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Pre-trial Review of Preliminary Evidence Examination in Tax-Related Criminal Offenses Following the Enactment of the New Criminal Procedure Code

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Abstract. *Preliminary evidence examination (pemeriksaan bukti permulaan or bukper) in Indonesian taxation is conducted before a case is elevated to investigation and aims to obtain preliminary evidence of an alleged tax crime. In practice, several actions taken by examiners particularly the borrowing of documents and the acquisition of electronic data, resemble coercive measures under criminal procedural law. This study analyses the legality of bukper procedures, the legal status of evidence borrowing, and the implications for pretrial review following the enactment of Law Number 20 of 2025 on the Criminal Procedure Code (KUHAP), effective since 2 January 2026. It employs normative legal research using statutory, case, and conceptual approaches, examining nine pretrial rulings and two Constitutional Court decisions. The findings show that bukper is normatively equivalent to inquiry and should contain no coercive measures; that evidence borrowing not genuinely based on the taxpayer's voluntary consent qualifies as a seizure-like action requiring district court authorization; and that the lex specialist argument cannot justify derogation from KUHAP where the legal basis is merely a ministerial regulation. Constitutional Court Decision Number 83/PUU-XXI/2023 declared both paragraph (1) and paragraph (4) of Article 43A of the General Tax Provisions Law (UU KUP) conditionally unconstitutional, so that even the delegation of bukper procedures to a ministerial regulation may not concern coercive measures. The new KUHAP reinforces this position. The study recommends regulating bukper at the statutory level with judicial control mechanisms.*

Keywords: *Evidence; Preliminary; Pretrial; Specialist; Review.*

1. Introduction

Criminal law enforcement in the Indonesian taxation sector is unique because it operates within a tax system based on the self-assessment principle. Under this system, taxpayers are entrusted with the responsibility of calculating, determining, paying, and reporting their own tax liabilities. Consequently, the state holds the authority to conduct oversight and enforce the law through several stages, ranging from tax audits and preliminary evidence examinations (**bukper**) to full criminal investigations into tax offenses. Among these stages, the preliminary evidence examination occupies a position that is both crucial and problematic. This process is defined as an examination conducted to obtain preliminary evidence regarding a suspected tax-related criminal offense (Article 1 number 27 of Law Number 6 of 1983 concerning General Provisions and Tax Procedures as amended several times, most recently by Law Number 7 of 2021 concerning Harmonization of Tax Regulations (hereinafter referred to as the KUP Law). The authority to carry this out is granted to the Director General of Taxes based on information, data, reports, and complaints (IDLP) (Article 43A paragraph (1) of the KUP Law in conjunction with Article 2 number 13 of Law Number 7 of 2021 concerning Harmonization of Tax Regulations (HPP Law). However, the procedures for conducting the examination of preliminary evidence are not directly stipulated in the law; instead, their regulation is delegated to a Regulation of the Minister of Finance (Regulation of the Minister of Finance Number 177/PMK.03/2022 concerning Procedures for Examination of Initial Evidence of Criminal Acts in the Tax Sector, which replaces successively PMK Number 239/PMK.03/2014, PMK Number 18/PMK.03/2013, and PMK Number 202/PMK.03/2007).

