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Clemency Authority Versus Judicial Review: The Jurisdictional Conflict of Absolute Discretion under Article 36(1)(a) of the General Provisions and Tax Procedures Law

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Abstract: This scholarly work explores the ongoing juridical ambiguity and adjudicative divergence stemming from Article 36(1)(a) within the General Tax Provisions and Procedures Law (KUP Law), which grants the Director General of Taxes (DGT) power to mitigate or nullify fiscal penalties. The central argument positions this competence beyond routine administrative discretion amenable to judicial control, characterizing it instead as executive clemency—an absolute, extra-judicial capacity rooted in equitable and compassionate principles. Employing a normative-juridical methodology combining historical reconstruction, conceptual analysis, and case examination, this work traces the authority's origins to the colonial Ordonansi Kepadatan (Ordinance of Propriety), originally designed as a substantive justice mechanism operating outside formal adjudicative processes. Critical evaluation of Tax Court Decision No. PUT-004535.99.2024.PP.M IXA demonstrates how the tribunal's substantive examination fundamentally misconstrued the DGT's prerogative character, transforming mercy applications into actionable disputes—a categorization error obscuring executive-judicial boundaries. Research outcomes establish that Article 36(1)(a) determinations lie beyond judicial cognizance, falling outside the Tax Court's legitimate jurisdictional scope. Addressing this theoretical confusion requires dual policy interventions: Supreme Court Circular (SEMA) issuance directing judges toward inadmissibility declarations for such proceedings, coupled with KUP Law statutory revision explicitly recognizing these administrative decisions' definitive and conclusive character.

Keywords: Tax Law, Executive Discretion, Administrative Clemency, Judicial Oversight, Legal Certainty, Tax Court, Beyond Judicial Cognizance

INTRODUCTION

Modern fiscal governance navigates a persistent institutional contradiction: governments must maintain operational adaptability through discretionary mechanisms while guaranteeing juridical predictability to citizens under rule-of-law principles (Dourado, 2017). This inherent conflict demands reconciling bureaucratic effectiveness with protecting individual procedural and substantive entitlements across global jurisdictions (Avi-Yonah, 2021). Indonesia's taxation architecture exemplifies such executive latitude most prominently via Article 36(1)(a) of Law No. 6 of 1983 governing General Tax Provisions and Procedures (KUP Law), as modified by Law No. 7 of 2021 (Government of Indonesia, 1983). This statutory mechanism grants the Director General of Taxes (DGT) authority for "eliminating or reducing administrative penalties encompassing interest charges, monetary fines, or assessment increases ... when such penalties arise from taxpayer oversight or circumstances beyond their volitional control" (Government of Indonesia, 1983).

Notwithstanding its equity-promoting intention, Article 36(1)(a) application has generated recurring interpretative disputes and protracted institutional friction (Aribowo, 2015). Taxpayer application denials—whether total or partial—frequently escalate toward Tax Court litigation, where inconsistent adjudicative outcomes (judicial disparity) compromise predictive capacity and weaken normative uniformity (Nainggolan, 2023). This situation precipitates a foundational legal-theoretical question: Must every DGT administrative determination, irrespective of character or purpose, automatically undergo judicial examination? Where should demarcations between legitimate administrative competence and necessary judicial supervision be positioned?

This scholarly investigation contends that the mandate bestowed upon the DGT via Article 36(1)(a) transcends ordinary administrative discretion, constituting instead administrative clemency—an extra-judicial, unconditional manifestation of executive mercy (Aribowo, 2015). Rooted in equitable and humanitarian foundations, this power inherently generates non-justiciable determinations, situating them beyond judicial examination. Consequently, substantive judicial intervention constitutes a fundamental categorical error obscuring constitutional separations between executive and judicial spheres. This research endeavors to advance Indonesian tax jurisprudence by reconceptualizing this authority through historical genealogy and administrative-law theoretical frameworks. Utilizing Tax Court Decision No. PUT-004535.99.2024.PP.M IXA as an illustrative case, it reveals how contemporary judicial reasoning departs from clemency's essential nature while proposing normative solutions for restoring juridical certainty and theoretical coherence.

