

**Article History**

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# Harmonizing Investigative Powers of KPK and Tax Authority in State Financial Crimes

**Vito Oktovianus Maupiku<sup>1</sup>, Mardian Putra Frans<sup>2</sup>**<sup>1,2</sup> Universitas Kristen Satya Wacana, Indonesia\* correspondence email: [maupikuvito@gmail.com](mailto:maupikuvito@gmail.com)**Abstract**

**This study aims** to analyze the overlap of investigative authority between investigators of the Corruption Eradication Commission (KPK) and investigators of the Directorate General of Taxes (DJP) in criminal acts that cause financial losses to the state and to harmonize these authorities.

**The study is** a normative legal study using a legislative approach and a conceptual approach.

**Novelty** previous studies have discussed the legal analysis of the authority of the Corruption Eradication Commission as the prosecutor of corruption offenders and the position of civil servant investigators of the Directorate General of Taxes in the framework of criminal tax law enforcement in Indonesia. The difference in this study is that it identifies and analyzes in depth the potential overlap of authority between the DJP investigators and the KPK in handling cases involving tax crimes that have implications for state financial losses, as well as formulating a model for coordination and synchronization of authority based on the principles of ultimum remedium and efficiency of law enforcement based on the principles of limited authority and lex specialis systematis.

**The results** the application of the principle of limited authority and the principle of lex specialis systematis strengthens the authority of DJP investigators in handling tax crimes that cause financial losses to the state.

**Conclusion** investigators of the DJP have more specific and effective authority in handling tax crimes that cause financial losses to the state, based on the principle of limited authority and the principle of lex specialis systematis.

**Keywords:** KPK Investigators; DJP Investigators; Principle of lex specialis systematis; Principle of limited authority.

**Abstrak**

**Penelitian ini bertujuan** Menganalisis adanya tumpang tindih kewenangan penyidikan antara penyidik Komisi Pemberantasan Korupsi (KPK) dengan Penyidik Direktorat Jenderal Pajak (DJP) tindak pidana yang merugikan keuangan negara serta berupaya melakukan harmonisasi

**Metode penelitian** ini merupakan Penelitian hukum normatif dengan menggunakan pendekatan perundang-undangan dan pendekatan Konseptual.

**Kebaruan** penelitian sebelumnya membahas tentang Analisis Yuridis Kewenangan Komisi Pemberantasan Korupsi Sebagai Penuntut Pelaku Tindak Pidana Korupsi dan Kedudukan Penyidik Pegawai Negeri Sipil Direktorat Jenderal Pajak Dalam Kerangka Penegakan Hukum Pidana Perpajakan di Indonesia. Perbedaan dari penelitian ini adalah mengidentifikasi dan menganalisis secara mendalam potensi tumpang tindih kewenangan antara Penyidik DJP dan KPK dalam penanganan kasus yang melibatkan tindak pidana perpajakan yang berimplikasi pada kerugian keuangan negara, serta merumuskan model koordinasi dan sinkronisasi kewenangan berbasis prinsip ultimum remedium dan efisiensi penegakan hukum berdasarkan asas kewenangan terbatas dan lex specialis systematis.

**Hasil penelitian** penerapan asas kewenangan terbatas, dan asas lex specialis systematis

*memperkuat kewenangan penyidik DJP dalam penanganan tindak pidana perpajakan yang merugikan keuangan Negara.*

**Kesimpulan** *penyidik DJP memiliki kewenangan yang lebih spesifik dan efektif dalam menangani tindak pidana perpajakan yang merugikan keuangan Negara, berdasarkan asas kewenangan terbatas, dan asas lex specialis systematis.*

**Kata Kunci** : *Penyidik KPK; Penyidik DJP; Asas lex specialis systematis; Asas kewenangan terbatas.*

## 1. INTRODUCTION

In Indonesia, there are a number of law enforcement agencies that have the authority to handle criminal cases related to state finances, including law enforcement agencies originating from financial institutions themselves and law enforcement agencies outside financial institutions. In the exercise of investigative authority, investigative activities are carried out through regulations and regulations by investigators to conduct a series of investigative actions. Financial services authority investigators (hereinafter referred to as "OJK Investigators") are authorized investigators to conduct investigations into criminal offenses in the field of financial services.<sup>1</sup> Law enforcement agencies as investigators outside financial institutions that also have the authority to handle criminal cases related to financial crimes are the Indonesian National Police, the Corruption Eradication Commission, and the Attorney General's Office.<sup>2</sup>

Criminal offenses related to finance can also be found in corruption cases. One such case is corruption in the tax sector, which has prompted the South Sumatra High Prosecutor's Office to hold a press conference on Monday, October 30, 2023, announcing three suspects in an alleged corruption case. Additionally, the Special Criminal Investigation Team of the South Sumatra High Prosecutor's Office has designated two new suspects. Both suspects are from the private sector or are taxpayers, and the case is currently being handled directly by the tax investigation team.<sup>3</sup>

In relation to this case, the three tax officials are suspected of accepting bribes from problematic companies. They acted as tax auditors to reduce the companies' tax payments, which ultimately resulted in lower state revenue while they enjoyed the benefits.<sup>4</sup>

This is contrary to the law as specifically stipulated in Article 39 paragraph (1) letter (i) of Law Number 28 of 2007, which states that:

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<sup>1</sup> Muh, Afdal Yanuar. Kewenangan Penyidik Otoritas Jasa Keuangan dalam Menyidik Tindak Pidana Pencucian Uang. *Journal of anti-money laundering/countering the financing of terrorism*, 1(1), 2022. 67-68. DOI: [easchgate.net/publication/371117837\\_kewenangan\\_penyidik\\_otoritas\\_jasa\\_keuangan\\_dalam\\_menyidik\\_tindak\\_pidana\\_pencucian\\_uang](https://easchgate.net/publication/371117837_kewenangan_penyidik_otoritas_jasa_keuangan_dalam_menyidik_tindak_pidana_pencucian_uang)

<sup>2</sup> Junaidi, Abdullah. Tugas dan Wewenang Lembaga Penanganan Tindak Pidana Korupsi di Indonesia. *Yudisia*, 5(1), 2014. 102-121. DOI: <https://journal.iainkudus.ac.id/index.php/Yudisia/article/view/696>

<sup>3</sup> Adrian Fajriasyah. Tiga Pegawai Pajak Palembang Jadi Tersangka Kasus Korupsi Perpajakan. Diakses dari [https://www.kompas.id/baca/nusantara/2023/10/30/tiga-pegawai-pajak-palembang-tersangka-kasus-korupsi-pemenuhan-kewajiban-perpajakan?status=sukses\\_login&login=1726645239027&open\\_from=header\\_button&loc=header\\_button.accessed](https://www.kompas.id/baca/nusantara/2023/10/30/tiga-pegawai-pajak-palembang-tersangka-kasus-korupsi-pemenuhan-kewajiban-perpajakan?status=sukses_login&login=1726645239027&open_from=header_button&loc=header_button.accessed) (2024, Oktober 8).

