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IMPLEMENTATION OF THE MEANING OF PHILOSOPHY ARTICLE 23A UUD 1945 IN THE FORMATION OF TAXATION REGULATIONS UNDER LAW AS IMPLEMENTING REGULATIONS (REVIEW OF ATTRIBUTION AND DISCRETION AUTHORITY)

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Abstract

That in accordance with the 1945 Constitution Article 23A states that "Taxes and other compulsory levies for state needs are regulated by law". Furthermore, Article 28 H paragraph (4) states that everyone has the right "to have private property rights and such property rights may not be taken over arbitrarily by anyone". From the two articles, it is very clear that it is regulated regarding the protection of citizens' rights against government power. Based on the considerations of these articles, the regulation of taxation, which is compulsory and does not contribute directly to society must be the result of an agreement between the legislative as representatives of the people and the executive implementing the regulation and collection of taxes. However, based on the consideration of state revenue needs in addition to the attribution of the law, taxation regulations are also regulated by the discretion of the Minister of Finance Regulation and even the Decree or Regulation of the Director General which is in the nature of policy regulations (beleids regel).

Keywords: Tax Regulations, Implementing Regulations, Attribution Review, Discretionary Powers.

INTRODUCTION

The Director General of Taxes (Dirjen Pajak) has an important role in the taxation system in Indonesia, especially in ensuring the implementation of tax regulations in accordance with the law. In order to carry out these duties, the Director General of Taxes as the party that obtains discretionary authority from the law has formed Decree Number 206/PJ/2021 concerning the Delegation of Authority of the Director General of Taxes to Officials within the Directorate General of Taxes. In this Decree, the Director General of Taxes delegates 274 tasks obtained by attribution from the law which are then delegated to tax officials under him. The Decree of the Director General of Taxes Number 206/PJ/2021 is a strategic decision so it needs to be analyzed from the perspective of legality, authority, and the application of discretion. This study aims to confirm that the decision is legally valid and has clear binding force, especially by referring to the norms in the State Administration Law (UU AP) and legal doctrines related to policy regulations (beleidsregel). That the Decree of the Director General of Taxes Number 206/PJ/2021 has delegated some of its authority to officials within the Directorate General of Taxes.

According to some people, the delegation of the Director General's authority is not in accordance with the intent of Article 23A of the Amendment to the Constitution. Where in the Regulation of Article 23A of the Amendment to the Constitution it is interpreted that every tax regulation is made based on an agreement between the people represented by the DPR and the

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Executive as the implementer of the agreement. So that the Decision made by the Director General of Taxes is not considered to be ignorant of the command of Article 23A in question. If the Decree of the Director General is considered flawed, then how can the duties of the Director General of Taxes who has so many duties, responsibilities and authorities in a very limited time be carried out effectively and efficiently. While on the other hand there are no provisions governing the procedures for dividing these tasks.

The provisions in the General Provisions of Taxation Law Number 28 of 2007 provide several attribution authorities to the Director General of Taxes. This authority is a direct authority (attribution) so that there are no provisions above it. The Director General of Taxes as an administrative official cannot refuse the task given. One way to be able to carry out such a large and extensive task effectively and efficiently is by having assistance in carrying out the task in the form of delegating some of the tasks received to officials below him. In Law Number 40 of 2013 on Government Administration, Administrative Officials can delegate authority to officials below them in the form of delegation and mandate. Article 1 number 24 in conjunction with Article 175 of the Job Creation Law defines delegation in the form of a mandate as follows:

"A mandate is the delegation of authority from a higher government agency and/or official to a lower government agency and/or official with responsibility and accountability remaining with the mandate giver." According to Gilbert Abracian, there are two types of mandate theories, namely the imperative mandate theory and the free mandate theory. According to the imperative mandate theory, the mandate recipient represents the mandate giver because they receive strict instructions and have been determined in detail by their superior as the mandate giver, while according to the free mandate theory, subordinates who receive the mandate can act at any time and are not dependent on the instructions given by their superior as the mandate giver. Subordinates as mandate recipients can act freely because they have gained the trust of their superiors. The important thing is the legal awareness of the mandatee and not the instructions.[1]