METHOD

This scholarly inquiry adopts a normative-juridical approach, focusing primarily upon legal norm examination across statutory architectures and recognized juridical theories. A descriptive-analytical framework is deployed, pursuing systematic articulation and assessment of the DGT's discretionary competence expressed in Article 36(1)(a) of the KUP Law, particularly regarding Tax Court judicial examination.

Multiple complementary methodologies receive implementation. Legislative analysis examines hierarchical relationships and interconnections among pertinent legal instruments, encompassing the KUP Law, Tax Court Law, and Administrative Governance Law. Historical methodology reconstructs the developmental trajectory of administrative clemency concepts from colonial-period foundations in the *Ordonansi Kepadatan* through contemporary expression in KUP Law Article 36. Conceptual methodology investigates core legal structures including discretion, clemency, and non-justiciability, drawing insights from doctrinal scholarship and jurisprudential frameworks.

Three data classification categories undergird the investigation: (1) primary juridical materials, encompassing legislative enactments, governmental regulations, and Tax Court Decision No. PUT-004535.99.2024.PP.M IXA; (2) secondary juridical materials, comprising academic publications, peer-reviewed scholarship, and authoritative legal analyses; and (3) empirical evidence, manifested through Tax Court statistical information and adjudicative patterns. Qualitative legal examination processes all materials, incorporating deductive analytical techniques for formulating coherent interpretations addressing core research inquiries.

a. Theoretical Framework: Discretion and Clemency

Grasping the distinctive juridical character of authority embedded within Article 36(1)(a) of the KUP Law necessitates differentiating among various governmental power classifications. Administrative law scholarship conventionally divides discretionary authority into two fundamental categories—bound discretion (*gebonden vrijheid*) and free discretion (*freies ermesen*) (Susanto, 2020; Ashfiya, 2023). Nevertheless, academic discourse recognizes a third autonomous construct: administrative clemency or executive mercy (Sumadi, 2015). While standard discretion merely permits implementation flexibility regarding legal standards, clemency designates an executive privilege for pardoning, absolving, or discharging individuals from legally enforceable obligations (Susanto, 2020; Hadjon, 2008; Marzuki, 2022; Anggara, 2018). Clemency's fundamental characteristic neither contests the legitimacy of initial obligations nor evaluates their legal validity; instead, it mobilizes ethical considerations encompassing fairness, proportionality, and humanitarian concerns. Administrative clemency consequently functions beyond conventional administrative action parameters, warranting classification as an extra-judicial executive instrument (Aribowo, 2015). This investigation therefore proposes that Article 36(1)(a) authority must be conceptualized as administrative clemency manifestation rather than traditional discretionary power.

b. Historical Evolution: From the Ordonansi Kepadutan to Article 36 of the KUP Law

The discretionary competence delegated to the DGT via Article 36(1)(a) possesses historical lineage tracing to the colonial *Ordonansi Kepadutan* (Stbl. 1928 No. 187) (Soemitro, 1992). Prof. Dr. Rochmat Soemitro's scholarship describes the ordinance operating as a supplemental mechanism for achieving equitable outcomes when conventional legal remedies proved exhausted. Taxpayers perceiving formal adjudicative processes as failing to secure justice could submit petitions toward the supreme executive authority—the Governor-General—seeking equitable intervention (Soemitro, 1992; Aribowo, 2015). Positioning this competence at the executive hierarchy's apex demonstrates its essential nature as mercy-oriented, extra-judicial action. Throughout subsequent regulatory frameworks, the underlying principle persisted, becoming integrated into post-colonial taxation provisions and eventually formalized within the KUP Law (Aribowo, 2015).