A legal issue arises because the procedures for examining preliminary evidence stipulated at the ministerial regulation level authorize examiners to carry out actions that substantially resemble the coercive measures found in criminal procedural law. These actions include the borrowing and examination of books, records, and documents; the accessing and downloading of electronic data; the inspection of specific premises or rooms; and even the application of official seals (Article 8 paragraph (3) and Article 17 of the Minister of Finance Regulation Number 177/PMK.03/2022). In criminal procedural law, the act of taking possession of or holding an object under state control for evidentiary purposes constitutes a form of seizure (Article 1 number 35 of Law Number 20 of 2025 concerning the Criminal Procedure Code; the formulation is substantially in line with Article 1 number 16 of Law Number 8 of 1981 (old Criminal Procedure Code), with the addition of "tangible or intangible" objects). Seizure may only be carried out by an investigator with the permission of the head of the local district court (Article 119 paragraph (1) of Law Number 20 of 2025: before carrying out a confiscation, investigators submit a request for permission to the head of the district court where the object is located; in urgent circumstances, confiscation without permission is only for movable objects and approval must be requested within a maximum period of 5 (five) working days (Article 120). Compare Article 38 of Law Number 8 of 1981.) . Thus, there is a normative conflict between the administrative label of "borrowing" and the substance of the action, which essentially resembles a seizure. This conflict has prompted a number of taxpayers to file pre-trial motions. In several cases, district courts have granted these motions, declaring the preliminary evidence examination and the subsequent actions taken to be unlawful (Sanggau District Court Decision Number 2/Pid.Pra/2021/PN Sag dated June 7, 2021; Surabaya District Court Decision Number 14/Pid.Pra/2022/PN Sby dated June 10, 2022; Balikpapan District Court Decision Number 2/Pid.Pra/2022/PN Bpp dated March 23, 2022; Pematangsiantar District Court Decision Number 2/Pid.Pra/2022/PN Pms dated May 11, 2022). Such a ruling entails significant legal consequences for tax authorities, including the invalidation of the preliminary evidence examination, the inadmissibility of evidence obtained therein, and—in cases that have advanced to the formal investigation stage—potential implications for the validity of subsequent investigative actions.

This controversy led to a constitutional review of the preliminary evidence examination provisions by the Constitutional Court. In Decision Number 83/PUU-XXI/2023, the Court declared the phrase "examination of preliminary evidence prior to the conduct of an investigation" in Article 43A paragraph (1) of the General Provisions and Tax Procedures Law (UU KUP) conditionally unconstitutional, insofar as it is not interpreted to exclude the use of coercive measures. Often overlooked in discussions is the fact that, in the same ruling, the Court also declared Article 43A paragraph (4) of the UU KUP which delegates the procedures for such examinations to a Regulation of the Minister of Finance to be conditionally unconstitutional; consequently, such delegation is constitutional only insofar as it does not regulate matters involving coercive measures or infringe upon the fundamental rights of taxpayers (Constitutional Court Decision Number 83/PUU-XXI/2023, rulings number 2 and number 3, was pronounced in a plenary session open to the public on February 13, 2024). The ruling did not immediately put an end to the debate. Tax authorities interpreted it as confirmation that preliminary evidence gathering (*bukper*) is not subject to *Pra-Peradilan* (pretrial review). Conversely, taxpayers and some academics interpreted it conditionally: since *bukper* proceedings must not involve coercive measures, any action that is effectively coercive during the process lacks a legal basis and remains subject to challenge via *Pra-Peradilan*. This divergence in interpretation demonstrates that the formal procedural aspects of *bukper* remain a pressing legal issue requiring deeper academic analysis.

Legal developments have progressed further with the enactment of Law Number 20 of 2025 concerning the Criminal Procedure Code, which enters into force on January 2, 2026, and repeals Law Number 8 of 1981 (Law Number 20 of 2025 concerning the Criminal Procedure Code, ratified and enacted on December 17, 2025, effective January 2, 2026 (Article 369); Article 362 revokes and declares Law Number 8 of 1981 invalid; Article 368 stipulates that this Law may be referred to as the Criminal Procedure Code). The new Criminal Procedure Code actually reinforces the issues addressed in this study by explicitly defining "coercive measures." These measures are now defined to include the designation of a suspect, arrest, detention, search, seizure, examination of correspondence, wiretapping, blocking, and travel bans prohibiting departure from Indonesian territory all of which may only be carried out in accordance with statutory provisions (Article 1 number 14 of Law Number 20 of 2025). The scope of pretrial proceedings has also been expanded to include the lawfulness of the execution of coercive measures, with the clarification that coercive measures carried out without the authorization of the head of the district court are subject to such proceedings (Explanation of Article 158 letter a of Law Number 20 of 2025: coercive measures that have obtained permission or approval from the head of the district court are not objects of pre-trial proceedings, while coercive measures that do not obtain permission or approval from the head of the district court are objects of pre-trial proceedings). The prohibition on the use of evidence obtained through unlawful searches or seizures is also explicitly stated (Article 163 paragraph (3) letter d of Law Number 20 of 2025). Consequently, the review of the **bukper** (preliminary evidence) procedure against national criminal procedural law now rests on a far more robust normative basis than that provided by Law Number 8 of 1981.