What is needed for superiors is to formulate legal norms as a guide for subordinates as mandate recipients. In order to create guidelines for officials within the Directorate General of Taxes who can carry out the mandate authority of the Director General of Taxes, Decree of the Director General of Taxes Number KEP-206/PJ/2021 concerning the Delegation of Authority of the Director General of Taxes to Officials within the Directorate General of Taxes was made. The Attachment to Decree Number KEP-206/PJ/2021 contains the Authority of the Director General of Taxes, Legal Basis and delegated to which Officials and Information containing, among other things, the procedures that regulate it. The Attachment contains 274 tasks which are the authority of the Director General of Taxes which are delegated to Officials of the Directorate General of Taxes.

In the dictum considering Decree Number KEP206/PJ/2021 it is stated that, "in order to increase the effectiveness and efficiency of the implementation of taxation duties within the Directorate General of Taxes, it is necessary to delegate the authority of the Director General of Taxes to officials within the Directorate General of Taxes". From the dictum considering, it

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can be understood that the purpose of the formation is to make the tasks distributed to the Director General of Taxes effective and efficient. That from the background, the problems that then arise are a) Is Decree Number KEP206/PJ/2021 issued by the Director General of Taxes valid? and b) How binding is the Decree so that the Decree of Determination and Letter of Objection are binding on the public?

METHOD

The approach used by the author in the study is the statute approach obtained through primary legal materials in the form of legal products, both those that are still valid and those that are no longer valid. As a normative study, this study focuses on library research. According to the nature of the study, this study focuses on the application of theories, principles and concepts related to the provisions for the formation of policy regulations. This study uses secondary data sources, namely data obtained from library legal materials or literature that are related to the object of this study in the form of:

1. Primary Legal Materials

In the form of legal materials that have binding force, including provisions of related laws and regulations, such as the 1945 Constitution and the Law on the Formation of Regulations, the Law on Government Administration and the Law in the field of Taxation as well as several laws and regulations that are under the law

2. Secondary Legal Materials

In the form of legal materials consisting of scientific works written by legal experts including books, texts, journals and opinions of legal scholars,

3. Tertiary Legal Materials

Legal materials that complement primary legal materials and secondary legal materials include legal dictionaries, KBBI and others.

The legal facts that have been collected will be used by means of Inventory and classification of legal materials. Then interpreted in order to explain and make conclusions in research by referring to the applicable legal principles and legal rules, and relating to the problems and data or legal materials that have been obtained in this study.

DISCUSSION

Mandate Concept in the Implementation of Tasks

In the construction of the AP Law, legitimate authority is obtained through attribution, delegation, or mandate. Attribution authority is given in the context of dividing power in the implementation of the law. Delegation authority is the authority obtained in the context of dividing work by delegation so that responsibility and accountability are transferred to those who are delegated. Mandate authority is due to the existence of a very broad and extensive routine workload carried out by the head of an agency, institution or executive organization

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where responsibility and accountability still lie with the mandate giver. This means that in the delegation of the mandate, there is only assistance with tasks, not delegation of responsibility.

1) The granting of mandate authority is based on the work assigned to the head of an agency or institution to be able to run effectively and efficiently, but responsibility and accountability lie with the mandate giver. This is as regulated in Article 14 of the AP Law
2) Government Agencies and/or Officials receive a Mandate if:
    a) assigned by a higher Government Agency and/or Official; and
    b) is the implementation of routine tasks
3) Officials who carry out routine tasks as referred to in paragraph (1) letter b consist of:
    a) daily executors who carry out routine tasks from definitive officials who are temporarily unable to do so; and
    b) task executors who carry out routine tasks from definitive officials who are permanently unable to do so.
4) Government Agencies and/or Officials may grant a Mandate to other Government Agencies and/or Officials who are subordinate to them, unless otherwise specified in the provisions of laws and regulations.
5) Government Agencies and/or Officials who receive a Mandate must state the name of the Agency and/or Government Official who grants the Mandate.

