enforcement, especially in

Indonesia, tax disputes are carried out through administrative efforts, for example at the Directorate General of Taxes and can be continued with legal efforts through two levels of justice, namely through the Tax Court culminating in the Supreme Court. Tax disputes can involve factual and/or legal disputes. Included in the definition of a legal dispute is a dispute regarding the interpretation of the law and laws and regulations only on the facts that occur. The facts themselves are not disputed by the parties. In the case of tax disputes that are the subject of this paper, tax disputes are only legal disputes. In reality, sometimes court decisions or even the Supreme Court are found to be contradictory or inconsistent with legal norms. For example, there is a case of a Value Added Tax (VAT) dispute for the Tax Period January to February 2009 which was

¹ Winahyu Erwiningsih, "Implementasi Penyelesaian Sengketa Pajak Pada Pengadilan Pajak Indonesia",

Justicia Sains: Jurnal Ilmu Hukum, Vol. 06, No. 02 Maret 2022, hlm. 249.



decided by the Supreme Court in its decision number 467/B/Pk/Pjk/2022 dated March 1, 2022. The legal issue in this case is whether the Taxpayer (as a VAT Collector) was late or not late in collecting VAT, based on applicable laws and regulations. Taxpayer (BUT² Chevron Makassar Ltd.) is a company engaged in the oil and gas mining business and is a party to the Production Sharing Contract with the Government of the Republic of Indonesia and according to applicable tax laws and regulations is a taxpayer who has an obligation to collect VAT as a VAT Collector. In this case, the Taxpayer collects VAT within the time period stipulated in the Government Regulation, namely on the basis of the provisions of Article 10 of Government Regulation No. 143 of 2000 concerning the Implementation of Law Number 8 of 1983

concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods. The provisions of the Government Regulation stipulate that VAT is collected at the time of payment, so that as long as payment for goods or services has not been made, VAT is not yet payable. Therefore, according to him, the Taxpayer is not late in collecting VAT.

In issuing the Tax Bill Letter (hereinafter referred to as STP), the Director General of Taxes determines that the Taxpayer is late in collecting VAT based on the provisions in the Ministerial Regulation, namely Article 6 paragraph (1) of the Regulation of the Minister of Finance Number 11/PMK.03/2005 concerning the Appointment of Contractors for Oil and Gas Mining Business Cooperation Agreements to Collect, Deposit and Report Value Added

² BUT or Permanent Establishment is a form of business used by foreign tax subjects (non-resident taxpayers), whether individuals (natural persons) or

legal persons, to run a business or carry out business activities in Indonesia..



Tax and Sales Tax on Luxury Goods along with the Procedures for Collection, Deposit and Reporting. The provisions of the Regulation of the Minister of Finance state that VAT must be collected after the delivery of Taxable Goods or Taxable Services even though there has been no payment. The Director General of Taxes imposes administrative sanctions on Taxpayers who are considered late in collecting VAT. Article 6 paragraph (1) of the Regulation of the Minister of Finance Number 11/PMK.03/2005 (Regulation of the Minister of Finance No. 11/2005) states:

- “(1) Collection of Value Added Tax and Luxury Goods Sales Tax as referred to in Article 2 paragraph (1) shall be carried out no later than:
- a. at the end of the following month after the month in which the delivery of Taxable Goods and/or Taxable Services occurs in the event that payment is received after the end of the following month after the month in which the delivery of Taxable Goods and/or Taxable Services occurs; or
 - b. when making payment in casel:

- 1) payment occurs before the end of the following month after the month of delivery of Taxable Goods and/or Taxable Services;
- 2) payment is made before delivery of Taxable Goods and/or Taxable Services; or
- 3) payment is made at the same time as the delivery of Taxable Goods and/or Taxable Services.”

In issuing the STP, the Director General of Taxes has also ignored the provisions in the Government Regulation mentioned above. In its decision No. 31533/PP/M.V/99/2011 dated May 25, 2011, the Tax Court has based itself on the Regulation of the Minister of Finance No. 11/2005 (there was an error by the judge in applying the law when deciding the case). In relation to this, Tax Law is seen as a special State Administrative Law, but it is not a stand-alone law. Tax Law certainly cannot be separated from other areas of law such as Law on Legislation, Civil Law, and even Criminal Law. This can also be seen from the opinions of legal scholars (tax) quoted below, both explicitly and implicitly. Drs. Rochmat



Soemitro, S.H., stated:

"The relationship between Tax Law and Civil Law is a reciprocal relationship.

