



## Ratio legis of the slogan for the sake of justice based on the one almighty god on enforcement letters (Taxes)

Rocmad Dwi Riwayanto<sup>1</sup>, I Gede Widhiana Suada<sup>2</sup>, Dominikus Rato<sup>2</sup>, Himawan Estu Bagijo<sup>2</sup>

<sup>1</sup> Faculty of Law University of Jember, Indonesia, Jawa-Timur, Indonesia

<sup>2</sup> Lecturer, Faculty of Law University of Jember, Indonesia, Jawa-Timur, Indonesia

### Abstract

Further, as observed in the elucidation of Article 7 paragraph 1 of Law No. 19 of 2000 concerning Amendment to Law Number 19 of 1997 concerning tax collection with enforcement letters. To achieve tax collection effectiveness and efficiency based on Enforcement Letters, this provision provides the same executorial force and legal force as a deed, which is a civil court decision that has permanent legal force. Therefore, Enforcement Letters can be directly implemented without the assistance of a court decision anymore and an appeal cannot be filed. Regarding this slogan of “For the Sake of Justice Based on the One Almighty God” contained in enforcement letters under Article 7 paragraph 1 of Law No. 19 of 2000 concerning tax collection in the enforcement letters can be executed just like court decisions having permanent legal force, this executorial title on judges decision serving as the head of decisions or crown of decisions as a formulation of oath pronounced by a judge that justice in the name of God is making case decisions conforms with the applicable laws hence having an executorial force with a dimension of closing a case in order to expedite any legal actions decided by judges on legal connection between parties, as well as rights and obligations attached thereto.

**Keywords:** Justice, tax

### Introduction

Tax is the biggest revenue of the state that can be used to build the nation’s economic strength and bring prosperity to people. Tax paid by taxpayers is considered as a form of active participation of people to serve the nation’s purpose as contained in the Indonesian Constitution. Tax, philosophically, is regarded as a form of awareness and participation of people in its implementation in Indonesia, one of which can be seen from the application of self-assessment system. The self-assessment system is a system having the absolute trust in the taxpayers to calculate, pay and report independently their tax liability in accordance with the applicable laws and regulations <sup>[1]</sup>.

Taxpayers have tax rights and obligations regulated by laws; tax subjects who have met subjective and objective requirements must report, calculate and pay their own tax liability as per the actual condition under the provisions of laws. If Taxpayers do not assume the taxation liability according to the applicable taxation laws and regulations then they shall be imposed with sanctions, either administrative or criminal sanctions. Whereas administrative sanctions include interest, penalty and increase sanctions. If the violations cause damages to the State’s revenue, criminal sanctions may be imposed, including confinement, imprisonment and penalty as regulated in articles 38, 39 and 39A of the Taxation General Provisions Law (UU KUP). All of such laws and regulations provide a legal basis in tax collection as mandated in Article 23A of 1945 Constitution, which with such laws facility it is expected that the government can uphold a law enforcement in taxation <sup>[2]</sup>.

Tax collection with enforcement letters is regulated in Law No.19 of 2000. If any tax debt is not paid, then KPP (Tax Office) shall issue a reprimand letter, followed up with the issuance of an order letter for confiscation, and if it is still not paid, an auction will be held by the state’s auction office

at the request of the tax office. An Enforcement Letter has a heading of “For the Sake of Justice Based on the One Almighty God”, having the same executorial and legal standing as court decisions that have permanent legal force. This sentence is then called as a slogan or head decisions. This slogan has an executorial force.

Further, as observed in the elucidation of Article 7 paragraph 1 of Law No. 19 of 2000 concerning Amendment to Law Number 19 of 1997 concerning tax collection with enforcement letters. To achieve tax collection effectiveness and efficiency based on Enforcement Letters, this provision provides the same executorial force and legal force as a deed, which is a civil court decision that has permanent legal force. Therefore, Enforcement Letters can be directly implemented without the assistance of a court decision anymore and an appeal cannot be filed.