That J.B.J.M ten Berge said [2]

> *mandaat is een 'opdracht aan de hierarchiisch ondergeschte ambtenaar om de uittoefening van een bevoegdheid ter hand te nemen. Ook mandaat aan niet-ondegeschikten bijvoorbeeld een ambtenaar van een ander openbaar lichaam, een college of een stichtingsbestuur is denkbaar, maar dan behoeft de mandaatverlening de instemming van de gemandateerde.*

It is clear that a mandate can be interpreted as assistance for tasks from subordinates, so it is very similar to official assistance which is also regulated in the AP Law. However, in the concept of official assistance, if the assistance affects the performance of the assistance provider, the information and documents required are confidential or the provisions of the law do not allow the provision of assistance, then official assistance is not carried out. Meanwhile, as long as the mandate has not been revoked by the mandate giver, the mandate recipient must carry out the tasks delegated to him. The mandate is only assistance in carrying out routine tasks by subordinates as seen from the explanation of Article 14 paragraph (4) of the AP Law. In the explanation, it is stated that the implementation of authority obtained by means of a mandate is carried out by mentioning the name (a.n) for him (u.b), carrying out the mandate (m.m) and carrying out tasks (m.t) by mentioning the name of the mandate giver. This shows that the decision issued or the factual action taken is a decision or action from the mandate giver. The granting of this mandate authority can be revoked by the mandate giver if the

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delegation of authority actually causes ineffectiveness in the implementation of government. Article 14 paragraph (5) of the AP Law stipulates that the Official who grants the mandate can use the authority that has been granted through the mandate.

This proves that the mandate giver still has full power so that they can intervene or change any factual decision or action taken. From what is regulated in Article 14 of the AP Law, the concept of granting a mandate is used to accommodate the interests of government officials in carrying out so many tasks so that they can be carried out effectively and efficiently.

That Decree Number KEP-206/PJ/2021 and its Attachments clearly show that the Decree was issued by the Director General of Taxes in order to delegate 247 authorities which are routine duties of the Director General of Taxes to the Acting Director General of Taxes. The delegation of the 247 authorities of the Director General of Taxes is because these routine tasks cannot be carried out by the Director General of Taxes alone because these tasks are quite numerous and quite widely spread, in almost every Regional Office and Tax Service Office throughout Indonesia. The condition of the large number and wide distribution of these routine tasks on the one hand, while on the other hand the need for public services that run effectively and efficiently, so assistance is needed to carry out these routine tasks.

The authority delegated by the Director General of Taxes to the Officials below him is the authority of the legal product produced, binding on some of the interested community. The binding nature is because the legal product can produce decisions that are concrete, individual and final. Because the form of a decision that has binding properties for a person or body, must be implemented and has legal implications, then the Person or Body mentioned in the decision must comply.

Beleidsregel as a form of discretionary authority

As officials who are given the responsibility to help create public welfare in accordance with the ideals written in the opening of the 1945 Constitution, Administrative officials, including the Director General of Taxes, are given the authority to make policy regulations if existing laws and regulations do not regulate, are incomplete or unclear.

The formation of policies that are regulatory in nature is used as a guideline in implementing actions. The formation of these policy regulations is one of the executive's duties in the legislative function. In state administrative law, it is called "pouvoir discretionnaire" or "freies ermessen" or discretionary power, which contains broad obligations and powers, namely regarding the actions to be taken and the freedom to choose whether or not to take the action.

The existence of this discretionary power has its own consequences in the field of legislation, namely the transfer of legislative power to Government Administration officials, so that in certain circumstances and/or in certain portions and levels, these officials can issue laws and regulations without prior approval from the DPR or without delegation or attribution from the Law. With this freies ermessen, it means that some of the power held by the law-making body is transferred into the hands of state administration officials, as executive bodies.

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The emergence of discretionary power is due to the needs of Government Administration officials who must carry out their government duties but in their implementation there are problems in the regulations. In the AP Law, Article 1 number 9 states: "Discretion is a Decision and/or Action determined and/or carried out by Government Officials to overcome concrete problems faced in the implementation of government in terms of laws and regulations that provide choices, do not regulate, are incomplete or unclear, and/or there is government stagnation."