On the one hand, Tax Law uses many terms that are commonly used in Civil Law, and also gives meanings as adopted in Civil Law. However, it is not uncommon for Tax Law to use terms that have different meanings than in Civil Law, for example regarding the definition of domicile which in Tax Law is determined 'according to circumstances'. This is possible because Tax Law is part of an autonomous law.

Furthermore, Tax Law makes events (eg. death, birth), conditions (wealth, foreigners), incidents (eg. sale and purchase, rent) in Civil Law as tax targets. The above matters are made into Tatbestand which are placed in tax laws and if fulfilled cause a person to be taxed. Another school of thought says that the relationship between Tax Law and Civil Law is very close, because according to that school of thought, Civil Law is a general law that covers everything, and Tax Law as part of Public Law must also follow Civil Law, unless explicitly stipulated by law to the contrary.

On the other hand, there is also an influence of Tax Law on Civil Law because Tax Law as *lex specialis* must receive primary treatment regarding something rather than Civil Law as *lex generalis*.³

Prof. Dr. H. Rochmat Soemitro, S.H.

stated:

"Taxation law is a legal product that must meet legal norms that aspire to justice and legal certainty. In addition, every law is based on legal principles (*rechtsbeginselen*)."⁴

Prof. Dr. H. Rochmat Soemitro, S.H.

stated:

"In tax law, not only taxpayers but also state organs and state officials who implement tax regulations and laws are bound by law, not only tax law but also other laws such as civil law, public law, criminal law and so on. It is impossible in a state of law for the state authorities to take actions that have legal consequences without any legal basis."⁵

R. Santoso Brotodihardjo, S.H. (former

Head of Jakarta Financial Inspection,

Directorate General of State Contributions),

stated:

"In many matters of Tax Law, he bases his interpretation on other parts of the Science of Law, but (as Adriani says) he does not stand on his own feet. He pays attention to them only when he

³ Rochmat Soemitro, *Dasar-dasar Hukum Pajak dan Pajak Pendapatan 1944*, Cetakan ke-6, Eresco N.V., Bandung, 1963, hlm. 17.

⁴ Rochmat Soemitro, *Pajak Ditinjau dari Segi Hukum*,

PT Eresco, Bandung, 1991, hlm. v.

⁵ Rochmat Soemitro, *Hukum Pajak Internasional Indonesia Perkembangan dan Pengaruhnya*, PT Eresco, Bandung, 1986, hlm. 46.



needs them for his own interests, as we will see in the following explanations."

Relationship with Civil Law:

"With Civil Law, which is part of the whole law that regulates relations between individuals, Tax Law is very much related. We can understand this, because most Tax Laws seek the basis for possible collection of events, conditions and legal acts that operate in the civil sphere, such as: income, wealth, assignment agreements, transfer of rights due to inheritance, etc."⁶

The correct and proper application of Tax Law in accordance with applicable legal norms is very much needed so as not to harm one party in order to achieve justice for the entire community and ensure legal certainty which is also very important in business activities.

Based on the background explanation above, the Author feels the need to conduct a comprehensive study on the conflict of legal norms in tax laws and regulations and their solutions which will be entitled

"Conflict of Legal Norms in Tax Laws and Their Solutions."

B. Problem Formulation

Based on the background above, the problem can be formulated as follows::

1. How should the tax legislation be applied in the case?
2. How can the implementation of tax law be fairer and provide legal certainty for the taxpayer?

C. Research Objectives

The aim of this research is:

1. To analyze the tax legislation that should be applied in this case.
2. To analyze the implementation of fairer tax laws and provide legal certainty for the taxpayer.

D. Research Methods

The research method used is the normative legal research method, namely

⁶ R. Santoso Brotodihardjo, *Pengantar Ilmu Hukum Pajak, Cetakan ke-XI*, PT Eresco, Jakarta-Bandung,

1984, hlm. 9.