<sup>4</sup> Putusan Pengadilan Negeri Palembang, Nomor 13/Pid.Sus-TPK/2024/PN.PIng, 25 Juli 2024.

"Any person who intentionally: fails to remit taxes that have been withheld or collected, thereby causing a loss to state revenue, shall be punished with imprisonment for a maximum of 6 (six) months and a maximum of 6 (six) years and a fine of at least 2 (two) times the amount of taxes owed that have not been paid or paid in full and a maximum of 4 (four) times the amount of taxes owed that have not been paid or paid in full."

In Article 1(1) of Law No. 8 of 1981 on the Criminal Procedure Code, it is explained that: "An investigator is a police officer of the Republic of Indonesia or a specific civil servant who is granted special authority by law to conduct investigations." Furthermore, Article 1(10) of Law No. 2 of 2002 on the Police (Police Law) states that an investigator is a police officer authorized to conduct investigations. The Police Law also emphasizes that investigators have the rights and obligations to handle all types of crimes, including conducting investigative proceedings against various criminal offenses. The investigative stages of corruption cases by police investigators begin with the collection of evidence in accordance with the provisions of Article 184(1) of the Criminal Procedure Code (KUHP).<sup>5</sup> Article 7 of Law No. 19 of 2019 on the Corruption Eradication Commission (KPK Law) regulates the general authority of the KPK, including conducting investigations and inquiries into criminal acts. It also regulates KPK investigators, including the requirements to become a KPK investigator and their main duties. KPK investigators have the authority to handle corruption cases involving state officials and cases related to corruption in the public sector, including in the fields of taxation or finance. Pursuant to Article 30(1)(d) of Law No. 16 of 2004 on the Indonesian Prosecutor's Office, the authority of prosecutors as investigators is clearly stipulated in the law, which states: "Conducting investigations into specific criminal offenses in accordance with the law."<sup>6</sup>

From the description of the duties of investigators in each institution, the author found similarities and differences. The similarities refer to investigative actions such as gathering evidence to clearly uncover a crime and identify the suspect, particularly in cases that cause financial losses to the state, with a focus on corruption-related crimes in the field of taxation. For example, tax evasion by tax officials can be categorized as a criminal act of corruption due to the loss incurred by the state or for violating tax laws, which are categorized as tax crimes.

The author then assessed that at one time, investigations could be conducted on the same object, so that this could potentially overlap, as in the decision mentioned above. In the above case, the investigation should also have been conducted by investigators from the Directorate General of Taxes itself as *representatives* under Article 1 paragraph (8) of Regulation Number KEP-272/PJ/2002, which states: "Tax Investigators are certain civil servants within the Directorate General of Taxes who are granted special authority as investigators to

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<sup>5</sup> I, Putu Edi Rusmana, I, Made Minggu Widyantara, & Luh, Putu Suryani. Kewenangan Penyidik Kepolisian Dalam Melakukan Penyidikan Tindak Pidana Korupsi. *Jurnal Preferensi Hukum*, 2(3), 2021. 576-580. <https://ejournal.warmadewa.ac.id/index.php/juprehum/article/download/4018/2864>

<sup>6</sup> Vania, Kurnia, Sahuri, Lasmadi, & Elisabeth, Siregaer. Tinjauan Yuridis Terhadap Tugas dan Kewenangan Jaksa sebagai Penyidik dalam Perkara Tindak Pidana Korupsi. *Journal Of Criminal Law*, 1(3), 2020. 1-3. <https://scholar.google.com/citations?user=cF4xoiwAAAAJ&hl=en&oi=sra>

conduct investigations into criminal acts in the field of taxation, in accordance with applicable laws and regulations." Thus, they have special authority as investigators in handling cases of criminal tax offenses based on applicable legal regulations, where the Director General of Taxes may also conduct investigations and inquiries into the above cases. In the course of this case, investigators from the Directorate General of Taxes (hereinafter referred to as DJP) handled taxpayers (private parties) due to the element of cooperation between three tax officials handled by the Attorney General's Office.

In this case, there is also an element of gratification that could actually be handled by the Corruption Eradication Commission (KPK) investigators. This is in accordance with Article 38 paragraph (1) of Law Number 30 of 2002, which states that the investigation, examination, and prosecution of criminal acts of corruption must follow the applicable criminal procedure law, in accordance with Law No. 31 of 1999 on the Eradication of Corruption, as amended by Law No. 20 of 2001. Furthermore, according to Article 50(2) of the same Law, if the investigation is conducted by the police or the prosecution, the process must always be coordinated with the KPK. Considering the authority held by the KPK, it is not impossible that this case could be directly handled by the KPK.

Based on Article 11 (a) of Law No. 19 of 2019: "involving law enforcement officials, state officials in criminal acts of corruption committed by law enforcement officials or state officials." Based on Article 11(a), it can be concluded that the KPK has the authority to conduct investigations and inquiries into corruption crimes involving state officials or employees, including those occurring within the tax administration.