That from the above norms it can be understood when an official of Government Administration in the implementation of government is allowed to make his own legal rules. However, it is clear that the legal rules made by the official can only be carried out when there are concrete problems faced because the laws and regulations do not regulate, are incomplete or unclear. This authority is reaffirmed in the AP Law Article 22 and Article 23 which regulate as follows:

Article 22

1) Discretion may only be exercised by authorized Government Officials.
2) Every use of Government Official Discretion aims to:
    (1) Facilitate the implementation of government;
    (2) Fill legal gaps;
    (3) Provide legal certainty; and
    (4) Overcome government stagnation in certain circumstances for the benefit and public interest.

Article 23

Government Official Discretion includes:

a) Making Decisions and/or Actions based on provisions of laws and regulations that provide a choice of Decisions and/or Actions;
b) Making Decisions and/or Actions because laws and regulations do not regulate;
c) Making Decisions and/or Actions because laws and regulations are incomplete or unclear; and
d) Making Decisions and/or Actions due to government stagnation for broader interests.

Although the provisions for the formation of laws and regulations do not regulate the formation of policy regulations, it is explicitly provided in the AP Law. This is what then becomes the basis for the emergence of many policy regulations due to the lack of detailed regulations on implementing regulations in laws or presidential regulations or ministerial regulations. Discretionary authority is often also termed freies ermessen, interpreted as wisdom and freedom to choose. or freedom of action. Freies ermessen is a German term consisting of two words, namely Freie and Ermessen. The word Freie means "free, independent and not bound",

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while the word freies means "free person. The word Ermessen can be interpreted as considering, assessing, guessing and deciding.[3,4] So if interpreted clearly freies ermessen is a person's freedom to guess and assess and consider a decision. Then in the concept of state administrative law it is often interpreted as the freedom of government officials to issue decisions or not to issue decisions and/or act or not to act, on their own initiative, in the context of organizing the state to realize public welfare.

That then with the existence of discretionary authority (freies ermessen) government administrative officials are given the authority to form policy regulations (beleidsregel) which are outside the hierarchy of legislation in Article 7 and Article 8 of Law Number 12 of 2011. As regulations that are outside the hierarchy of legislation, beleidsregel may not contradict, replace or delete existing provisions of legislation, its existence only complements when existing legislation does not regulate, is unclear or incomplete. Because it is not in the hierarchy of legislation, the policy regulation cannot be tested materially (judicial review) in the Supreme Court because there is no basis for the legislation above it that orders it or cannot be tested wetmatigheid because there are no regulations that regulate it previously. Thus, to test a policy regulation can only be done with the general principles of good governance. This is because the policy regulation is made by government administration officials whose actions or decisions are limited by the general principles of good governance. Initially, policy regulations were considered regulations that deviated from the authority of the government as conveyed by H.M Laica

"Policy regulations (beleidsregel) began to be realized in the Netherlands in the sixties. At that time, policy regulations (beleidsregel) were suspected of being a deviation from the law. Policy regulations (beleidsregel) are seen as a deviation from the authority of state administration, reminding Dutch administrative law experts of the culture of 'clandastiene wetgeving' which van Vollenhoven suspects is a symptom of the emergence of 'real legislation' products made by state administration officials (het verschijnsel doelt van wetgeving in concreto door de administratie)".[5]

However, when the government carries out its duties in order to form a welfare state, many obstacles are found due to the many rapid changes so that legal means are needed that can adopt these changes. The obstacles caused by the legal means that are lacking or cannot anticipate changes can be overcome by forming policy regulations as one of the solutions. That P.J.P.Tak stated about this policy regulation in his opinion:

"Beleisregels zijn algemene regel die een bestuursinstantie stelt omtrent Belessteching van ee bestuursbevoegheid jegens de burgers of een andere bestuursinstantie en voor welke regelstelling de grondwet nochde formele wet direct een uitdrukkelijke gronslag biedien Beleidsregels berusten dus niet op een bevoegdheid tot wetgeving en kunnen daarom ook geen algemeen verbindende voorschriften zijn maar op een bestuursbevoedg heid van een bestuursorgaan en betreffen de.uitoefening van die bevoegdheden.[6] (Policy regulations are general regulations issued by government agencies regarding the implementation of government authority towards citizens or other government agencies and the creation of these regulations does not have a clear basis in the Constitution and formal laws, either directly or

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indirectly. This means that policy regulations are not based on the authority to create laws and therefore do not include general binding laws and regulations but are placed on the authority of the government of a state administrative organ and are related to the implementation of government)".