"legal research that examines positive legal norms as the object of its study". In normative legal research, law is no longer seen as something that is merely utopian but has been institutionalized and written in the form of existing legal norms, principles and institutions. Normative legal research is also known as dogmatic legal research that examines, maintains and develops positive legal structures with logical structures. Normative legal research is carried out by examining primary legal materials, secondary legal materials and tertiary legal materials.⁷

E. Research Results and Discussion

1. Aspects of Value Added Tax (VAT) and Production Sharing Contracts

General Explanation of Law Number 8 of 1983 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury

Goods (which has been amended several times), explains that:

"Value added tax is a tax on the consumption of goods and services in the Customs Area which is imposed in stages at each production and distribution channel."

According to Mardiasmo, Value Added Tax (hereinafter referred to as VAT) is:

"A tax imposed on any additional value of goods and/or services from the manufacturing process to the consumer."

According to Suandy, VAT is:

"A tax imposed on the delivery or import of taxable goods or taxable services carried out by Taxable Entrepreneurs and can be imposed repeatedly every time there is an increase in value and can be credited as a reduction in output tax."

Based on the definition of VAT above, it can be concluded that VAT is a tax imposed on the additional value of taxable goods and/or services during the production process until the taxable goods and/or services reach the final consumer and the delivery is carried

⁷ Muhaemin, *Metode Penelitian Hukum*, Mataram University Press, Mataram, 2020, hlm. 46.



out by the Taxable Entrepreneur.⁸

Based on the definition of VAT above, it can be concluded that VAT is a tax imposed on the additional value of taxable goods and/or services during the production process until the taxable goods and/or services reach the final consumer and the delivery is carried out by the Taxable Entrepreneur.⁹

Based on the provisions in Article 4 of Law Number 8 of 1983 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods as amended by Law Number 11 of 1994 and Law Number 18 of 2000 (VAT Law applicable to VAT dispute cases for the January to February 2009 Tax Period, hereinafter referred to as the Value Added Tax Law), it is regulated that:

“Value Added Tax is imposed on:

- a. Delivery of Taxable Goods within the Customs Area carried out by Entrepreneurs;
- b. Import of Taxable Goods;

- c. Delivery of Taxable Services within the Customs Area carried out by Entrepreneurs;
- d. Utilization of intangible Taxable Goods from outside the Customs Area within the Customs Area;
- e. Utilization of Taxable Services from outside the Customs Area within the Customs Area; or
- f. Export of Taxable Goods by Taxable Entrepreneurs.”

Furthermore, Article 4A of the Value Added Tax Law also regulates provisions regarding the types of goods and services that are not subject to Value Added Tax. Article 4A paragraph (2) states that:

“Determination of the types of goods that are not subject to Value Added Tax as referred to in paragraph (1) is based on the following groups of goods.:

- a. Mining or drilling products taken directly from the source;
- b. Basic necessities that are greatly needed by the people;
- c. Food and drinks served in hotels, restaurants, eateries, stalls, and the like;
- d. Money, gold bullion, and securities.”

Article 4A paragraph (3) states that,

“Determination of the types of services

⁸ Suparna Wijaya dan Silvi Damayanti Br. Sagala, *Pajak Pertambahan Nilai Urgensi Penerapan Reverse Charge Mechanism*, Penerbit Adab, Indramayu, 2022, hlm. 17.

⁹ Online Pajak, “Pajak Pertambahan Nilai (PPN), Apa Itu?” <https://www.online-pajak.com/tentang-ppn-efaktur/pajak-pertambahan-nilai-ppn>, diakses pada 3 Oktober 2024.



that are not subject to Value Added Tax as referred to in paragraph (1) is based on the following service groups.:

- a. Services in the field of medical health services;
- b. Services in the field of social services;
- c. Services in the field of sending letters with stamps;
- d. d. Services in the fields of banking, insurance, and leasing with option rights;
- e. Services in the field of religion;
- f. Services in the field of education;
- g. Services in the field of arts and entertainment that have been subject to entertainment tax;
- h. Services in the field of broadcasting that are not advertising;
- i. Services in the field of public transportation on land and on water;
- j. Services in the field of labor;
- k. Services in the field of hospitality;
- l. Services provided by the Government in order to run the government in general.”

The provisions in Article 1 number 27 of the Law on Value Added Tax, state that:

“Value Added Tax Collector is a treasurer of the Government, agency, or government agency appointed by the Minister of Finance to collect, deposit, and report the tax owed by Taxable Entrepreneurs on the delivery of Taxable Goods and/or the delivery of Taxable Services to the treasurer of the Government, agency, or government agency.”