Previous studies have addressed this topic from various perspectives. Sofian and Hasibuan examined the regulations and practices regarding **Pra-Peradilan** (pretrial hearings) for tax offenses, recommending that the capacity of tax investigators be strengthened and that standard operating procedures be established for suspect designation, searches, and seizures to minimize losses in pretrial proceedings. However, those studies were conducted prior to the enactment of Law No. 7 of 2021 concerning the Harmonization of Tax Regulations (UU HPP) and before the Constitutional Court Ruling Number 83/PUU-XXI/2023 (Ahmad Sofian & Batara Mulia Hasibuan, 2020). Muchtar, Ilyas, and Ilmi examine criminal law policy reform regarding the handling of tax-related crimes, but their focus is on substantive criminal policy rather than the validity of formal preliminary evidence procedures (Syamsuddin Muchtar, Amir Ilyas, & Musfiratul Ilmi, 2021). Firmansyah and Farid examined the legal politics of pretrial proceedings following Constitutional Court Decision No. 21/PUU-XII/2014 as a mechanism for protecting suspects' rights, though not specifically within the context of taxation (Shandy Herlian Firmansyah & Achmad Miftah Farid, 2022). Prasetyo specifically examined the lending of evidence in preliminary tax investigation cases (*bukper*) and concluded that the relevant Minister of Finance Regulation (PMK) required reformulation, as the concept of lending cannot override the concept of seizure under the Criminal Procedure Code (KUHAP) a study that most closely resembles the present research. However, he did not conduct a comparative analysis of conflicting pretrial hearing rulings or the institutional framework of tax investigators (Handoyo Prasetyo, 2022).

The novelty of this research lies in three aspects. First, a comparative analysis of the ratio decidendi in pretrial rulings whether granting, rejecting, or declaring inadmissible regarding taxpayer petitions concerning preliminary evidence examinations (*bukper*), interpreted in light of Constitutional Court Ruling Number 83/PUU-XXI/2023. Second, an examination of the lex *specialist* argument frequently relied upon by tax authorities, analyzed through the principle of the hierarchy of norms (lex superior derogat legi inferiori); this demonstrates that the derogation of the Criminal Procedure Code (KUHAP) by a ministerial regulation is unjustifiable a position reinforced by the Constitutional Court's ruling, which also limits the delegation of authority under Article 43A paragraph (4) of the General Provisions and Tax Procedures Law (UU KUP). Third, an emphasis on the institutional dimension specifically comparing the authority of tax investigators with that of National Police investigators and the process of transferring tax criminal cases to public prosecutors re-examined within the framework of the new Criminal Procedure Code.

Based on the foregoing, the research questions are formulated as follows: (1) what is the legal status of the preliminary evidence examination within the criminal justice system does it constitute a preliminary inquiry or a formal investigation, and how is the warrant for such an examination classified? (2) when and on what grounds may a preliminary evidence examination be conducted? (3) does the borrowing of documents during such an examination constitute a form of seizure? (4) can the lex *specialist* principle justify deviations in preliminary evidence examination procedures from the Criminal Procedure Code? (5) how does the authority of tax investigators compare to that of National Police investigators, and what are the mechanisms for case referral? and (6) what are the prevailing practices and ratio decidendi in pretrial rulings concerning preliminary evidence examinations, and what are the implications following Constitutional Court Ruling Number 83/PUU-XXI/2023 and the new Criminal Procedure Code under Law Number 20 of 2025?