Thus, the reason why the KPK has authority in investigating corruption cases in the tax environment is based on several reasons, namely that the KPK is an institution that was established with the consideration that government institutions in handling corruption cases have not been effective and efficient to date. The KPK should be granted full authority to handle corruption cases. Meanwhile, the National Police and the Prosecutor's Office act as supporting parties to assist the KPK when needed, functioning as the central hub in the fight against corruption. This is because corruption falls under the category of special crimes that require special handling.<sup>7</sup>

This is reinforced by Article 4 of the Law, which states that the KPK was established with the aim of making efforts to eradicate corruption more effective and efficient. The reinforcement is intended to enable the KPK to eradicate corruption to the maximum extent possible, with implications for the recovery of state losses following corruption. This indicates that the KPK can handle any case of corruption that occurs in all state institutions, including in the taxation sector.

Furthermore, the author argues that there are reasons why tax investigators have the authority to investigate cases of corruption occurring in the taxation environment because tax

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<sup>7</sup> Tunjung, Mahardika Hariadi & Luqman Wicaksono. Perbandingan Penanganan Tindak Pidana Korupsi Di Negara Singapura dan Indonesia. *Jurnal Forum Studi Hukum dan Kemasyarakatan* 5(1), 2013.265-267. DOI: <https://jurnal.uns.ac.id/recidive/article/view/32712>

investigators can carry out investigative audits, which are focused on revealing inefficiencies or abuse of authority in certain institutions. Tax evasion cases can be prevented, uncovered, and resolved through investigative audits, which are divided into three categories: detective, repressive, and preventive. The investigative audit process usually begins with receiving an assignment, followed by planning, evidence collection, report preparation, and finally legal prosecution. At this stage, auditors may also act as legal counsel to defend the defendant in court, and forensic audits may be requested to provide testimony regarding the evidence used to identify the defendant.<sup>8</sup>

Furthermore, Civil Servant Investigators (PPNS) in the field of taxation, under the Directorate General of Taxes, have the authority to investigate criminal tax offenses. The PPNS of the Directorate General of Taxes is a specialized unit focused on handling tax-related criminal cases, in accordance with the regulations set forth in Law No. 8 of 1981 and Law No. 16 of 2009. Tax-related criminal offenses are their primary responsibility. Additionally, pursuant to Law No. 16 of 2009, these regulations serve as special laws that supersede the general provisions of Law No. 8 of 1981.<sup>9</sup>

Furthermore, the Whistleblowing system plays a role in encouraging the involvement of employees of the Directorate General of Taxes (DJP) and the public also has an important role in preventing and eradicating criminal acts of corruption, including monitoring the abuse of authority by employees within the Directorate General of Taxes (DJP). Through the whistleblowing system, active participation by officials/employees and the public in supporting the prevention and handling of corruption and abuse of power over services provided by the Ministry of Finance can be further enhanced. Therefore, effective management and follow-up on every report of violations occurring within the DJP are necessary.<sup>10</sup> With the above reasons, investigators from the Directorate General of Taxes can be capable and effective in handling corruption crimes in the DJP area.

Criminal acts in the taxation sector related to corruption are regulated in Law Number 28 of 2007, the third amendment to Law Number 6 of 1983 concerning General Provisions and Procedures for Taxation. This provision can be found in Article 39 paragraph (1) letter (i), which regulates:

"Any person who intentionally fails to remit taxes that have been withheld or collected, thereby causing a loss to state revenue, shall be punished with imprisonment for a

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<sup>8</sup> Galih, Setyo Refangga, *et al.* Mencegah Kejahatan Keuangan: Peran Auditor Investigas dalam Mengungkapkan Pengelapan Pajak. *Journal Of Social Science Research*, 4(3), 2024. 1-11. DOI: <http://j-innovative.org/index.php/Innovative/article/view/12378>

<sup>9</sup> Farrel, Alanda Fitrah, Agus, Takawariawan, & Zainak, Muttaqin. Kedudukan Penyidik Pegawai Negeri Sipil Direktorat Jendral Pajak Dalam Kerangka Penegakan Hukum Pidana Perpajakan Di Indonesia. *Sign Jurnal Hukum*, 3(1), 2021. 1-17. DOI: <https://jurnal.penerbitsign.com/index.php/sjh/article/download/v3n1-1-25/56/#:~:text=Hasil%20penelitian%20menunjukkan%20bahwa%20kedudukan,perpajakan%20ditekankan%20sebagai%20penyidik%20utama.>

<sup>10</sup> Umy, Anisari Khulsuma. Analisis Whistleblowing System Direktorat Jendral Pajak Untuk Mengoptimalkan Penerimaan Pajak. *Akunesa*, 3(1), 2014. 1-11. DOI: <https://ejournal.unesa.ac.id/index.php/jurnal-akuntansi/article/view/12358>

minimum of 6 (six) months and a maximum of 6 (six) years and a fine of at least 2 (two) times the amount of unpaid or underpaid taxes and up to 4 (four) times the amount of unpaid or underpaid taxes.”

Furthermore, the author found decision No. 2569 K/PID.SUS/2018, in which the defendant was found guilty of deliberately failing to pay taxes that had been deducted or collected, resulting in a loss of state revenue. In this case, the indictment referred to Article 39 paragraph (1) letter i,<sup>11</sup> and the case is being handled by the Directorate General of Taxes as the investigating agency. However, given that there are elements of state losses, this case should also be handled by the KPK.

The urgency of this paper lies in the potential overlap of investigative authority between the Corruption Eradication Commission (KPK) and the Directorate General of Taxes (DJP) in handling criminal acts that cause financial losses to the state. This paper explicitly states the research objective as “To analyze the overlap of investigative authority between investigators from the Corruption Eradication Commission (KPK) and investigators from the Directorate General of Taxes (DJP) in criminal cases that cause financial losses to the state.” This overlap can lead to legal uncertainty, inefficiency in law enforcement, and potential conflicts of authority between institutions, which in turn can hinder efforts to recover state financial losses and effectively combat tax crimes and corruption. Therefore, research that seeks to analyze and harmonize these authorities is crucial.

The novelty of this research lies in the justification offered regarding the division of authority between the DJP and the KPK, particularly in the context of “criminal acts that harm state finances.” This study specifically justifies that DJP investigators have special authority in investigating tax crimes based on Law No. 28 of 2007 and Law No. 16 of 2009 as well as the principle of *lex specialis systematis*. Meanwhile, the KPK has the authority to investigate and prosecute corruption crimes, including those involving tax officials, based on Law No. 31 of 1999, with “the concept of state financial loss as the point of convergence of the authority of these two institutions.” This approach, which seeks to harmonize based on the principles of limited authority and the principle of *lex specialis systematis*, as well as identifying the common ground of state financial loss, offers a new perspective to address potential overlapping investigative authorities, which is expected to generate recommendations for more effective implementation in the enforcement of criminal law that harms state finances.