The explanation in Article 11 of the Law on Value Added Tax explains the principles adopted in collecting VAT, namely::

“(1) The collection of Value Added Tax and Luxury Goods Sales Tax adheres to the accrual principle, namely that tax is payable at the time of delivery of Taxable Goods or at the time of Delivery of Taxable Services, even though payment for such delivery has not been received or has not been fully received.

(2) In contrast to the provisions set out in paragraph (1), in the case of payment being received before delivery of Taxable Goods or delivery of Taxable Services, tax is payable at the time of such payment.”

In this case, the object of tax collection by the VAT Collector is the payment made by the PKP as a government partner..¹⁰

After knowing what the objects of VAT are, then it is necessary to know when the VAT is due. The due date for VAT payment by the VAT Collector is regulated based on

¹⁰ Untung Sukardji, *Pemungut Pajak Pertambahan Nilai: Sebuah Pembahasan dan Tinjauan Yuridis*,

Rajawali Press, Jakarta, 2008, hlm. 92.



the provisions in the Government Regulation. These provisions are regulated in Article 10 of Government Regulation Number 143 of 2000 concerning the Implementation of Law Number 8 of 1983 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods as Amended Several Times, Last by Law Number 18 of 2000. Article 10 of PP No. 143 of 2000 states:

“Tax owed on the delivery of Taxable Goods and/or Taxable Services to the Value Added Tax Collector is collected at the time of payment by the Value Added Tax Collector..”

In addition to being regulated in Government Regulation No. 143 of 2000, regulations related to VAT payment due dates are also regulated based on provisions in the Regulation of the Minister of Finance. This is regulated in Article 6 paragraph (1) of the Regulation of the Minister of Finance Number: 11/PMK.03/2005 concerning the Appointment of Contractors for Oil and Gas Mining Business Cooperation Agreements to

Collect, Deposit and Report Value Added Tax and Luxury Goods Sales Tax along with Procedures for Collection, Deposit and Reporting. Article 6 paragraph (1) of the Regulation of the Minister of Finance states:

“Collection of Value Added Tax and Luxury Goods Sales Tax as referred to in Article 2 paragraph (1) shall be carried out no later than:

- a. at the end of the following month after the month in which the delivery of Taxable Goods and/or Taxable Services occurs in the event that payment is received after the end of the following month after the month in which the delivery of Taxable Goods and/or Taxable Services occurs; or
- b. when making payment in the event of:
 - 1) payment occurs before the end of the following month after the month of delivery of Taxable Goods and/or Taxable Services;
 - 2) payment is made before delivery of Taxable Goods and/or Taxable Services; or
 - 3) payment is made at the same time as the delivery of Taxable Goods and/or Taxable Services.”

For example, the delivery of goods from the supplier to the VAT Collector occurred on November 12, 2008. The Taxpayer as the VAT Collector only paid for



the goods to the supplier on January 5, 2009. According to the Regulation of the Minister of Finance, the VAT Collector must collect VAT no later than the end of December 2008, if the goods/services have not been paid for previously. This is different from the provisions according to the Government Regulation, by paying the price of the goods on January 5, 2009, the VAT Collector can collect VAT on January 5, 2009, even though the goods/services have been delivered on November 12, 2008. Thus, it can be concluded that the obligation of the VAT Collector based on the Government Regulation can be longer than the provisions in the Regulation of the Minister of Finance.

This mechanism is regulated in Article 16A of the 1984 VAT Law, which stipulates that upon the delivery of BKP or JKP by a Taxable Entrepreneur to a VAT Collector, the tax owed is collected, deposited, and

reported by the VAT Collector. For example, Taxable Entrepreneur A delivers BKP with a Selling Price of Rp100,000,000.00 to the VAT Collector. For the delivery of the BKP, VAT is owed in the amount of Rp10,000,000.00. As a Taxable Entrepreneur who delivers the BKP, Taxable Entrepreneur A is required to make a Tax Invoice with a VAT amount of Rp10,000,000.00. The Tax Invoice along with the SSP (Tax Payment Slip) is submitted to the VAT Collector. With the SSP received, the VAT Collector deposits the VAT owed in the amount of Rp. 10,000,000.00 to the state treasury in the name of PKP A. Then the VAT Collector pays the Selling Price of the BKP which is the object of the agreement in the amount of Rp. 100,000,000.00 along with the attachment of the SSP as a proof of VAT deposit of Rp. 10,000,000.00 which has been stamped with the cash register by the KPPN to PKP A.¹¹

¹¹ Untung Sukardji, Op.cit, hlm. 13.