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2. Research Methods

This study is a normative or doctrinal legal study, examining law as a system of norms. The approaches employed include the statutory approach, the case approach, and the conceptual approach. The statutory approach is used to examine the consistency of norms regarding the examination of preliminary evidence both vertically and horizontally against the Criminal Procedure Code (KUHAP), the 1945 Constitution of the Republic of Indonesia (UUD 1945), and the principles of legislative drafting. The KUHAP analyzed includes Law Number 8 of 1981 (the criminal procedure law in effect when the pretrial rulings were issued) and Law Number 20 of 2025 (the new KUHAP that replaced it). The case approach is used to analyze the ratio decidendi of Constitutional Court Decisions Number 21/PUU-XII/2014 and Number 83/PUU-XXI/2023, as well as nine district court pretrial rulings that granted, rejected, or declared inadmissible the taxpayers' petitions. The conceptual approach is used to examine the relationship between the concepts of borrowing evidence and seizure, and to distinguish between the concepts of preliminary inquiry (*penyelidikan*) and formal investigation (*penyidikan*) within criminal procedural law.

Primary legal materials include Law Number 20 of 2025, Law Number 8 of 1981, the Law on General Provisions and Tax Procedures (as last amended by the Law on the Harmonization of Tax Regulations), Minister of Finance Regulation Number 239/PMK.03/2014, Minister of Finance Regulation Number 177/PMK.03/2022, and relevant court decisions. Secondary legal materials consist of textbooks on criminal procedural law, legal journal articles, and official institutional publications. Legal materials were collected through a literature review. All legal materials were analyzed using a qualitative-prescriptive approach, employing grammatical, systematic, and teleological interpretation techniques. The validity of the findings was tested through triangulation involving norms, legal doctrine, and court rulings.

3. Result and Discussion

3.1. Legal Status of Preliminary Evidence and Classification of the Order to Examine Preliminary Evidence

The starting point for addressing the issue in this study is the legal characterization of the examination of preliminary evidence within the criminal justice system. The legislature has positioned the examination of preliminary evidence as a stage conducted prior to the commencement of a formal investigation. This is evident from the Elucidation of Article 43A paragraph (1) of the KUP Law, which states that the examination of preliminary evidence shares the same purpose and status as the preliminary inquiry (**penyelidikan**) regulated under the Criminal Procedure Code (KUHAP) (Explanation of Article 43A paragraph (1) of the KUP Law (as amended by the HPP Law): examination of preliminary evidence has the same purpose and status as investigations as regulated in the KUHAP). In criminal procedural law, a preliminary inquiry (*penyelidikan*) consists of a series of actions taken by an investigator to seek out and discover an event suspected of being a criminal offense, in order to determine whether or not a formal investigation (*penyidikan*) should be conducted (Article 1 number 8 of Law Number 20 of 2025; compare Article 1 number 5 of Law Number 8 of 1981). An investigation consists of a series of actions taken by an investigator to seek and gather evidence in order to clarify the criminal offense that occurred and identify the suspect (Article 1 number 5 of Law Number 20 of 2025; compare Article 1 number 2 of Law Number 8 of 1981).

The distinction between preliminary inquiry and formal investigation is fundamental, as coercive measures—such as search, seizure, and detention—are strictly reserved for the latter under Law No. 20 of 2025 and must adhere to rigorous procedural safeguards. Since preliminary evidence examination (*bukper*) is normatively equated with inquiry, it should inherently be free from coercive elements; accordingly, the SPPBP functions merely as an administrative tool for gathering information, carrying no authority to impose suspect status or employ force. However, a significant inconsistency arises at the implementing regulation level, where the Minister of Finance grants *bukper* examiners powers to borrow evidence, access electronic data, enter premises, and perform sealing actions substantively akin to formal investigation. This creates a legal anomaly: while *bukper* remains conceptually an inquiry, its practical execution often involves coercive tactics without corresponding procedural protections, rendering it highly susceptible to pretrial legal challenges.