Based on the above reasons, the KPK investigators and the Director General of Taxes found similarities in the authority of KPK investigators and Tax Directorate General investigators in handling criminal cases related to state financial losses. This shows that both institutions have special authority to conduct investigations. The KPK itself has investigators who specialize in handling corruption, similar to investigators from the Directorate General of Taxes (DJP) who have investigative authority in criminal tax cases as regulated in Article 44 paragraph (1) of Law Number 28 of 2007, which is the third amendment to Law Number 6 of 1983 concerning General Provisions and Procedures for Taxation. which states that:

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<sup>11</sup> Putusan Mahkamah Agung, Nomor 2569 K/PID.SUS/2018, 20 September 2019.

"Investigations into criminal offenses in the field of taxation may only be conducted by certain civil servants within the Directorate General of Taxes who have been granted special authority as investigators of criminal offenses in the field of taxation." Thus, DJP investigators have the authority to conduct investigations into tax-related criminal offenses.

## **2. METHOD**

Normative legal research is research that is normative in nature with a written legal approach (law in books) or research based on rules or norms that apply in society. Normative research can be considered to rely largely on secondary data, which includes primary, secondary, and tertiary legal materials. Most of these data sources come from laws or written regulations that apply in society.<sup>12</sup> Normative legal research is a type of research that focuses on written aspects of law or legislation (law in books). In this type of research, researchers rely on rules, norms, or legal principles that are already in force in society. The methods used in this type of research are more oriented toward analyzing existing legal texts, such as laws, government regulations, or official court decisions. This research uses secondary data, which means that researchers do not collect data directly from the field, but rather from existing sources. These data sources are divided into three main types: 1. Primary legal materials: These include the most authoritative legal texts, such as laws, government regulations, and constitutions. All legal rules that have been enacted and recognized by the state are primary legal materials; 2. Secondary legal materials: These include literature that explains or interprets primary legal materials, such as legal textbooks, journal articles, or opinions from legal experts; 3. Tertiary legal materials: These include sources that provide further guidance or instructions, such as legal dictionaries, legal encyclopedias, or legal indexes. With this approach, normative legal research focuses on how written law is applied and interpreted in society. Researchers are not usually directly involved with the facts or events that occur in the field, but rather with the analysis of existing legal documents.

## **3. DISCUSSION**

### **3.1 The Authority of Investigators of the Director General of Taxes and the Authority of Investigators of the Corruption Eradication Commission**

Judgment No. 13/Pid.Sus-TPK/2024/PN.Plg, rendered on July 25, 2024, addresses a case of corruption resulting in financial loss to the state, involving tax officials and taxpayers. In Indonesia, there is a special investigative team responsible for handling tax-related cases with criminal elements. Pursuant to Article 6(1)(b) of Law No. 8 of 1981 on the Criminal Procedure Code, certain civil servants are designated as Civil Servant Investigators (PPNS), who are generally tasked with investigating specific criminal offenses.

For tax crimes, the authorized investigators are PPNS from the Directorate General of Taxes (DJP), in accordance with the provisions of Article 1 point (32) of Law Number 8 of 1981, which provides an explanation regarding this matter:

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<sup>12</sup> Muhammad, Hendri Yanova, Parman, Komarudin, & Hendra, Hadi. Metode Penelitian Hukum: Analisis Problematika Hukum Dengan Metode Penelitian Normatif dan Empiris. *Badamai Law Journal*, 8(2), 2023. 394-400. <https://ppjp.ulm.ac.id/journal/index.php/blj/article/view/17423>

"Investigators are certain civil servants within the Directorate General of Taxes who are given special authority as investigators to investigate criminal acts in the field of taxation in accordance with the provisions of laws and regulations."

Referring to Article 1 point (3) of Law Number 5 of 2014 concerning State Civil Apparatus, it is stated that:

"Civil servants, hereinafter referred to as PNS, are Indonesian citizens who meet certain requirements, are appointed as permanent ASN employees by the personnel management official to hold government positions. PNS are part of the state apparatus tasked with providing professional, honest, fair, and equitable services to the public in the performance of state, government, and development duties, including law enforcement as investigators."

Article 44 paragraph (2) of Law Number 28 of 2007, which is the third amendment to Law Number 6 of 1983 concerning General Provisions and Procedures for Taxation, explains that the authority of investigators referred to in paragraph (1) includes: a. receiving, seeking, collecting, and examining statements or reports related to criminal acts in the field of taxation to make such statements or reports more complete and clear; b. examining, seeking, and collecting information regarding individuals or entities concerning the truthfulness of acts committed in connection with criminal acts in taxation; d. requesting information and evidence from individuals or entities in connection with criminal acts in the field of taxation; e. examining books, records, and other documents related to criminal acts in the field of taxation; f. conducting searches to obtain evidence of accounting, recording, and other documents, as well as seizing such evidence; g. requesting assistance from experts in the performance of criminal investigation duties in the field of taxation; h. ordering a person to stop and/or prohibiting a person from leaving a room or place during an investigation and checking the identity of persons, objects, and/or documents carried; i. photographing a person related to a criminal act in the field of taxation; j. summoning persons to be heard and examined as suspects or witnesses; k. halting investigations, and/or taking other necessary actions to ensure the smooth conduct of criminal investigations in the field of taxation in accordance with the provisions of laws and regulations.<sup>13</sup>

The duties of DJP investigators are special duties based on Article 36 of the KUP Law, because they seek data that provides clues as to whether a taxpayer has paid their taxes in full or not. Investigators may carry out their duties officially and appropriately in accordance with Article 38 or through informal channels as regulated in Article 40 of the Tax Administration Law. Formal investigations involve examining books and related documents, while informal investigations involve monitoring information received by the tax office, including information from the public and the media.<sup>14</sup> PPNS in carrying out law enforcement related to tax crimes