Production Sharing Contract or abbreviated PSC, is a term known as a profit sharing contract in the oil and gas business sector. Based on the provisions in Article 1 number 19 of Law Number 22 of 2001 concerning Oil and Gas, it is stated that:

“A cooperation contract is a Production Sharing Contract or other form of cooperation contract in Exploration and Exploitation activities which is more profitable for the State and the results are used for the greatest prosperity of the people..”

The terms used in Article 1 number 19 do not specifically explain the meaning of PSC, but are focused on the theoretical concept of cooperation in the oil and gas sector.¹²

According to Salim HS, PSC is an agreement or contract made between the implementing agency and a business entity and/or permanent business entity to carry out

exploration and exploitation activities in the oil and gas sector with the principle of profit sharing.¹³

According to Nugroho Eko Priamoko, the profit sharing contract is built on the following principles::

- a. distribution system based on production results;
- b. management authority lies with Pertamina;
- c. all equipment, facilities and infrastructure purchased and built for operations belong to Pertamina;
- d. the distribution of by-products is different from the distribution of main production;
- e. Pertamina holds the authority to determine the return of operating costs;
- f. the contractor bears the risk of loss of operating costs; and
- g. ownership of the minerals remains with the State until the point of delivery.¹⁴

2. Implementation of Tax Regulations and Their Impact on Taxpayers

There is a conflict between legal norms

¹² M. Lutfan HD Darus dan Erwin Asmadi, *Hukum Kontrak Migas Indonesia: Lintas Ruang & Waktu*, Umsu Press, Medan 2022, hlm. 126.

¹³ Haris Retno Susmiyati, “Aspek Hukum Kontrak Bagi Hasil (Production Sharing Contract) dalam Pengusahaan Pertambangan Minyak dan Gas Bumi

di Indonesia”, *Jurnal Risalah Hukum Fakultas Unmul*, Vol. 2, No. 2, 2006, hlm. 99.

¹⁴ Nugroho Eko Priamoko, *Kontrak Bagi Hasil Migas Aspek Hukum dan Posisi Berimbang Para Pihak*, Genta Publishing, Yogyakarta, 2017, hlm. 58.



in the tax dispute case that has been explained previously, where the Taxpayer in this case also acts as a VAT collector (there is no dispute between the Taxpayer and the Director General of Taxes regarding the position of the Taxpayer as a VAT Collector). The Taxpayer feels confident that he has collected VAT in a timely manner based on the provisions in Article 10 of Government Regulation No. 143 of 2000 concerning the Implementation of Law No. 8 of 1983 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods. The provisions in the Government Regulation stipulate that as long as payment for Taxable Goods or Taxable Services has not been made by the VAT Collector, the VAT is not yet payable.

The Director General of Taxes in this case, determined that the Taxpayer was late in collecting VAT based on the provisions stipulated in Article 6 paragraph (1) of the

Regulation of the Minister of Finance No. 11/PMK.03/2005 concerning the Appointment of Contractors for Oil and Gas Mining Business Cooperation Agreements to Collect, Deposit and Report Value Added Tax and Sales Tax on Luxury Goods along with the Procedures for Collection, Deposit and Reporting. Thus, in this case there has been a conflict of legal norms in Article 10 of Government Regulation No. 143 of 2000 with Article 6 paragraph (1) of the Regulation of the Minister of Finance No. 11/PMK.03/2005 concerning the due date for VAT payments made by VAT collectors due to a discrepancy between the tax laws and regulations that should apply. In this case, the Tax Court rejected the Taxpayer's lawsuit against the Decision of the Directorate General of Taxes by applying the Regulation of the Minister of Finance. Regarding this Tax Court Decision, the Taxpayer felt dissatisfied and then filed a Request for



Review to the Supreme Court.