3.2. Basis and Trigger for Initiating a Preliminary Evidence Examination

The question of when preliminary evidence examination (*bukper*) may be conducted must be addressed through both substantive and procedural aspects: substantively, it can only proceed when developed and analyzed information, data, reports, or complaints (IDLP) including follow-ups from tax audits indicate an alleged tax crime that could cause state revenue losses, ensuring it is not arbitrary or used to pressure taxpayers, but rather based on objective, measurable, and documented grounds, with any action lacking adequate IDLP being defective from the outset; procedurally, under the Minister of Finance Regulation, *bukper* may be conducted openly (commenced by a written SPPBP notification) or covertly (without prior notice), and it typically serves as a follow-up to tax audits, as seen in the Sanggau case where the SPPBP required the taxpayer to grant access to premises, electronic data, and evidence. The timing of this examination is critically important for taxpayers because it preserves the space for administrative resolution—as long as the investigation commencement notice has not been

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submitted to the public prosecutor via Police investigators, taxpayers still have the opportunity to self-disclose inaccuracies and settle underpaid taxes along with administrative sanctions, which aligns with the *ultimum remedium* principle that criminal penalties serve as a last resort when state revenue restoration cannot be achieved administratively. Therefore, *bukper* should function as a screening instrument to determine whether a case merits escalation to formal investigation, rather than serving as a premature loophole for coercive measures, which not only contradicts criminal procedural law principles but also risks shifting the very character of tax criminal law, where restoring state losses remains the primary objective.

3.3. Borrowing of Documents as an Act Resembling Seizure

The qualification of document borrowing in preliminary evidence examination (*bukper*) as seizure must be assessed substantively, examining whether the action fulfills the elements of seizure under criminal procedural law taking control of objects for evidentiary purposes, inherently coercive irrespective of the label. In *bukper*, the Ministerial Regulation imposes mandatory surrender within a specified period and links refusal to sealing, making genuine voluntariness problematic due to the unequal power between examiners and taxpayers, a view supported by court rulings that invalidated such actions as disguised searches without district court approval. The new Law No. 20 of 2025 reinforces the exclusion of evidence obtained through unlawful coercive actions. However, not every borrowing constitutes seizure; if handover is genuinely voluntary, clearly documented, and free from threats, coercion is absent. Nevertheless, the current regulation's compulsory construction necessitates reform to clearly separate voluntary requests from coercive takings, the latter requiring investigation-stage court oversight.

3.4. The Limits of the Lex *Specialist* Principle and the Hierarchy of Norms

Tax authorities often invoke lex *specialist* to defend preliminary evidence (*bukper*) procedures, but this principle applies only between equal-level norms; where a ministerial regulation conflicts with the KUHAP, the higher law (lex superior) prevails, as coercive measures restricting human rights must be based on statute—not ministerial regulations. This is affirmed by Constitutional Court Decision No. 83/PUU-XXI/2023, which held that *bukper* is constitutional only without coercive measures and that delegation to a ministerial regulation cannot touch upon coercive force or taxpayer rights. Despite a dissenting opinion from three justices, the majority ruling remains binding, and Law No. 20/2025 further reinforces this position, meaning any *bukper* action substantively resembling coercion based solely on a ministerial regulation directly contradicts criminal

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procedural law and cannot be justified under the guise of lex *specialist* (Article 1 number 14 of Law Number 20 of 2025).