Tax Court Decision No. PUT-004535.99.2024.PP.M IXA (2025) shows the Defendant (DGT) specifically invoking this historical foundation, referencing Soemitro and the *Ordonansi Kepadutan* for establishing that Article 36 constitutes an administrative privilege founded upon benevolence and goodwill—a clemency form residing wholly within executive discretion. This genealogical connection reinforces the interpretation that the statutory provision was never designed for establishing justiciable entitlements but rather for institutionalizing executive mercy across Indonesia's fiscal administration.

c. Balancing Justice and Legal Certainty in Taxation

A logically coherent legal framework must harmonize legal certainty (*rechtssicherheit*) with substantive justice (*gerechtigkeits*) (Mertokusumo, 2016; Hapsari, 2024; Nasriyan, 2019; Purba et al., 2023). Within taxation contexts, certainty guarantees predictability and uniform application, both fundamental for sustaining compliance behavior and fiscal equilibrium (Maulana, 2023; Zainuddin, 2023; Sugiarto, 2023). Nevertheless, excessive rigidity in applying statutory formalism may generate results contradicting substantive equity. Recognizing this potential, legislative drafters intentionally constructed Article 36(1)(a) as a justice-oriented relief mechanism (Aji et al., 2022; Puspa, 2023; Wijaya, 2023; Government of Indonesia, 2013). The provision permits administrative departures from rigid sanction application when equity considerations warrant, facilitating remedial justice for taxpayers whose non-compliance stems from circumstances beyond volitional control.

This structural design embodies the comprehensive philosophy that taxation systems must transcend revenue generation for incorporating reasonableness and humanitarian principles. The DGT consequently functions not solely as fiscal law enforcer but as an institutional agent authorized for moderating rigidity through merciful intervention when justice demands.

Empirical Analysis: The Disparity of Judgments in Practice

To empirically substantiate the thesis that judicial intervention has led to legal uncertainty, this study analyzes statistical data on Tax Court decisions related to lawsuits filed against the DGT's decisions under Article 36(1)(a). The data, compiled from the author's internal processing for the period 2020-2025, as presented below:

Table 1: Statistics of Lawsuit Decisions on the Director General of Taxes' Decisions Based on Article 36(1)(a) of the KUP Law in the Tax Court (2020-2025)

Year	Total Decisions	Verdict: Rejected	Verdict: Partially Granted	Verdict: Fully Granted	Verdict: Inadmissible
2020	23	23	0	0	0
2021	37	35	0	2	0
2022	28	18	0	0	10
2023	27	17	0	10	0
2024	15	15	0	0	0
2025	1	0	1	0	0

Source: Author's internal data processing (2025). Inadmissible = TDD (Tidak Dapat Diterima).

The data reveals significant volatility in judicial outcomes, empirically confirming the existence of judgment disparity. While the majority of lawsuits were rejected—a trend consistent with the argument that courts should not intervene substantively—there are critical anomalies that highlight the core problem. In 2021 and 2023, the court fully granted a total of 12 lawsuits, and in 2025, it partially granted another. These instances represent direct judicial intervention into the DGT's discretionary clemency decisions.

Furthermore, the high number of "Inadmissible" verdicts in 2022 (10 cases) is particularly telling. This suggests that certain judicial panels recognized the jurisdictional issue and correctly determined that the court was not the proper forum to hear the dispute.

This fluctuation—between outright rejection, substantive acceptance, and jurisdictional dismissal—is the very definition of legal uncertainty and demonstrates a lack of a unified judicial stance on the non-justiciable nature of clemency decisions. This inconsistency underscores the urgent need for legal clarification to ensure uniform application of the law.

d. Juridical Analysis of Article 36(1)(a) and the Scope of Tax Court Jurisdiction

Careful statutory interpretation of Article 36(1)(a) confirms its clemency-centered foundation. The legislative deployment of the permissive verb "may" (*dapat*) unambiguously signals discretion—no mandatory obligation binds the DGT toward granting applications (Government of Indonesia, 2011; Tax Court Decision No. PUT-004535.99.2024.PP.M IXA, 2025). Similarly, the statutory language "due to the taxpayer's mistake or not due to their fault" should receive interpretation not as judicially enforceable criteria but as preconditions enabling DGT clemency consideration in suitable circumstances (Dewi & Suardika, 2021; Darussalam et al., 2020; Rahmat & Yuniarti, 2022; Nugroho, 2023; Santoso, 2022; Setiawan, 2021).