The legal considerations of the Panel of
Supreme Court Justices in the Supreme Court
Review Decision No. 467/B/PK/Pjk/2022
dated March 1, 2022 are as follows:

“That the main point of dispute is the issuance of the Defendant's Decree Number: KEP-1360/WPJ.07/2010 dated November 30, 2010 concerning the Reduction or Elimination of Administrative Sanctions on Billing Letter Number: 00005/187/09/081/10 dated April 28, 2010 for the Tax Period January to February 2009, which was not approved by the Plaintiff;

That according to the Defendant, administrative sanctions were imposed on the Plaintiff due to the delay in depositing the Tax Payment Letter (SSP) for VAT collected in accordance with the Regulation of the Minister of Finance Number: 11/PMK.03/2005 dated January 31, 2005, while the Plaintiff did not agree because it had to refer to Government Regulation Number 143 of 2000;

That the main issue in the a quo dispute is whether it is true that the late payment of Value Added Tax for the period of January and February 2009 must refer to the Minister of Finance Number: 11/PMK.03/2005 dated January 31, 2005, so that the Plaintiff must be subject to administrative interest sanctions;

That the a quo issue is a legal issue

based on the evidentiary test connected with the applicable laws and regulations, has been considered properly and correctly by Judex Facti, so that it is strengthened and taken over by the Supreme Court with the following considerations:

That the Regulation of the Minister of Finance of the Republic of Indonesia Number: 11/PMK.03/2005 concerning the Appointment of Contractors for Oil and Gas Mining Business Cooperation Agreements to Collect, the Supreme Court of the Republic of Indonesia Deposit and Report Value Added Tax and Sales Tax on Luxury Goods along with the Procedures for Collection, Deposit and Reporting are specific in nature, while the Government Regulation of the Republic of Indonesia Number 143 of 2000 concerning the Implementation of Law Number 8 of 1983 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods as amended several times, most recently by Law Number 18 of 2000 is general in nature. Therefore, in accordance with the principle that special provisions override general provisions (*lex specialist derogat legi generali*), what applies is PMK Number 11/PMK.03/2005 in Article 6 paragraph (1) letter a of the Regulation of the Minister of Finance Number: 11/PMK.03/2005 which stipulates that VAT collection is carried out no later than the end of the following month after the month in which the delivery of BKP and/or JKP occurs in the event that payment is received after the end of the following month after the month in which the delivery of BKP and/or



JKP occurs;

That based on the considerations above, the imposition of the a quo administrative sanction by the Defendant is maintained.”

The Supreme Court's decision No.

467/B/PK/Pjk/2022 dated March 1, 2022

states:

“TO JUDGE:

1. Rejecting the application for judicial review from the Applicant for Judicial Review of BUT Chevron Makassar LTD;
2. Sentencing the Applicant for Judicial Review to pay court costs for the judicial review amounting to Rp2,500,000.00 (two million five hundred thousand Rupiah).”

In accordance with the applicable laws and regulations, namely based on Article 2 and Article 4 of MPR Decree No. III/MPR/2000, the order of the laws and regulations of the Republic of Indonesia is as follows::

“Article 2

The Order of Legislation is a guideline in making legal regulations below it. The Order of Legislation of the Republic of Indonesia is:

1. The 1945 Constitution;
2. Decrees of the People's Consultative

Assembly of the Republic of Indonesia;

3. Laws;

4. Government Regulations in Lieu of Laws (Perpu);

5. Government Regulations;

6. Presidential Decrees of a Regulatory Nature;

7. Regional Regulations.”

“Article 4

(1) In accordance with the Sequence of these Legislations, any lower legal regulation may not conflict with a higher legal regulation

(2) Regulations or Decisions of the Supreme Court, the Audit Board, the Minister, Bank Indonesia, Agencies or Commissions of the same level established by the Government may not conflict with the provisions contained in the Sequence of these Legislations.”

Regarding the order of statutory regulations, this is also regulated in Article 7 paragraph (1) of Law Number 10 of 2004 concerning the Formation of Statutory Regulations. Article 7 paragraph (1) of the Law states that:

“The types and hierarchy of Legislation are as follows:

- a. The 1945 Constitution of the Republic of Indonesia;
- b. Law/Perppu;
- c. Government Regulation;
- d. Presidential Regulation; and
- e. Regional Regulation.”