3.5. Pre-trial Challenges Regarding Preliminary Evidence: Mapping Rulings and Ratio Decidendi

Under the old Criminal Procedure Code, pretrial proceedings served as a horizontal control mechanism over coercive measures, later expanded by Constitutional Court Decision No. 21/PUU-XII/2014 to include suspect determinations, searches, and seizures a development codified and broadened under Law No. 20/2025, which now subjects all forms of coercive measures (including wiretapping and blocking) to pretrial review. Mapping court decisions reveals three interpretative patterns: first, granting petitions as in Sanggau, Pematang siantar, Surabaya, and Balikpapan—where document borrowing was substantively qualified as disguised search/seizure without district court approval, with Pematang siantar additionally highlighting authority defects (SPPBP issued by the DG rather than the delegated Regional Office Head) and the respondent's own expert admitting sealing constitutes coercion; second, rejecting petitions as in East Jakarta, South Jakarta, Sidoarjo, and Sleman based on voluntary handover, equivalence of *bukper* to inquiry without coercion, formal deficiencies, or the case having reached the investigation stage (Sleman); and third, inadmissible rulings as in Pematangsiantar 2024 where the petitioner's status as a wanted person (DPO) barred substantive review. These divergent interpretations reflect a persistent lack of uniformity in assessing *bukper*'s legal standing, a problem the Constitutional Court itself acknowledged as underpinning legal uncertainty, thereby justifying its intervention.

Table Overview of Pre-trial Rulings Regarding the Examination of Preliminary Evidence

No.	Court Decision	Result	Main Ratio Decidendi
1	Sanggau District Court Decision No. 2/Pid.Pra/2021/PN Sag (7 June 2021)	Granted	The borrowing of case files/evidence is classified as a search and seizure without the Chairperson of the District Court's permit, rendering it legally defective and invalid; consequently, the documents cannot be used.
2	Surabaya District Court Decision No. 14/Pid.Pra/2022/PN Sby (10 June 2022)	Granted	The phrase "obligated" in the notification letter implies coercion; the borrowing of documents and acquisition of electronic data constitutes a legal search and seizure without the Chairperson of the District Court's permit (Article 38 of the Criminal Procedure Code), thus invalid.
3	Balikpapan District Court Decision No. 2/Pid.Pra/2022/PN Bpp (23 March 2022)	Granted	The SPPBP (Preliminary Evidence Examination Notification Letter) on behalf of the Director General of Taxes is defective in authority because the authority has been delegated to the Head of the Regional Office of the DGT (under KEP-146/PJ./2018); the borrowing of files is classified as a search and seizure without the Chairperson of the District Court's permit, thus invalid.

4	Pematangsiantar District Court Decision No. 2/Pid.Pra/2022/PN Pms (11 May 2022)	Granted	The SPPBP on behalf of the Director General of Taxes is defective in authority (delegation to the Regional Office Head under KEP-146/PJ./2018); the borrowing is classified as search/seizure; the suspect determination is null and void as a chain reaction. The respondent's expert admitted that sealing constitutes a coercive measure.
5	South Jakarta District Court Decision No. 96/Pid.Pra/2020/PN Jkt.Sel (8 September 2020)	Dismissed (Rejected)	Preliminary evidence (*Bukper*) is declared equivalent to investigation, without coercive measures, and is not an object of pretrial proceedings; this formulation, as far as can be traced, originates from expert testimony quoted as evidence by the tax authority (pp. 38–39), thus it is not purely the judge's legal consideration.
6	East Jakarta District Court Decision No. 13/Pid.Pra/2021/PN Jkt.Tim (28 January 2022)	Dismissed (Rejected)	The documents were deemed voluntarily submitted (in the form of photocopies, without coercion, and some document requests were even refused by the Petitioner), thus no coercive measure was involved and it does not meet the qualifications for seizure/search (Article 1 numbers 16–17 and Article 38 of the Criminal Procedure Code); the petition is dismissed.
7	Sleman District Court Decision No. 12/Pid.Pra/2022/PN Smn (17 January 2023)	Dismissed (Rejected)	The case has entered the investigation stage; the *pro justitia* seizure and suspect determination (Article 39 paragraph (1) letter d of the Tax Law - UU KUP) are declared valid and legally justified; the petition is dismissed.
8	Sidoarjo District Court Decision No. 1/Pid.Pra/2023/PN Sda (23 February 2023)	Dismissed (Rejected)	The petition is deemed not to meet formal requirements; preliminary evidence is equated with investigation (*lex specialistt*) and is not an object of pretrial proceedings, while the argument regarding the invalidity of the suspect determination (the Notification Letter for Commencement of Investigation was not served) is deemed legally unfounded; the petition is dismissed.
9	Pematangsiantar District Court Decision No. 3/Pid.Pra/2024/PN Pms (22 October 2024)	Inadmissible (Not Acceptable)	The Petitioner is a wanted person (DPO); based on Supreme Court Circular Letter (SEMA) No. 1 of 2018, the petition is inadmissible, so the merits of the case are not considered.