Recognizing that clemency acts remain insulated from judicial examination corresponds with non-justiciable questions doctrine, establishing that particular matters receive constitutional assignment to political or executive branches (Asshiddiqie, 2004; Ashfiya, 2023; Asyikin, 2020; Muhsin, 2019). Comparative legal doctrines support this interpretation—the political question doctrine within United States jurisprudence and the *acte de gouvernement* principle in French administrative law (Zoller, 2010; Chapus, 1958; Virally, 1951; Duflo, 2021; Favoreu, 1968; Landot Avocats, 2021). Indonesian law reflects this philosophy through Article 2 of the State Administrative Court Law (UU PTUN), exempting designated executive actions from administrative-court jurisdiction (Government of Indonesia, 1986; Ridwan, 2010; Hadjon et al., 1999; Aditya et al., 2023; Anggara, 2018).

Therefore, determinations issued pursuant to Article 36(1)(a) warrant interpretation as grace acts—political-executive in essence and consequently beyond judicial cognizance. Judicial attempts toward evaluating their substantive foundations threaten dissolving institutional boundaries demarcating adjudication from administration.

e. Case Illustration: Tax Court Decision No. PUT-004535.99.2024.PP.M IXA

The preceding theoretical and doctrinal analysis receives empirical validation through Tax Court Decision No. PUT-004535.99.2024.PP.M IXA (2025). The Plaintiff, subjected to administrative penalties for delinquent VAT remittance, pursued relief pursuant to Article 36(1)(a) based upon liquidity constraints caused by the COVID-19 pandemic. Following DGT rejection, the taxpayer initiated judicial appeal proceedings.

During proceedings, the DGT maintained that the invoked authority constituted absolute administrative clemency manifestation derived from the *Ordonansi Keputusan*, positioning it outside judicial jurisdiction. The Tax Court's majority panel nevertheless rejected this contention, undertaking substantive evaluation of the Plaintiff's financial circumstances. The panel determined that liquidity insufficiency originated from the company's internal strategic choices and accordingly denied the petition. This analytical approach exemplifies what scholars characterize as categorical error—substituting executive evaluative determination with judicial economic analysis.

Alternatively, the dissenting jurist—despite supporting the Plaintiff—succumbed to a comparable analytical pitfall. Invoking General Principles of Good Governance (GPGG), particularly legality and prudence doctrines, the dissent contended that the DGT acted inconsistently through utilizing inaccurate financial information (Tax Court Decision No. PUT-004535.99.2024.PP.M IXA, 2025). However, this reasoning, though procedurally distinctive, still presumed judicial competence toward examining clemency decision

substance. GPGG invocation in this context transformed the principle's function—from guaranteeing procedural correctness to legitimizing substantive intervention (Bedner & Nasima, 2016; Kusdarini, 2019; Dewi, 2021; Sinamo, 2010; Fahmal, 2016; Purbopranoto, 1981; Israhadi, 2020).

Consequently, both majority and minority judicial positions relied upon identical flawed premises: that judicial oversight encompasses executive mercy act merits. The resulting consequence involves doctrinal confusion between administrative and judicial domains. Through converting discretionary clemency assessment into actionable litigation, the Tax Court effectively reconceptualized executive leniency as legal entitlement—contradicting both historical intention and administrative-law theoretical foundations.

f. Synthesis

The case exemplifies how clemency provision misinterpretation compromises the constitutional separation of powers principle. Judicial encroachment upon exclusively executive prerogatives disrupts administrative consistency, generates contradictory precedents, and cultivates uncertainty throughout tax law implementation. Restoring accurate characterization of Article 36(1)(a) as administrative clemency action consequently becomes vital for reestablishing jurisdictional demarcations and maintaining taxpayer confidence in both administrative equity and legal predictability.