The same opinion was also conveyed by Philipus M. Hadjon, policy regulations are essentially the result of the actions of government administration officials who aim to "naar buiten gedbracht schriftelijk beleid", namely to show out a written policy that functions as an operational part of the implementation of government tasks so that it cannot change or deviate from laws and regulations. This regulation is interpreted as a shadow law of the law. Thus, policy regulations are referred to as pseudo-wetgeving (pseudo legislation) or spigelrecht (shadow/mirror law).[7]

Menurut van Kreveld dalam praktek penyelenggaraan pemerintahan peraturan kebijakan dapat dibuat dalam beberapa bentuk atau jenis peraturan antara lain garis-garis kebijaksanaan (*beleidslipijnen*), kebijaksanaan *(het beleid*), peraturan (*voorschriften*), pedoman (reichtlijnen) petunjuk (*regelingen*), surat edaran (*circulaires*) resolusi (*resoluties*), instruksi (aanschrijvingen), nota kebijaksanaan (*beleids-nota's*), peraturan menteri (*reglemens ministriele*), keputusan *(beschikkingen*), pengumuman (*en bekenmakingen*).[8] The formation of this policy regulation does not arise from the authority delegated by the Constitution or the Law. Its formation arises from free authority. However, freedom is not without limits. The limits that must be considered in carrying out such free actions include: a) aimed at carrying out public service duties and facilitating the implementation of government; b) is an active action of the administration; c) the action is permitted by law; d) the action is taken on one's own initiative; e) the action is intended to resolve important issues immediately; f) in accordance with the AUPB; g) does not cause conflict; h) is carried out in good faith; i) can be accounted for.[9]

From these limitations, it is clear that the formation of policy regulations must be based on the interests of the intent and purpose for the interests of carrying out the tasks assigned to administrative officials, including in the context of public services (bestuurszorg). Thus, policy regulations cannot be made based on the wishes of government administrative officials alone, but rather on how the tasks assigned to these officials can be carried out effectively and efficiently (doelmatigheid van bestuur). Beleidsregel is an administrative policy issued by government officials to regulate the implementation of certain tasks. According to Van Wijk and Konijnenbelt, beleidsregel provides guidance for officials in exercising their authority, especially in situations where laws and regulations do not provide specific guidance.

Decree of the Director General of Taxes Number 206/PJ/2021 can be considered a form of beleidsregel because it provides operational guidance for officials of the Directorate General of Taxes in exercising their authority, especially in regulating the procedures for implementing taxation that are not regulated in detail in the law. Although beleidsregel is not a statutory regulation that has the same legal force as a law, according to Utrecht, beleidsregel can bind the public when announced and implemented consistently by government agencies.

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That thus the formation of the Decree of the Director General of Taxes Number 206/PJ/2021 was made based on discretionary authority. This discretionary authority is used by the Director General of Taxes due to the need for the implementation of daily tasks that are quite numerous and spread across several regions in Indonesia. With this Decree of the Director General of Taxes being made, it is hoped that services will be carried out effectively and efficiently and for the sake of legal certainty that can be obtained easily and quickly in accordance with the intent of Article 22 of the UUAP.

The concept of discretion or freies ermessen in Indonesian administrative law is regulated in Article 22 of the UUAP, which states that administrative officials can use discretion to ensure that administrative decisions taken are in accordance with legal objectives, taking into account the general principles of good governance.

This discretion gives administrative officials, including those within the DGT, the flexibility to make decisions in situations that are not regulated in detail by laws and regulations or when further interpretation is required. In the context of Decision Number 206/PJ/2021, discretion is used to provide flexibility to DGT officials in implementing tax policies that are more appropriate to the specific conditions faced in the field. This discretion must remain within the established legal limits, not deviate from the objectives of the law, and must comply with the principles set out in the laws and regulations.

Binding Power of Policy Regulations

The formation of policy regulations begins with the existence of concrete problems due to the unavailability of adequate legal advice due to laws and regulations that are not regulated, unclear or incomplete.