Regarding this slogan of “For the Sake of Justice Based on the One Almighty God” contained in enforcement letters under Article 7 paragraph 1 of Law No. 19 of 2000 concerning tax collection in the enforcement letters can be executed just like court decisions having permanent legal force, this executorial title on judges decision serving as the head of decisions or crown of decisions as a formulation of oath pronounced by a judge that justice in the name of God is making case decisions conforms with the applicable laws hence having an executorial force with a dimension of closing a case in order to expedite any legal actions decided by judges on legal connection between parties, as well as rights and obligations attached thereto.

Thereby, the executorial title attached to enforcement letters causes a reflection, has the placement of slogan “For the Sake of Justice Based on the One Almighty God” that is an executorial title on the enforcement letters appropriate? As we understood that the slogan “For the Sake of Justice Based on the One Almighty God” is words pronounced by a judge in ruling over a case and an enforcement letter is a

legal product issued by an executive agency namely the Head of Small Taxpayers Office as an official of state administration.

Indonesia itself is a country on the basis of law (*rechtsstaat*), a country upholding legal supremacy in its state constitution, which aims to uphold justice and legal certainty where government is run by legal provisions. Since Indonesia is a state of law under Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, the government cannot run a government if it contradicts with law where the government cannot adopt laws and regulations or decisions contradicting with the laws below or above them.

From the aspect of democracy, Indonesia expressly does not use the theory teaching of *Trias Politica* absolutely on the separation of legislative, executive and judicial power. "However, from the beginning, particularly relating to judicial power branch, it has been expressly determined to be free and independent from the influence of the other power branches, specifically the government"<sup>[3]</sup>. However, in fact, enforcement letters containing the slogan "For the Sake of Justice Based on the One Almighty God" take part of judges' authority if it is associated with the function of court as an institution to inspect, decide and resolve disputes leading to providing a writ of execution in issuing decisions having executorial force.

From various literature, the key takeaway is that the independence of judge power is an absolute and fundamental condition for countries based on law and democracy system"<sup>[4]</sup>. An explicit separation of power of executive and judicial agencies to realize an independent justice management of which governance is fully submitted to court. "One of the principles as a pillar in a state of law to uphold legal justice, truth and certainty is the acknowledgement of an independent judicial power"<sup>[5]</sup>. The separation of authority of the state agencies is a crucial matter because the existing power of state agencies require legality that ultimately leads to checks and balances to be accountable to people.

From this condition, there is still a connection between executive and judicial agencies in the execution hence placing bureaucracy system and public service of land office not more than as power politics. "Power is often comparable to the concept of politics, even most people consider that power is politics"<sup>[6]</sup>. Or, because there is a free power that according to Philipus Hadjon cited by Victor Imanuel argued that "free power includes freedom of policy and interpretation, freedom of policy or *beleidsvrijheid* is a freedom to decide by oneself"<sup>[7]</sup>. The freedom of policy emerges from the flexibility brought by laws and regulations through a formulation of norms. What is the meaning behind the slogan "For the Sake of Justice Based on the One Almighty God" placed on enforcement letters and can the purpose be revealed without abandoning the legal system applicable in Indonesia.

### Research Methods

The approach method used in this research is normative juridical approach, which is research of law conducted by means of studying materials sourced from various laws and regulations as well as other materials from various literature. In other words, this research studies library materials or secondary data. This method is used to study the legal

certainty of electronic certificate of right to land in Indonesian land law.

This research uses laws approach by studying laws and regulations related to the problems of law being discussed. For research of practical activities, this laws approach will open opportunities for research to study the consistency and conformity between one law and another or law and constitution or laws and regulations. The result of which is an argument to resolve the problems faced.

In addition to laws approach, case approach is also used, which is conducted by studying cases related to the problems being understood, and already have decisions with permanent law, in which the main study in this approach is case ratio decidendi or reasoning, a court consideration to make a decision. Case approach is not always in the form of court decisions but also studying the application norms or legal rules applied in legal practice by taking into account its normative nature.

### Results and Discussion.

#### Tax Collections with Enforcement Letters.

As expressed above, tax collection with Enforcement Letters is made when normal collection and immediate and total collection efforts have been made to no avail. The tax collection with Enforcement Letters is implemented based on the provisions of Law Number 19 of 1997 concerning Tax Collection with Enforcement Letters as amended with Law Number 19 of 2000.