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<sup>13</sup> Undang-Undang Nomor 28 Tahun 2007 Perubahan Ketiga atas Undang-Undang Nomor 6 Tahun 1983 tentang Ketentuan Umum dan Tata Cara Perpajakan, Nomor Ln.2007/NO.85, TLN NO.4740, <https://peraturan.bpk.go.id/Details/39916/uu-no-28-tahun-2007>

<sup>14</sup> Siti, Maimana Sari Ketaren, Alvi, Syahrin, Madiasa Ablisar, & M, Hamdan. Peranan Penyidik Pegawai Negeri Sipil (PPNS) Perpajakan Dan Penyidik Polri Dalam Penanganan Tindak Pidana Perpajakan. *USU Law Journal*, 2(2), 2013. 57-65. <https://media.neliti.com/media/publications/164407-ID-peranan-penyidik-pegawai-negeri-sipil-pp.pdf>

is under the supervision of the Supervisory Coordinator (Korwas) who is held by the Investigator of the Indonesian National Police. Therefore, PPNS DJP, as stipulated in Article 44 paragraph (3) of Law Number 16 of 2009, stipulates that: "Investigators shall notify the commencement of an investigation and submit the results of their investigation to the public prosecutor through the Indonesian National Police investigator in accordance with the provisions of the Criminal Procedure Code."<sup>15</sup> Investigators at the Directorate General of Taxes (DJP), which is part of the Civil Service (ASN), have special responsibilities and authorities in investigating tax cases, as regulated by the principle of *lex specialis derogat legi generali*. With their expertise in taxation, they can quickly handle cases that are detrimental to state finances, as they are familiar with the taxation system and can immediately detect criminal acts. This makes the handling of criminal acts that are detrimental to the state more effective and efficient in the taxation sector.

Meanwhile, the KPK, which is the authorized agency for handling corruption cases, has not been operating optimally. This has led to an increase in corruption cases that are difficult to control, which has become a major problem for the country. Therefore, a KPK that is truly independent and free from any influence is needed to carry out the duties and authorities granted to it in Law No. 31 of 1999 concerning Eradication of Corruption. The KPK is an independent state institution, and its existence is crucial in combating corruption in Indonesia. Additionally, the KPK has competent investigators from various law enforcement agencies who assist in the investigation and prosecution of corruption cases. Pursuant to Article 6 of the KPK Law, the KPK's duties are divided into five categories: a. coordinating with authorized agencies in the eradication of corruption; b. supervising authorized agencies in the eradication of corruption; c. conducting investigations, prosecutions, and legal actions against corruption; d. taking preventive measures against corruption; f. monitoring the implementation of state governance.<sup>16</sup>

The Corruption Eradication Commission (KPK) has special authority as an institution authorized to investigate and prosecute corruption cases. In carrying out its duties, the KPK can also cooperate with other agencies that have similar authority in the eradication of corruption. If a case cannot be pursued or is suspected of containing elements of corruption, the KPK can involve experts to assist in the investigation and prosecution. The KPK's special status is also evident in Article 12(1)(a) of Law No. 19 of 2019 on the Corruption Eradication Commission, which grants the KPK the authority to conduct wiretapping and record conversations. Wiretapping is an important step in preventing and eradicating corruption, which is a major issue for the nation. However, this authority may only be exercised in

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<sup>15</sup> Farrel, Alanda Fitrah, Agus, Tariawan, & Zainal, Muttaqin. Kedudukan Penyidik Pegawai Negeri Sipil Direktorat Jendral Pajak Dalam Kerangka Penegakan Hukum Pidana Perpajakan Di Indonesia. *SIGn Jurnal Hukum*, 3(1), 2021. 1-5.  
<https://jurnal.penerbitsign.com/index.php/sjh/article/download/v3n1-1-25/56/#:~:text=Hasil%20penelitian%20menunjukkan%20bahwa%20kedudukan,perpajakan%20ditekankan%20sebagai%20penyidik%20utama.>

<sup>16</sup> I, Made Artha Rimbawa. Kewenangan KPK Dalam Memberantas Tindak Pidana Korupsi. *Yustitia*, 15(2), 2021. 87-87, <https://ojs.unr.ac.id/index.php/yustitia/article/download/816/704/>

accordance with applicable procedures and solely for the purposes of investigation, inquiry, and prosecution that are relevant, and must be accountable.

Wiretapping conducted by the KPK in its investigation of corruption cases, in accordance with Law No. 19 of 2019 on the Corruption Eradication Commission, is carried out against individuals who are strongly suspected of involvement in criminal acts of corruption. In addition, wiretapping may also be carried out against individuals who are deemed to possess important information that could help clarify a corruption case or those suspected of involvement in acts of corruption.<sup>17</sup> Article 14 of the KPK Law grants the KPK the authority to carry out supervisory duties, as stipulated in Article 6(e), which grants the KPK the right to: 1. conduct reviews of administrative management systems in all government institutions; 2. provide recommendations to leaders of state institutions and the government to make changes if the results of the review indicate that the administrative management system has the potential for corruption; 3. report to the President of the Republic of Indonesia, the House of Representatives of the Republic of Indonesia, and the State Audit Agency if the KPK's recommendations regarding proposed changes are not heeded.<sup>18</sup> Therefore, the KPK has the authority to carry out its duties and functions to investigate and prosecute criminal acts of corruption, which also include criminal acts related to taxes.