Source: Compiled from court rulings (2020–2024).

Granted decisions rest on three key rationales: substantively, courts look beyond administrative labels to assess whether document borrowing, electronic data acquisition, or sealing substantively resembles search/seizure, which qualifies as a pretrial object under Constitutional Court Decision No. 21/PUU-XII/2014; procedurally, they identify violations of criminal procedure, particularly the absence of district court approval; and regarding authority, they highlight defects where SPPBP was issued by officials whose powers had already been delegated to others. Post-Constitutional Court Decision No. 83/PUU-XXI/2023, while interpreted by tax authorities as barring pretrial review, actually affirms that *bukper* is constitutional only without coercion meaning if coercive measures occur, their validity remains subject to pretrial scrutiny, preventing courts from stopping at formal labels. Law No. 20/2025 reinforces this by explicitly defining coercive measures under the new Criminal Procedure Code, mandating the exclusion of illegally obtained evidence, and applying prospectively to ongoing cases; thus, pretrial review of *bukper* not only survives but gains a stronger normative foundation whenever actions substantively resemble coercive force, ensuring judicial control remains available despite the lex *specialist* narrative.

3.6. Authority of Tax Investigators, Case Referral, and the *Ultimum remedium* Character

Tax investigators are Civil Service Investigators (PPNS) within the Directorate General of Taxes, vested with special authority to investigate criminal acts in the tax sector. This institutional authority is maintained under Law No. 20 of 2025. Under the new Criminal Procedure Code, investigators consist of Police Investigators as the primary investigators, PPNS, and certain other investigators. PPNS exercise their authority based on the laws that serve as their legal basis, are under the coordination and supervision of Police Investigators, and are required to coordinate with Police Investigators up to the stage of submitting case files to the public prosecutor.

In tax crimes, the authority of tax investigators is regulated under Article 44 paragraph (2) of the Tax Law, which includes, among others: receiving, searching, collecting, and examining information or reports; requesting information and physical evidence; examining books, records, and documents; conducting searches to obtain evidence; seizing evidence; requesting the assistance of experts; ordering someone to stop or prohibiting someone from leaving a room during examination; photographing someone; summoning individuals to be heard as witnesses; terminating investigations; and carrying out other necessary actions that are lawful and accountable.

Thus, the authority of tax investigators cannot be said to exceed that of Police Investigators, particularly with regard to instruments of coercive measures against persons. Law No. 20 of 2025 even affirms that PPNS and certain investigators cannot carry out arrests and detention, except upon the order of Police Investigators. Tax investigators' authority is materially special, as it is limited to tax crimes, and is far more restricted compared to Police Investigators as the primary investigators, who possess broader authority to employ coercive measures under Article 7 paragraph (1) of the new Criminal Procedure Code.

The main issue in *bukper* does not lie in the authority of tax investigators at the statutory level, but rather in the use of actions that resemble coercive measures at the stage prior to the commencement of investigation. These actions, which under the law should take place within the investigation stage with specific conditions and procedural controls, are in practice occurring at the preliminary evidence examination stage due to regulations issued under a Ministerial Regulation. Consequently, such actions are potentially carried out without court approval mechanisms, without investigative coordination with Police Investigators, and without the procedural controls mandated by criminal procedural law. It is in this sense that the *bukper* practice may be called into question—not because tax investigators have broader authority than Police Investigators, but because *bukper* examiners may perform actions that, substantively, Police Investigators themselves are also not permitted to undertake outside the investigation framework and without court authorization.