As regulated in the Law of PPSP (Tax Collection with Enforcement Letters), officials having authority to implement collection duty consist of 2 (two), namely:

- a. Central tax collection, made by officials appointed by the Minister of Finance in this case is the Heads of Tax Service Offices (KPP) and Heads of Land and Building Tax Service Offices (KPPBB).
- b. Regional tax collection, made by officials appointed by the Regional Governors.

The implementation of tax collection with Enforcement Letters is started with the issuance of a reprimand letter, warning letter or other similar letters by authorized officials or authority appointed by the officials, after 7 (seven) days from the payment overdue<sup>[8]</sup>. A Reprimand Letter shall not be given to Tax Bearers who have agreed to pay by installment or defer their tax payment. A Reprimand Letter shall not be given because, in essence, the tax bearers have comply with their obligations, but could not immediately perform their obligations due to poor financial condition.

Tax officials may compel tax bearers to settle their debts, without violating the provisions of taxation regulation. The compulsion element that may be used by tax officials is by issuing Enforcement Letters to tax bearers.

Pursuant to Article 1 Number 12 of PPSP Law, Enforcement Letter means a warrant to pay tax debts and tax collection fees. With the understanding that tax debt includes Enforcement Letter delivery fee.

Legal bases for the issuance of Enforcement Letters are<sup>[9]</sup>:

- a. Article 8 of Law Number 19 of 2000 concerning Tax Collection with Enforcement Letters.
- b. Article 9 of Decree of the Minister of Finance Number 561/KMK.04/2000 concerning the Implementation Procedure for Immediate and Total Collection in Enforcement Letters.

- c. Decision of the Minister of Finance Number 564/KMK.04/2000 concerning the Implementation Procedure of Enforcement Letters and Confiscation Outside the Working Area of Officials Issuing Enforcement Letters.
- d. Decision of the Director General of Tax Number KEP-21/PJ/2002 concerning the Procedure of Notification for the Implementation of Tax Collection with Enforcement Letters and Confiscation Outside the Working Area of Officials Issuing Enforcement Letters.

The issuance of Enforcement Letters is made by officials appointed by the Minister of Finance, namely Heads of Tax Service Offices or Heads of Land and Building Tax Service Offices issuing Tax Collection Letters (STP), Notice of Tax Underpayment Assessment (SKPKB), Notice of Additional Tax Underpayment Assessment (SKPKBT), Notice of Tax Liability (SPPT), Notice of Tax Assessment (SKP), Land and Building Title Transfer Fee Letter (STB), Notice of Land and Building Title Transfer Fee Underpayment Assessment (SKBKB) and Notice of Additional Land and Building Title Transfer Fee Underpayment Assessment (SKBKBT), Correction Decision Letter or Objection Decision Letter accrual to the amount of tax to pay.

The issuance of Enforcement Letters is only made when:

1. Tax bearers do not settle tax debts until the payment due date, and to them a Reprimand Letter or Warning Letter or other similar letters have been issued;
2. Immediate and total tax collection has been made to tax bearers;
3. Tax bearers do not meet the requirements as set out in the decision of approval for tax payment installment or deferment.

The issuance of Enforcement Letters by authorized officials is the main capital to implement effective tax collections because the issuance of Enforcement Letters gives authority to tax collection officers, especially Tax Bailiff to conduct direct execution (*parate executie*) in confiscating the assets of tax bearers and selling or auctioning the confiscated objects to settle tax debts without going through court procedure in advance.

In other words, Enforcement Letters have the same executorial force and position as civil court decisions. The executorial force given by law to Enforcement Letters is seen on Enforcement Letters with the heading of "For the Sake of Justice Based on the One Almighty God".

From the things expressed above, it can be concluded that Enforcement Letters have the following characteristics:

1. Having the same legal force as civil landmark decision against which an appeal could not be filed. Therefore, Enforcement Letters materially cannot be challenged, unless formal shortcomings found in the Enforcement Letters, such as:
  - Not officially notified;
  - Not signed by authorized officials;
  - Not notified according to the specified method <sup>(10)</sup>.
2. Having legal force.
3. Having double function, which are to collect tax and non-tax (collection fees). Therefore, those collectable with Enforcement Letters are all types of central and regional taxes, as well as tax collection fees comprising:

- Central tax
- Regional tax;
- Tax increase;
- Penalty (not criminal penalty);
- Interest; and
- Tax collection fees <sup>(11)</sup>.