### **3.2 Financial losses incurred by the state in corruption and tax crimes that harm state finances**

State finances encompass all rights and obligations of the state that can be valued in monetary terms, as well as all monetary assets or goods owned by the state that are related to the exercise of such rights and obligations. Meanwhile, according to the Law on the Eradication of Corruption, state finances are defined as "All state assets in any form, whether separated or not, including all parts of state assets as well as rights and obligations arising therefrom."<sup>19</sup>

Financial loss to the state is an important element in corruption crimes. According to Articles 2 and 3 of Law No. 31 of 1999 on Corruption Crimes (TIPIKOR), corruption crimes are unlawful acts committed with the intent to benefit oneself, others, or a company, which ultimately result in financial loss to the state. In the phrase "may cause financial loss to the state or the national economy" in Article 2(1) and Article 3 of the TIPIKOR Law, this is interpreted as a formal offense, meaning that corruption is deemed to have occurred once the elements of the act are present, without the need to prove actual financial loss to the state or

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<sup>17</sup> Nandi, Japri Sukri. Penyadapan Oleh Komisi Pemberantasan Korupsi Dalam Penyidikan Tindak Pidana Korupsi Dalam Penyidikan Tindak Pidana Korupsi Berdasarkan Undang-Undang Nomor 30 Tahun 2002 Tentang KPK. *Lex Privatum* 5(8), 2017. 5-5, DOI: <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/download/18201/17728>

<sup>18</sup> Ismail. Fungsi Penyidik KPK Dalam Pemberantasan Tindak Pidana Korupsi Berdasarkan Undang-Undang Nomor 30 Tahun 2002. *Jurnal Ilmu Hukum Legal Opinion*, 1(2), 2013. 1-4, DOI: <https://media.neliti.com/media/publications/144844-ID-fungsi-penyidik-kpk-dalam-pemberantasan.pdf>

<sup>19</sup> Karel, Antonius Paeh. Pengembalian kerugian keuangan negara berdasarkan rekomendasi badan pemeriksa keuangan (BPK) Hubungan Dengan Unsur Kerugian Negara Dalam Tindak Pidana Korupsi. *Jurnal Katlogis*, 5(2), 2017. 49-49. DOI: <https://media.neliti.com/media/publications/157395-ID-pengembalian-kerugian-keuangan-negara-be.pdf>

the national economy. Financial loss to the state itself can be understood as the loss or reduction of money, goods, or valuable documents belonging to the state that cannot be accounted for.<sup>20</sup>

### 3.2.1 Tax crimes that cause financial losses to the State

Tax crimes, also known as crimes in the tax sector, refer to acts that violate rules regarding tax obligations and provisions stipulated in tax laws.<sup>21</sup> According to the law governing criminal acts in the taxation sector, acts referred to as tax crimes are acts that “can cause losses to state revenue.” This means that these crimes are included in the type of acts that can harm state finances or the state economy.<sup>22</sup> Tax crimes related to state finances are regulated in Article 39 of Law No. 28 of 2007 concerning General Provisions and Procedures for Taxation (KUP). This article stipulates that any person who intentionally fails to register, misuses, or uses a Taxpayer Identification Number (NPWP) without authorization, as well as misuses or uses the status of a Taxable Business Entity (PKP) without authorization, may be subject to penalties. According to Article 39A, such violations include the issuance or use of tax invoices, withholding certificates, collection evidence, or tax deposit evidence that does not correspond to the actual transaction, which may also be subject to criminal penalties. Tax crimes are part of crimes under administrative law (*administrative or dependent crimes*), which are known to be easier to apply and more flexible in their enforcement. As long as the primary objective of this law is achieved—ensuring that taxpayers fulfill their obligations by paying taxes—its implementation is considered successful.<sup>23</sup>

### 3.3 The Principle of Limited Authority and the Principle of Lex Specialis in the System of Crimes Against State Finances

The principle of limited authority, in a legal context, refers to the principle that institutions have limitations determined by binding legal provisions and may not exceed the authority granted to them so that investigations can be carried out properly without interference from other parties that could hinder the investigation. Government Administration Law No. 30 of 2014 regulates the authority and responsibilities of government officials so that disputes over authority can be avoided. Government authority, hereinafter

<sup>20</sup> Novela, Janis, Audi, H. Pondang, 7 Adi, T. Koesoemo. Kerugian Keuangan Negara Menjadi Dasar Penyidikan Perkara Pidana Korupsi Pasca Putusan Mahkamah Konstitusi Nomor: 25/PUU-XIV/2016. *Jurnal Hukum Universitas Sam Ratulangi Lex Privatum*, 12(4), 2023. 1-1, DOI: <https://ejournal.unsrat.ac.id/v3/index.php/lexprivatum/article/view/53206/45040>

<sup>21</sup> Erja, Fitria Virginia & Eko, Soponyono. Pembaharuan Kebijakan Hukum Pidana Dalam Upaya Penanggulangan Tindak Pidana Perpajakan. *Jurnal Pembangunan Hukum Indonesia*, 3(3), 2021. 299-300. DOI: <https://ejournal2.undip.ac.id/index.php/jphi/article/view/12832>

<sup>22</sup> Nana, Rosita & Fahmy, Asyhari. Analisa Yuridis Terhadap Asas Lex Specialis Systematis Dalam Tindak Pidana Perpajakan (Studi Kasus Putusan No.95/Pid.Sus-TPK/2021/PN.Smg Atas Nama Aasri Murwani). *Jurnal Hukum dan Pembangunan Ekonomi*, 10(2), 2022. 268-279. DOI: <https://jurnal.uns.ac.id/hpe/article/view/63458>

<sup>23</sup> Valentiono, Ohoiwirin & Ahmad, Sholikhin Ruslie. Penerapan Sanksi Pidana Terhadap Wajib Pajak Yang Melakukan Tindak Pidana Perpajakan. *Bureaucracy Journal: Indonesia Journal Of Law and Social-Political Governance*, 2(2), 2022. 679-691. DOI: [https://www.researchgate.net/publication/366178672\\_PENERAPAN\\_SANKSI\\_PIDANA\\_TERHADAP\\_WAJIB\\_PAJAK\\_YANG\\_MELAKUKAN\\_TINDAK\\_PIDANA\\_PERPAJAKAN](https://www.researchgate.net/publication/366178672_PENERAPAN_SANKSI_PIDANA_TERHADAP_WAJIB_PAJAK_YANG_MELAKUKAN_TINDAK_PIDANA_PERPAJAKAN)

referred to as authority, is the power possessed by government agencies or officials, as well as other state administrators, to act in the realm of public law. Meanwhile, authority is the right granted to government agencies, officials, or other state administrators to make decisions and/or take actions in the performance of government duties. In public law literature, particularly administrative law, government authority is typically classified based on its nature or characteristics.<sup>24</sup> The principle of *lex specialis systematis* is derived from the principle of *lex specialis derogate legi generalis*, whereby when two special laws conflict, the law with the highest authority prevails. In the context of criminal law, there are three criteria for determining whether a law can be categorized as *lex specialis systematis*. First, the substantive criminal provisions in the law differ from or deviate from the general provisions in force. Second, the law regulates formal criminal law that also differs from the general procedures or formalities of criminal law. Third, the law is aimed at a specific group or subject of law.<sup>25</sup> From these two principles, the author understands that the Tax Law, as the legal basis for the Director General of Taxes, has full authority to investigate criminal acts that cause losses to state finances in the taxation sector.