Based on the good intentions of officials to carry out their duties effectively and efficiently, even though there are no supporting laws and regulations, a policy regulation is made. Of course, good intentions are based on the AUPB and do not conflict with existing laws and regulations. According to H.M. Laica Marzuki, policy regulations are made because of the freedom of government (vrij bestuur) in a modern welfare state, namely:

"The function of policy regulations (beleidsregel) remains as part of operational arrangements, does not change laws and regulations into new substantive rules... policy regulations (beleidsregel) are legal means (juridische instrumentarium) of state administration that aim to dynamize the validity of laws and regulations (algemene verbindende voorschrift).[10]

Prajudi Atmosudirdjo, calls policy regulations pseudo legislation (pseudo wetgeving) which is interpreted as the creation of legal rules by authorized State Administration officials which are actually intended as guidelines (richtlijnen) for implementing policies to implement a statutory provision, but are widely published.[11]

This pseudo-legislation is generally used to create policies in order to implement the provisions of the law. Thus, this regulation binds the citizens concerned indirectly, those who are directly bound by this regulation are the implementing officials according to the delegation given. According to Baker and Stroink, policy regulations were originally:

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These rules originate as 'internal rules' in which the administrative authority sets out Yis policy as to how the empowering Act is to be applied. However these rules are often published, or otherwise made known to the public, as a result of which they acquire an 'external effect'.

Carlo Romano stated that policy regulations were originally internal rules where government bodies set policies on how the authority granted by law should be implemented. Government bodies make policy regulations as a form of regulation for themselves (self-regulation) on the implementation of government authority. In a rigid doctrine, policy regulations only work internally and do not create rights or obligations for citizens.[12] Policy regulations as internal rules, where government agencies or officials establish policies on how the authority granted in the law is implemented. However, policy regulations are often disseminated or intended to be known to the public so that they produce external effects.[13] Policy regulations are made by government agencies/officials when the law leaves broad discretion for government agencies/officials to implement the law, but the law does not order the creation of implementing regulations. In Indonesia, several legal experts have different opinions about the validity of policy regulations. According to Ridwan HR, policy regulations function as the operational aspects of carrying out government tasks and these regulations cannot deviate from statutory regulations.[14] Apart from that, it was stated that the formation of policy regulations was due to the following reasons: [15] :

"Consideration of various possibilities (de afweging van belangen), absence of statutory regulations (geen wettelijke voorschriften bestaan), discovery of facts (vasstelling van feiten), explanation of statutory regulations (de uitleg van wettelijke voorshriften), and interpretation of laws (wetinterpretatie)

Meanwhile, Hamid S. Attamimi stated that policy regulations have similarities in nature with statutory regulations, namely that they apply generally.[16] That the validity of generally applicable policy regulations is also stated by P de Haan and Laica Marzuki. According to P. de Haan there are four elements in policy regulations, namely[17] :

a) *een algemene regel*; (general rules)

b) *omtrent de uitoefening van een bestuursbevoegheid jegens de burger*: (relating to the implementation of government authority over citizens)

c) *vastgesteld door een bestuursinstantie die de bevoegheid daartoe niet uitdrukkelijk aan de Grondwet of formele wet ontleent, doch impliciet aan de bestuursbevoegheid zelf en;* (Formulated by government agencies whose authority is not expressly regulated in the Constitution or Law, but implicitly government authority is inherent in their position)

d) *welke in beginsel is ingevolge de algemene beginselen van behoorlijk bestuur* (in principle an elaboration of the general principles of good governance)

In line with this opinion, Laica Marzuki added that policy regulations consist of elements [18] :

a. Issued by a state administrative body or official as a manifestation of freies ermessen (discretionary power) in written form, which after being announced is to be enforced on citizens;

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b. The contents of the policy regulation in question, in fact, constitute a separate general regulation (generale rule), so it is not merely a guideline for operational implementation as the original purpose of the policy regulation or beleidsregel itself. The state administrative body or official who issues the policy regulation has absolutely no authority to make general regulations (generale rule) but is still considered legitimate considering that beleidsregel is a manifestation of freies ermessen given written form.