4. Can be followed-up with confiscation or prevention and detention actions <sup>(12)</sup>.

Enforcement Letters can be applied either for direct tax or indirect tax.

An Enforcement Letter shall be issued no earlier than 21 (twenty-one) days from the issuance of a Reprimand Letter, or 28 (twenty-eight) days from the payment due date of Notice of Tax Underpayment Assessment (SKPKB), Income Tax, or Value Added Tax, or Value Added Tax on Goods and Services, and Sales Tax on Luxury Goods, or Notice of Tax Debt (SPPT) or Notice of Land and Building Tax (SKP PBB). However, if to a bearer, Immediate and Total Collection Letter has been issued, an Enforcement letter can be issued immediately.

After an Enforcement Letter is issued, it is followed with a notification of Enforcement Letter by Bailiff with statement and delivery of the Enforcement Letter to the tax bearer. The statement in this case is reading the content of the Enforcement Letter to the tax bearer, then to both parties, namely the tax bearer and the Bailiff, sign the Minutes as a statement that the Enforcement Letter has been notified.

Notification of Enforcement Letters by Bailiff is addressed to:

#### 1. Personal Taxpayers.

To Personal Taxpayers, Enforcement Letters are notified to:

1. Taxpayers or tax bearers at the residence, business location or other possible places;
2. Adults residing under one roof with or working at the taxpayers' or tax bearers' business location, of if the taxpayers or tax bearers concerned cannot be met;
3. One of the heirs or will executors or those managing his/her assets, if the taxpayers or tax bearers have deceased and the inheritance has not been divided;
4. Heirs, if the taxpayers or tax bearers have deceased and the inheritance has been divided.

To the deceased taxpayers or tax bearers and the inheritance has been divided, an Enforcement Letter shall be issued and notified to each of the heirs. If the heirs are of under age, then the Enforcement Letter shall be delivered to their guardian or custodian <sup>(13)</sup>.

#### 2. Corporate Taxpayers.

To Corporate Taxpayers, Enforcement Letters are notified to <sup>(14)</sup>:

1. Managers, shareholders and capital owners either at the entity's domicile concerned, at their residence or other possible places; or
2. Management-level employees at the domicile or business location of the entity concerned if the Bailiff cannot meet one of the them as referred to in number 1).

#### 3. Bankrupted Taxpayers

If the Taxpayers are declared bankrupt by Commercial Court, the Enforcement Letter shall be notified to the

Receiver or Estate Property Bureau and Supervising Judge assigned. Whereas to corporate taxpayers declared dissolved or under liquidation, the Enforcement Letter shall be notified to a person or entity encumbered with settlement, or liquidator or Liquidation Team.

#### 4. Special Circumstances

If the Enforcement Letter could not be notified to personal or corporate Taxpayers as in letters a and b above, the Enforcement Letter shall be delivered through Regional Government officials no less than a Subdistrict Secretary or Village Secretary level where the Taxpayers live or operate their business activities. If the Taxpayers' or tax bearers' address, or domicile are unknown, the notification of Enforcement Letter shall be made by means of posting the Enforcement Letter to a notification board of KPP/JPPBB issuing and or notifying the Enforcement Letter through mass media.

#### 5. Taxpayers or Tax Bearers Outside the Working Area of Officials Issuing Enforcement Letters

If within a city there are several KPPs or KPPBBs, the Official issuing the Enforcement Letter may order their Bailiff to implement the Enforcement Letter outside his/her working area, to the extent that it is still in the same city. In this case, the official shall notify the implementation of the Enforcement Letter to the official whose working area covers the Enforcement Letter implementation area.

If the implementation of the Enforcement Letter is made outside the working area of the official issuing the Enforcement Letter and it is not in the same city, then the procedure is as follows:

1. The official issuing the Enforcement Letter shall send a request for assistance to implement the Enforcement Letter along with a Copy of the Enforcement Letter and information regarding the taxpayers or tax bearers to the official at the implementation location of the Enforcement Letter.
2. The official at the implementation location of the Enforcement Letter shall notify the same to the taxpayers or tax bearers concerned according to the standard procedure, and then notify the action taken along with the copy of Minutes of Enforcement Letter Notification and an Implementation Report of the Enforcement Letter.