**Table 2. Comparison of Arguments and Legal Considerations in Decision
No. PUT-004535.99.2024.PP.M IXA**

Party / Panel	Main Argument / Consideration	Legal Basis / Doctrine	Nature of Review
Plaintiff	Experienced liquidity difficulties that met the criteria of PMK 8/2013.	PMK 8/PMK.03/2013	Substantive (Factual)
Defendant (DGT)	1. Authority is clemency-based, non-justiciable. 2. Substantively, the Plaintiff did not meet the criteria for liquidity difficulties.	1. Article 36(1)(a) KUP Law, Clemency Doctrine (Prof. Soemitro). 2. PMK 8/PMK.03/2013	1. Juridical-Jurisdictional 2. Substantive (Factual)
Majority Panel	Rejected the lawsuit because the Plaintiff's liquidity difficulties were caused by internal group policies (not legitimate external factors).	PMK 8/PMK.03/2013, Arm's Length Principle	Substantive (Factual & Juridical)
Dissenting Judge	Granted the lawsuit because the DGT was not careful and inconsistent in assessing liquidity (should have used 2020 data).	PMK 8/PMK.03/2013, General Principles of Good Governance (GPGG)	Substantive (Factual & Juridical)

g. Study's Limitations

This investigation recognizes multiple inherent constraints. Primarily, given its normative-judicial and doctrinal orientation, the examination remains restricted to legislative enactments, legal theoretical constructs, and adjudicative determinations. Consequently, the research excludes empirical quantification of fiscal consequences stemming from inconsistent judicial interpretations, nor does it assess how such discrepancies might affect wider parameters including taxpayer conduct, compliance patterns, or investment environment dynamics.

Additionally, although the detailed examination of Tax Court Decision No. PUT-004535.99.2024.PP.M IXA offers a meaningful analytical illustration, the discourse rests upon a singular case and consequently may not encompass the complete range of judicial reasoning throughout comparable taxation controversies. The derived conclusions, while illustrative, must therefore receive understanding within the boundaries of this case study's circumscribed scope.

Ultimately, the investigation depends entirely upon publicly accessible documentary sources and excludes qualitative viewpoints—including structured interviews or field-based observations engaging judges, taxation administrators, or policy architects—that might have yielded more substantial contextual understanding regarding the administrative and adjudicative mechanisms underlying Article 36(1)(a) of the KUP Law. Subsequent research incorporating such empirical elements would augment the explanatory comprehensiveness and pragmatic applicability of these findings.

CONCLUSION

This examination validates that the competence delegated toward the Director General of Taxes pursuant to Article 36(1)(a) of the KUP Law constitutes, through both historical genealogy and conceptual architecture, a distinctive administrative clemency form rather than conventional discretionary operation. The authority originates from the colonial *Ordonansi Kepadatan*, an instrument initially constructed for providing substantive equity beyond formal adjudicative channels. Consequently, determinations executed under this statutory provision warrant recognition as extra-judicial actions insulated from direct judicial examination.

Tax Court Decision No. PUT-004535.99.2024.PP.M IXA demonstrates persistent doctrinal miscomprehension: the tribunal's choice toward undertaking substantive examination disregarded the DGT's jurisdictional contention, effectively transforming a clemency application into a justiciable assertion. This analytical error has sustained inconsistent adjudications and contributed to juridical unpredictability within Indonesia's taxation dispute resolution framework, undermining public trust in rule-of-law principles.

For realigning Article 36(1)(a) with its designated constitutional and administrative purpose, two remedial trajectories receive advancement. For immediate implementation, the Supreme Court should promulgate a Supreme Court Circular (SEMA) directing Tax Court adjudicators toward declaring such proceedings *niet ontvankelijke verklaard* (inadmissible) due to jurisdictional absence. For sustained reform, legislative amendment of the KUP Law becomes imperative for explicitly codifying that determinations issued pursuant to this provision remain final and conclusive at the administrative phase. Executing these interventions will reaffirm demarcations between executive discretion and judicial competence while restoring equity, predictability, and institutional legitimacy throughout Indonesia's taxation architecture.

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