Furthermore, the author uses another principle to justify that for criminal acts that cause financial losses to the state in the tax sector, the authority to handle such cases lies with the Director General of Taxes. The principle referred to is the principle of limited authority. This principle seeks to emphasize that the scope or limits of the authority of investigators in carrying out their investigative duties in cases of corruption in the tax sector, as stipulated in Article 44(1) of Law No. 6 of 1983 on the Tax Administration System, as amended by Law No. 7 of 2021, are as follows: This article regulates the authority of tax investigators. It explains that tax investigators are authorized to conduct investigations into criminal offenses occurring in the tax sector after an investigation has been conducted by the authorized tax officials. However, tax investigators may only conduct investigations related to tax violations, so their authority is limited to criminal offenses related to taxes.

Article 44 paragraph (2) states: "Civil Servant Investigators within the Directorate General of Taxes who are authorized to conduct investigations related to tax crimes may only conduct investigations within the scope of tax cases." This provision clarifies that DJP investigators are authorized to conduct investigative actions, but their authority is limited to tax-related matters, including investigations into tax violations such as tax evasion and misuse of tax invoices. This further aligns with the principle of limited authority, which must not exceed the authority granted by law. Article 44A(c) states: "Such acts do not constitute criminal offenses in the field

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<sup>24</sup> Jefferson, Gerald Langkay, Ronald, J. Mawuntu, & Dani, R. Pinasang. Kajian Hukum Pelampuan Batas Kewenangan Pejabat Administrasi Yang Bertentangan Dengan Asas-Asas Umum Pemerintahan Yang Baik Berdasarkan Undang-Undang Nomor 30 Tahun 2014 Tentang Adminitrasi. *Lex Administratum*, 11(4), 2023.1-4. DOI: <https://ejournal.unsrat.ac.id/index.php/administratum/article/view/48622>

<sup>25</sup> Lilik, Perdana, Penerapan Asas *Lex Specialis Systematis* Pada Tindak Pidana Korupsi Kualifikasi Pemerasan Wajib Pajak Di Pengadilan Negeri Semaran.Tesis. Semarang: Universitas Sultan Agung. 2021. DOI: <http://repository.unissula.ac.id/24842/>

of taxation.” Therefore, this principle specifically clarifies that the authority of DJP investigators is limited to matters within the tax domain.

Furthermore, the author adds another principle to justify that for criminal acts that cause losses to state finances in the tax sector, the competent authority is the Director General of Taxes, namely the principle of *lex specialis systematis*, which is derived from the principle of *lex specialis derogate legi generalis*, where the principle of *lex specialis systematis* is a way to determine which law which is most appropriate to apply in a particular situation where an act can be charged under two or more specific laws. To determine which specific law should be applied among two or more laws, careful consideration must be given to the subjects involved, the object of the alleged violation, the available evidence, as well as the context and location of the violation.<sup>26</sup> Therefore, based on the criteria of *lex specialis systematis*, tax law is one of the fields that best meets these requirements. This shows that the Directorate General of Taxes has special authority in handling criminal acts related to taxation, including those related to corruption in the taxation sector itself.

### **3.4 The most authorized tax investigators conduct investigations into criminal acts that cause financial losses to the state based on the principles of limited authority and systematic *lex specialis*.**

Principle of limited authority Investigators of the Director General of Taxes have authority based on Article 39(i) of the Tax Administration Law, which states: “Failure to remit taxes that have been withheld or collected, thereby causing a loss to state revenue, shall be punished with imprisonment for a minimum of 6 (six) months and a maximum of 6 (six) years and a fine of at least 2 (two) times the amount of taxes due that have not been paid or have been underpaid.” Article 40 states that “Criminal offenses in the field of taxation cannot be prosecuted after the expiration of 10 (ten) years from the due date of the tax, the end of the Tax Period, the end of the Tax Year, or the end of the relevant Tax Year.” Furthermore, Article 43A states that: (1) The Director General of Taxes, based on information, reports, and complaints, is authorized to conduct preliminary evidence examination before conducting an investigation of criminal acts in the field of taxation; (1a) Preliminary evidence examination shall be conducted by civil servant investigators within the Directorate General of Taxes who receive a preliminary evidence examination order; (2) In the event of indications of criminal acts in the field of taxation involving Directorate General of Taxes officials, the Minister of Finance may assign an internal audit unit within the Ministry of Finance to conduct preliminary evidence examination. Article 44 paragraph (1) states: “Criminal investigation in the field of taxation may only be carried out by certain civil servants within the Directorate General of Taxes who have been given special authority as criminal investigators in the field of taxation.” In criminal cases that cause financial loss to the state based on this principle, DJP investigators only have limited authority to conduct investigations within the tax administration, which,

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<sup>26</sup> Silvia Hermala Sagala, *Analisa Hukum Terhadap Penggunaan Lex Specialis Sistematis Dalam Tindak Pidana Perbankan Menjadi Tindak Pidana Korupsi*. Skripsi. Medan: Universitas Pembangunan Panca Budi.2021. DOI: <https://eprints.pancabudi.ac.id/id/eprint/699/1/SILVIA%20HERMALA%20SAGALA.pdf>

according to the author, makes the investigations conducted by DJP investigators more focused on gathering evidence and identifying suspects. As a result, cases of criminal offenses causing financial loss to the state can be resolved more quickly and accurately without overlap or misunderstandings between DJP investigators and investigators from other agencies.