Taxpayers or tax bearers who have been given with Enforcement Letters legally by law, shall settle their tax debts, as set out in the Enforcement Letters. The tax debt settlement plus tax collection fees, shall be paid FULLY within a period of two times twenty-four hours (2 x 24).

To the taxpayers or tax bearers who have no intention to settle their tax debts within such period, the authorized tax officials shall issue a warrant of confiscation to assets of the taxpayers or tax bearers<sup>[15]</sup>.

#### The Meaning of Slogan "For the Sake of Justice Based on the One Almighty God" in Enforcement Letters

A slogan or head of decision is always written at the beginning of judges' decisions in ruling over cases in court. From the slogan, there are two important parts. The first clause is "For the Sake of Justice", according to Bismar Siregar stating that slogan is a formulation of oath. The oath reads "For the Sake of Justice" is pronounced by a judge

that justice in the name of God has internal accountability relating to the accountability of a judge to God so that a judge must be consistent in carrying out his/her duties and responsibilities as a jurist by acting and speaking according to the applicable laws and regulations to rule over cases. This is a parameter or standard by a judge that is constitutionally and socially accountable in the country.

This clause of "For the Sake of Justice" is actually a decision imposed by judges to realize justice. Sometimes a judge is breaking positive legal rules. This is often called as *contra legem*, which is a decision made by a judge contradicting with the content of an article in a law<sup>[16]</sup>. Judges have different reasonings and argumentations in interpreting the content of articles of laws, thereby there are some parties consider that legal certainty cannot be created even though on the other hand justice has been achieved. A judge's decision is a judge's crown as a jargon to hear, not only in the juridical and academic circles, but also ordinary people that a judge's decisions are his/her pride and authority<sup>[17]</sup>. Judge's decision made based on *contra legem* as an effort to create legal certainty based on considerations through comprehensive legal interpretation. This is because of the narrow law language so that each of the judges will give decisions different from the language of law.

Different from legal certainty according to the school of Legal Positivism is a certainty born from the text of law to measure a condition and event containing legal certainty. Something is deemed certain in law if it meets the elements of the law and if it does not meet all of the elements, it can be said that there is a vagueness or void of law. Whereas legal certainty is something dynamic following changes and development of people according to Rousseau cited from E. Fernando M. Manullang that ideally, the content of law is a direct reflection of what is voiced out in the society. Therefore, if it is inconsistent, such law should have been rejected for the good of individuals and society<sup>[18]</sup>.

This legal certainty refers to every legal action made in accordance with the ideal, value and wisdom formed as a result of analytical thinking of problems to obtain an order that is usable as a mass reference in the future that ensures legal certainty. With the issuance of Law No. 19 of 2000 concerning Amendment to Law Number 19 of 1997 on tax collection in enforcement letters, it was indeed designed as a strong guarantee right, with the characteristic of placing a slogan on enforcement letters under Article 7. Then, the second clause is "Based on the One Almighty God", which is a prayer of a judge written and pronounced in delivering a case decision. "O God, in Your name I pronounce this decision, this prayer carries the name of God of which accountability is direct vertically to the One Almighty God. "Therefore, the judge in this case must always get closer to God to be able to intensively communicating in order obtain direction and guidance of the One Almighty God when ruling cases to be able to produce reasonings and values of justice of God in every decision he/she made"<sup>[19]</sup>. God's justice is the highest justice; a judge in interpreting the aspiration of justice in society still relies on the closeness to the One Almighty God.

It must be realized that the owner of justice is the One Almighty God and it is the most perfect justice among other justice. The emergence process of a decision is not simple, besides intellectual working process of a judge in interpreting and analyzing facts while equipped with legal argumentations on the events in dispute by parties, the judge

issues a decision after approaching God so that the action taken would be truly in justice by always receiving guidance from the One Almighty God, as the best guidance is that from God, to actualize the purposes of law, namely justice, certainty and benefit. From the aspect of legal document, "Based on the One Almighty God" is a common aspiration of Indonesian people pursuant to the Recital of the 1945 Constitution contained in the first principle of Pancasila. The concept of Belief in the One Almighty God is the most fundamental and important thing as the spirit of Indonesian people in the life of the people and the nation realized in the concept of people sovereignty (democracy).