That E.A.Al Kerna is of the opinion that policy regulations are a special form of general regulations. Policy regulations are used by the government in the framework of implementing power over the general public. These regulations are made in the framework of government discretion to carry out tasks assigned by law. By issuing these regulations, they can actually be used as guidelines so that the public can avoid arbitrary government actions because there is certainty. Likewise, Marcus Lukman's opinion that policy regulations can be used appropriately and effectively, namely among others[19]:

a. Appropriate and effective as a means of regulation that complements, perfects, and fills in the deficiencies in the laws and regulations.
b. Appropriate and effective as a means of regulation in the absence of laws and regulations
c. Appropriate and effective as a means of regulation for interests that have not been accommodated properly, appropriately, correctly, and fairly in the laws and regulations
d. Appropriate and effective as a means of regulation to overcome the condition of outdated laws and regulations
e. Appropriate and effective for the smooth implementation of administrative tasks and functions in the fields of government and development that are rapidly changing or require updating according to the situation and conditions faced

That from the opinions of the state administrative law experts, it can be understood that policy regulations emerge due to the existence of discretionary authority in acting by government administrative officials (freies ermessen) which is included in the form of general decisions (not bescheking). That the Decision of the Director General of Taxes is in accordance with the principle that states that government administrative officials are required to make decisions to resolve a problem submitted to them. The official may not refuse for any reason that there is no law that regulates its resolution. The Director General of Taxes is only given attribution authority by law to issue decisions.

However, there are no rules in the law that regulate the delegation of authority from the Director General of Taxes to officials below him in issuing decisions. Based on this and the existence of discretionary authority, the Decision of the Director General of Taxes was issued. Thus, the Decision of the Director General of Taxes was issued in order to complement the existing provisions. It can be said that policy regulations are made in order to complement the principle of legality. As stated in the General Explanation Number IV of the 1945 Constitution, it is stated that the Constitution is a written basic law, in addition to the Constitution, unwritten basic laws apply, namely basic rules that arise and are maintained in the practice of state

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administration, although not written. From the explanation, it can be seen by the founders of the nation that in state administration, policy regulations will emerge as a result of the incompleteness of existing written regulations. This is also a form of recognition of the use of policy regulations but still within the limits permitted by law. Beleidsregel allows administrative officials to fill legal gaps with operational policies, which are important to ensure the smooth running of state administration. Beleidsregel is considered valid and can be binding if it does not conflict with higher regulations and is implemented within the limits of authority that has been determined.

That Article 23A of the Amendment to the Constitution which philosophically orders that taxation regulations must be with the consent of the people, namely regulated by law, is a different side from the intention of policy regulations. That the Decree of the Director General of Taxes Number 206/PJ/2021 which is a policy regulation was made as a complement to the law because the law does not regulate, is incomplete or unclear. In the decision there are no regulations regarding obligations or burdens on the community so that regulations are not made in the law. The Decree of the Director General of Taxes, the policy must not conflict with existing laws and regulations and must not conflict with the AUPB The basis for its formation is regulated by the UUAP, namely the discretionary power of the Director General of Taxes.

The purpose of its formation is in the context of carrying out routine tasks carried out by the Director General of Taxes in carrying out the attribution authority granted by the General Provisions of Taxation Law. That from this fact, policy regulations are made not to deviate from the wishes of the law but their formation is intended for the effective and efficient implementation of the tasks it carries out. Thus, policy regulations do not conflict with the intent of Article 23A of the UUD but are instead made to support the implementation of a good agreement between the government and the people in the law. As well as the intention of making Decree Number 206/PJ/2021 to carry out the duties attributed to the Director General of Taxes by the General Provisions of Taxation Law.

CONCLUSION

Article 23A of the 1945 Constitution states that taxes and other compulsory levies for state purposes must be regulated by law, while Article 28 H paragraph (4) emphasizes that every individual has the right to own private property, which may not be taken over arbitrarily. These two articles reflect the protection of citizens' rights against government power. Based on considerations from these articles, tax regulations that are compulsory in nature, and do not provide direct contributions to society, must be the result of an agreement between the legislature, as representatives of the people, and the executive, who is responsible for implementing tax regulations and collection.

However, in the context of state revenue, tax regulations are also regulated by discretion through the Regulation of the Minister of Finance and can even involve the Decree or Regulation of the Director General which is of a policy nature (beleids regel). This shows that in addition to the legal basis of the law, there is also room for policy to adjust tax regulations according to the needs of the state.

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Footnotes

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