Regarding case handover, the procedural flow of tax crime investigation involves tax investigators and Police Investigators. Law No. 20 of 2025 maintains this pattern with a clearer formulation. The submission of case files by PPNS is conducted through Police Investigators, who then jointly submit the case files to the public prosecutor. This pattern is in line with Article 44 paragraph (3) of the Tax Law, which stipulates that tax investigators submit their investigation results to the public prosecutor via Police investigators. Thus, the coordination obligation between PPNS and Police Investigators continues until the stage of submitting case files to the public prosecutor.

Once the case files are declared complete (P-21), the responsibility over the suspect and evidence is handed over to the Public Prosecutor's Office as the public prosecutor. This stage is commonly known as Stage II handover and serves as the basis for the Public Prosecutor's Office to proceed with prosecution. This mechanism does not mean that the case is transferred to the Police to be re-investigated; rather, it reflects the coordination and supervisory function of Police Investigators over PPNS within the criminal justice system. In addition to this general procedure, the Tax Law provides specific mechanisms reflecting the *ultimum remedium* character of tax criminal law. First, investigators may terminate an investigation if there is insufficient evidence, the event under investigation is not a tax crime, the investigation has lapsed due to the statute of limitations, or the suspect has passed away, as regulated under Article 44A of the Tax Law. Second, the Attorney General may terminate an investigation upon the request of the Minister of Finance for the sake of state revenue interests, provided that the case has not yet been submitted to court and the taxpayer has fully paid the state revenue losses along with the applicable sanctions, as regulated under Article 44B of the Tax Law. Empirically, data from the Law Enforcement Directorate of the Directorate General of Taxes shows that during 2018–2022, the majority of tax criminal investigations (550 out of 669 cases, or 82.2%) ended with submission to the public prosecutor (P-21), while terminations based on Articles 44A, 44B, and Article 8 paragraph (3) of the Tax Law respectively covered only 2.8%, 5.7%, and 9.3% of cases. These two mechanisms demonstrate that tax criminal law enforcement remains positioned as a last resort, after efforts to restore state revenues through administrative mechanisms have been unsuccessful.

4. Conclusion

Normatively, preliminary evidence examination (*bukper*) holds a position equivalent to investigation, and therefore should not contain any coercive measures. However, the practice of borrowing documents without the taxpayer's voluntary consent has been qualified as a disguised seizure, the validity of which requires approval from the chairperson of the district court. The pretrial decisions that granted the petitions demonstrate that actions resembling coercive measures, carried out without the Criminal Procedure Code (KUHAP) procedures and without proper legal authority, are potentially invalid, which may consequently nullify the suspect determination and the evidence obtained. Constitutional Court Decision No. 83/PUU-XXI/2023, as well as the enactment of Law No. 20 of 2025, further reinforce that derogation from the KUHAP can only be done through a statute (law). Therefore, the *bukper* authority that resembles coercive measures, derived from a ministerial regulation, is difficult to sustain under the new criminal procedural law regime. The legislator needs to review the *bukper* procedures that have the potential to restrict fundamental rights, particularly by affirming that actions such as sealing and access to electronic data can only be carried out at the investigation stage with a court order. The Directorate General of Taxes must ensure that any acquisition of evidence at the *bukper* stage is based on the taxpayer’s clearly documented voluntary consent, and must immediately escalate the case to investigation should coercive measures be required. The Ministry of Finance needs to align Minister of Finance Regulation No. 177/PMK.03/2022 with Law No. 20 of 2025 and Constitutional Court Decision No. 83/PUU-XXI/2023, by strictly separating the voluntary collection of materials in *bukper* from coercive measures in investigation. Further research is also recommended to examine the consistency of pretrial decisions following the enactment of the new law, in order to assess the effectiveness of the regulatory framework.

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