Based on the provisions stipulated in Article 2 and Article 4 of MPR Decree No. III/MPR/2000 and Article 7 paragraph (1) of Law Number 10 of 2004 concerning the Formation of Legislation, it has been expressly stipulated that lower legal regulations may not conflict with higher legal regulations. Thus, the tax legislation that should be enforced by the Panel of Supreme Court Justices in its legal considerations and decisions is Article 10 of Government Regulation No. 143 of 2000, stating that the Application for Review submitted by the Taxpayer explaining that as a VAT Collector he was not late in depositing VAT into the state treasury is granted. Because in terms of hierarchy, Article 10 of Government Regulation No. 143 of 2000 is higher compared to the Ministerial Regulation, which in terms of hierarchy is also much lower in position.

The implementation of fair tax laws

and providing legal certainty for Taxpayers is also by paying attention to the correct and proper legal principles in deciding cases. In relation to this, the Panel of Supreme Court Justices has been negligent, less careful, and less attentive to the application of the principle of *lex superior derogat legi inferiori*, which means that higher legal rules or regulations override lower legal rules or regulations. This is supported by the opinion of Dr. H. Imam Soebechi, S.H., M.H. (Former Supreme Court Justice and Former Head of the State Administration Chamber of the Supreme Court of the Republic of Indonesia), who stated:

“The principle of *lex specialis derogat legi generali* is only applied to the testing of parallel or equivalent laws and regulations. Testing of regulations that are not equivalent uses the principle of *lex superior derogat legi*



inferiori.”¹⁵

With the application of this principle, laws and regulations issued by a higher agency override the application of laws and regulations issued by an agency with lower authority or power. This principle also only applies to two laws and regulations that are contradictory, but not hierarchically equal. As a result of the erroneous decision, the Taxpayer suffers a loss and is forced to carry out his obligation to pay a fine to the Directorate General of Taxes. Thus, the Director General of Taxes when issuing the STP and issuing the State Administrative Decision against the Taxpayer has violated the general principles of good governance, especially the principle of legal certainty and the principle of professionalism in accordance with the provisions of Article 53 of Law No. 5 of 1986 concerning State

Administrative Courts as amended by Law No. 9 of 2004 and Law No. 51 of 2009. In fact, the Taxpayer according to Article 10 of Government Regulation No. 143 of 2000, he was not late in collecting VAT and was not even considered due. In this case, the purpose of the law, namely to realize certainty, justice, and usefulness, cannot be achieved because the Supreme Court Justices cannot provide the right decision for Taxpayers. Because the guarantee of legal certainty and justice is generally in laws and regulations that are hierarchically higher. That is why the regulation regarding the basic rights of citizens and Human Rights (HAM), state administration, and taxes (the imposition of which must be based on law) are regulated in the Constitution.

The difference in interpretation between the Government Regulation (PP)

¹⁵ Imam Soebechi, *Judicial Review Perda Pajak dan Retribusi Daerah*, Penerbit Sinar Grafika, Jakarta,

2012, hlm. 269.



and the Regulation of the Minister of Finance (PMK) in determining the time for collecting Value Added Tax (PPN) creates a major challenge in the implementation of tax law in Indonesia. This difference is seen in the case of Taxpayer Chevron Makassar Ltd., where PP No. 143 of 2000 states that VAT is payable when payment is made, while PMK No. 11/PMK.03/2005 states that VAT must be collected immediately after the delivery of Taxable Goods or Taxable Services, even though there has been no payment. This inconsistency in the rules creates legal uncertainty for the taxpayers involved, which in turn affects the sense of justice in the tax system. From the perspective of the Indonesian legal hierarchy, the rules in the PP should have higher power than the PMK because the PP is directly under the law and is regulated by the President.¹⁶ This principle

is stated in Article 7 paragraph (1) of Law Number 12 of 2011 concerning the Formation of Legislation, which states that PP has a higher position than regulations made by the ministry. Therefore, in this case, PP should be used as the main basis for determining the time of VAT collection, not PMK, in order to maintain the consistency of the application of the law in accordance with the principle of *lex superior derogat legi inferiori* (higher law overrides lower law).

The facts show that PMK No. 11/PMK.03/2005 was used as the basis by the Directorate General of Taxes to determine the Tax Collection Letter (STP) against Chevron Makassar Ltd. even though it contradicts PP No. 143 of 2000 which is higher. The use of PMK as the main guideline reflects weaknesses in the supervision and application of the principle of regulatory

¹⁶ Sofyan Apendi, "Ketiadaan Peraturan Menteri Dalam Hierarki Peraturan Perundang-Undangan Nasional Dan Implikasinya Terhadap Penataan

Regulasi Dalam Sistem Hukum Nasional", *Jurnal PALAR (Pakuan Law Review)*, Volume 07, Nomor 01, Januari-Juni 2021, hlm. 120-121.



hierarchy which should prioritize higher rules.