In Indonesia, democracy system is based on law so that citizens have the same position in law by conveying their sovereignty through representative institutions in parliament as constitution maker under the principle of "Based on the One Almighty God", there should not be any material or content of laws contradicting with the values of the One Almighty God so that social justice is actualized on all people of Indonesia. Thus, judges are expected to be away from making mistakes in giving decisions on cases handled either deliberate or not in order to not make people restless, fully accountable to the state and people in inspecting, deciding and resolving cases. Overall, people will subject themselves to the slogan of "For the Sake of Justice Based on the One Almighty God". Judges with full awareness conducting inspection to cases in court until making decisions based on the philosophical values of the One Almighty God so that they can give fair decisions without any tendency and from any party, according to the oath of office of a judge.

A judge's decision is a product of court as a judicial institution having functions and roles in inspecting, deciding and resolving disputes between members of community or people and government or non-government institutions. The function of court as justice is expressly stated to be independent from any form of intervention from any party and free from the influence of legislative and executive power.

From the drafting of the 1945 Constitution, it is stated that Indonesia firmly does not use the teaching of *Trias Politica* absolutely on the separation of judicial, executive and legislative power. These three power must be separate one another in their functions, duties and organs especially the freedom of judicial power that is emphasized by Montesquieu. Legislative power is a power to make laws while executive power is to enforce laws and judicial power is a power to rule over violations to laws. Montesquieu wanted an absolute separation of the three power to ensure the independence of individuals on rulers' arbitrary acts. It is different from John Locke who included judicial power into executive power, where John Locke included foreign relations into federative power.

In light of judicial power branch, it has been explicit that it must be free from the influence of the government <sup>[20]</sup>. Executive, in its practice, is different from judicial power exercised by a judge, hence Montesquieu opined that executive power is different from court power. The organization of power is none other than a realization of the organization of power wielded by absolute kings. The organization has two different forms, but has the same principle namely "share and separate" <sup>[21]</sup>. Therefore, there is still a correlation among the three state Institutions.

As the development of constitution, Ivor Jennings provided the definition of separation of power in material and formal senses; separation in material sense is a strict separation of power between state institutions in carrying out their functions, while separation of power in formal sense is a non-strict separation of power carried out among the three institutions. Therefrom, there is a cooperation among legislative, executive and judicial institutions in carrying out their respective authority. This opinion of Ivor Jennings is in line with the opinion of Miriam Budiharjo cited by Mexasasai Indra saying that first, separation of power is divided vertically namely separation of power by the level of government, second is horizontally, which is separation of power by its function <sup>[22]</sup>. Here, the distinction of functions of legislative, executive and judicial power is clear without abandoning the applicable system of law in Indonesia.

### Conclusion

The meaning contained in the slogan "For the Sake of Justice Based on the One Almighty God" is a formulation of oath and accountability to the One Almighty God in the execution and if there is no such slogan, execution cannot take place. Small Taxpayers Office as an executive institution issuing enforcement letters placing the slogan complies with Article 7 of Law No. 19 of 2000 concerning Amendment to Law Number 19 of 1997 concerning tax collection in enforcement letters. Small Taxpayers Office as a public service office carries out attribution authority, which is authority derived from laws granted to government organs. The authority of this government as an executive institution, has the ability to adopt positive law hence creating law connections. The issuance of enforcement letters as evidence of executorial title and if taxpayers do not pay tax debts, execution can be carried out on the power itself or with a writ of court to achieve legal certainty.

The implementation of enforcement letters can be through court mechanism, which currently can be through Tax court so that the interpretation of the slogan in enforcement letters can be performed by Judge. To review the articles of Law No. 19 of 2000 concerning Amendment to Law Number 19 of 1997 concerning tax collection in enforcement letters, so that there is no different opinion on the execution procedure of enforcement letters to achieve legal certainty according to the authority. To avoid mistakes, the slogan must be formulated by clear methods to avoid mistakes in interpretation.

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