Furthermore, the author justifies that the principle of *lex specialis systematis* is a strong reason why DGT investigators have the most authority. Tax investigators under the law have absolute authority to conduct investigations and examinations of criminal acts that cause financial losses to the state. In the context of taxation, the rules in the Law stand alone, namely *ius singulare* (single law) because they have their own system of rules and laws but are integrated into the national legal system which includes the Criminal Procedure Code, the Criminal Code, and other laws in accordance with the *lex specialis derogat legi generali* principle, which has developed in legal theory, and one of its derivatives is the *lex specialis systematis* principle. Tax criminal law meets the criteria as a principle of *lex specialis systematis* because the parties involved are highly specific, namely taxpayers and tax officials. Additionally, both the substantive and procedural rules in tax criminal law differ from the provisions in the Criminal Code (KUHP) and the Criminal Procedure Code (KUHP).<sup>27</sup> In criminal law, there are three criteria used to determine whether a law can be categorized as *lex specialis systematis*. First, the substantive criminal provisions in the law differ from the general provisions that apply. Second, the law also regulates formal criminal law that differs from general criminal procedures. Third, the parties subject to the law in the statute have special characteristics.<sup>28</sup>

*Lex specialis systematis* is one of the fundamental principles of law. Bellefroid defines legal principles as basic norms whose application is derived from positive law and which are regarded by legal science as generally applicable provisions. Meanwhile, van Der Velden explains that legal principles are based on one or more values to determine situations that need to be realized. One of the functions of legal principles is as a tool to resolve conflicts between various provisions in legislation. In this context, the principle of *lex specialis systematis* can be used as a guideline when a specific criminal offense is regulated in more than one regulation. According to Indriyanto Seno Adji, *lex specialis systematis* refers to criminal provisions that have distinctive characteristics or specificities that differ from existing provisions, whether related to the subject of law, the collection of evidence, or the scope and territory of the offense.<sup>29</sup>

The application of the *Lex specialis systematic* in criminal tax investigations has specific rules, namely tax laws that override the rules in criminal law or the Criminal Code, where the authority, legal mechanisms, and procedures are regulated in Law No. 6 of 1983 concerning

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<sup>27</sup> Edward, Omar Sharif Hiariej. Asas Lex Specialis Systematis dan Hukum Pidana Pajak. *Jurnal Penelitian Hukum De jure*, 21(1), 2021. 1-1. DOI: <https://pdfs.semanticscholar.org/7eab/6ceae56c61ca12e57678ee758b74a4bc70bd.pdf>

<sup>28</sup> Ibid hal 5

<sup>29</sup> Wilda, Amalia. Sanksi Pengemabalian Kerugian Keuangan Negara Bagi Koruptor Berdasarkan Asas Lex Specialis Sistematis. *Siyasi : Jurnal Trias Politica*, 1(2), 2023. 173-182. DOI: <https://journal.uinsgd.ac.id/index.php/siyasi/article/view/31005>

KUP and Law No. 7 of 2021, where Article 44 of KUP stipulates that This provision states that only certain civil servants within the Directorate General of Taxes (DJP) have the special authority to conduct investigations into tax-related criminal offenses. DJP investigators possess various authorities, including collecting evidence, obtaining information from relevant parties, conducting searches and seizures, and prohibiting individuals from leaving a premises.<sup>30</sup> With this authority, its application in investigations differs from that of other law enforcement investigators. In criminal law doctrine, as explained at the beginning of this article, criminal tax law is known as *ius singulare* (single law) because it has its own system of norms and sanctions. Tax criminal law is a special form of criminal law that is independent. It is one of the oldest forms of special criminal law in the world, characterized by highly specific features. In addition to containing norms and sanctions that encompass administrative and criminal elements, tax criminal law is also based on principles related to economics and finance.<sup>31</sup>

The distinction between general criminal law and tax offenses is specifically regulated in Article 38 of the Tax Administration Law, which states that there are no criminal sanctions, but rather administrative sanctions imposed for negligence. This is also explained in Article 39, which clarifies that the imposition of administrative sanctions does not automatically preclude the possibility of criminal prosecution. However, if during a tax audit administrative issues are identified that also indicate criminal offenses, both may be processed concurrently. In such cases, the administrative issues will be resolved by the Tax Court, while the criminal offenses will be handled in the General Court, as they fall under different jurisdictions.<sup>32</sup>

Furthermore, the author justifies that Article 39A and Article 41 of the KUP Law are an application of the principle of *lex specilis systematis*, which confirms that laws governing specific matters (taxation) override general rules. Furthermore, Article 44 of the Tax Administration Law, based on the principle of *lex specialis systematis*, grants the Tax Investigation Unit (DJP) special authority to investigate tax offenses that harm state finances. This makes the DJP investigators more competent in handling tax cases compared to other investigators with more general authority. With the existence of Article 44 of the Tax Administration Law, the principle of *lex specialis systematis* is implemented to ensure the enforcement of tax law, with investigations conducted effectively and efficiently by tax investigators who possess specialized expertise and authority in the tax sector.

#### 4. CONCLUSION

Based on the above explanation, the author found an overlap in authority between the DGT investigators, who have special authority in investigating tax crimes based on Law No. 7 of 2021 and the principle of *lex specialis systematis*, and the KPK, which has the authority to

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<sup>30</sup> Rudang, Sari Ayu Damanik, *et al.* Tinjauan Hukum Terhadap Pelaksanaan Penyidikan Tindak Pidana di Bidang Perpajakan Menurut Undang-Undang Nomor 28 Tahun 2007. *Jurnal Sosial Politik, Pemerintahan dan Hukum*, 3(3), 2024. 119-124. DOI:

<https://jurnal.penerbitwidina.com/index.php/JPS/article/view/1201>

<sup>31</sup> Ibid hal 8

<sup>32</sup> Ibid hal 9

investigate corruption crimes, including those involving tax officials, based on Law No. 31 of 1999. This discrepancy arises because there is no harmonization mechanism in place to define the boundaries of authority between the two institutions. In this case, the principle of limited jurisdiction asserts that DGT investigators only have authority in the field of taxation. The *lex specialis systematis* principle is also applied because tax law is specific, with Articles 39A, 41, and 44 of the Tax Administration Law superseding general rules. Therefore, DJP investigators, who possess special authority to investigate tax-related criminal offenses, must be prioritized in efforts to combat corruption that harms state finances, particularly in the tax sector.

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