The legal uncertainty arising from the inconsistency of these norms is detrimental to taxpayers, who must choose between following the rules of the PP or different PMK. This threatens legal certainty, which should provide clear, consistent, and appropriately implemented rules, in accordance with the basic principles expressed by Gustav Radbruch.

In state administrative law, tax law is part of administrative law that does not stand alone, so it must still prioritize higher rules. PMK as a technical rule should not override PP which has a higher position. This also raises questions regarding the principle of *Lex Specialis Derogat Legi Generali* in the context of tax regulations.

To avoid losses for taxpayers and ensure legal certainty, the application of the principle of prudence by tax officials is very

important. Reform and harmonization of tax regulations are needed to overcome the differences between conflicting regulations, so that it can create a more consistent, accountable, and fair tax system for all parties.

The Supreme Court's decision in the Chevron Makassar Ltd. VAT dispute case raises major questions regarding legal certainty, because the Supreme Court based its decision on the Minister of Finance Regulation (PMK) No. 11/PMK.03/2005, which should be below Government Regulation (PP) No. 143 of 2000 in the legal hierarchy. Using PMK as the basis for the decision, instead of PP, shows that the Supreme Court, as the highest judicial authority, has set aside the hierarchical provisions that have been established by the Law on the Formation of Legislation. This raises the risk of legal uncertainty and has the potential to harm taxpayers in interpreting



their tax obligations. In the theory of legal certainty, this decision violates the principle that the law must be applied consistently and in accordance with the applicable hierarchy of rules. According to Hans Kelsen, the legal system must be hierarchical, where lower rules must not conflict with higher rules.¹⁷ In this case, the use of PMK which is lower than PP is contrary to the principle. Thus, taxpayers, such as Chevron Makassar Ltd., face difficulties in determining which rule to follow, considering that they are considered late in collecting VAT based on rules that are not in accordance with the hierarchy.

This evaluation highlights the importance of the Supreme Court's role in maintaining justice in the tax law system. When the Supreme Court decides based on lower regulations, this creates legal uncertainty and threatens justice for

taxpayers. The Supreme Court should consider the principles of administrative and tax law, including the principle of regulatory hierarchy, in order to create fairer decisions and provide legal certainty.

This case also illustrates the relevance of John Rawls' theory of distributive justice, where legal uncertainty arising from inconsistent regulations is a form of injustice. The neglect of the principle of *lex superior derogat legi inferiori* in the Supreme Court's decision has an impact on the credibility and clarity of the rules for taxpayers, which causes confusion regarding the legal basis for their tax obligations.

Efforts to harmonize tax regulations and increase supervision in the preparation of regulations are very important to prevent future regulatory conflicts. Revising the PMK and strengthening legal literacy among

¹⁷ Jimly Asshiddiqie & M. Ali Safa'at, *Teori Hans Kelsen Tentang Hukum*, Konpress, Jakarta, 2006, hlm. 170.



tax officials can ensure that the regulations implemented are in accordance with a higher legal hierarchy, guarantee legal certainty, and provide consistent justice for taxpayers.

F. Conclusion

From the discussion above, two conclusions can be drawn in this study, namely:

1. The tax legislation that should be applied in this case is the provisions in Article 10 of Government Regulation No. 143 of 2000 concerning the Implementation of Law No. 8 of 1983 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods.
2. The application of fairer tax laws and providing legal certainty for Taxpayers is by applying the principle of *lex superior derogat legi inferiori* by the Judge in deciding the case so that the

Taxpayer does not need to suffer losses to pay a single penny of fine that he should not have incurred in this case, because the Taxpayer has complied with the provisions in the Government Regulation so that there is no delay in collecting VAT and submitting it to the state treasury.

As a suggestion, the government needs to harmonize the provisions in the PP and PMK related to the time of VAT collection in order to eliminate conflicting legal norms in tax regulations. In addition, the Supreme Court and tax authorities must be more consistent in implementing the hierarchy of regulations according to applicable principles. This step will help reduce legal uncertainty and create a fairer, clearer tax system, and provide certainty for taxpayers in carrying out their tax obligations.

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