RECHTSVINDING
Vol. 4, 2 (July-December, 2026), pp. 189-200
EISSN: 2987-4424, DOI: https://doi.org/10.59525/rechtsvinding.1963

Legal Aspects of Refunding Excess Tax Payments to Consumers

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ARTICLE INFO

Keywords:

Tax;
Consumers;
fiscal justice

Article history:

Received 2025-05-18
Revised 2026-06-21
Accepted 2026-07-26

ABSTRACT

Consumption tax plays a strategic role as a source of state revenue that supports development financing and the implementation of government functions. In its implementation, there is a possibility of tax payments exceeding the amount due due to administrative errors, miscalculations, changes or cancellations of transactions, and corrections to the tax base. Legal issues arise when consumers, as the parties who economically bear the tax burden, do not have a transparent, easily accessible, and certain refund mechanism. This study aims to examine the regulations and mechanisms for refunding excess tax payments to consumers from the perspective of legal certainty and fiscal justice. This study uses a normative legal research method with a statutory and conceptual approach. The results show that the refund mechanism tends to focus on those who are formally recognized as taxpayers or those who make payments. This situation has the potential to create an imbalance between the formal recipients of refunds and those who actually bear the tax burden. Therefore, strengthening verification mechanisms, transparency, and proportional refunds is necessary to protect consumer rights and achieve fiscal justice.

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1. INTRODUCTION

Taxes are one of the state's primary instruments for financing development, governance, and public services. This position is constitutionally based through Article 23A of the 1945 Constitution of the Republic of Indonesia, which stipulates that taxes and other compulsory levies for state purposes are regulated by law. This provision implies that the state's authority to collect taxes must be based on the principles of legality, legal certainty, and justice. The state does have the authority to collect taxes, but this authority cannot be used to retain payments exceeding the amount of tax legally owed. Therefore, any overpayment of tax must be accompanied by a clear, transparent, and accountable correction and refund mechanism (Mardiasmo, 2019; Suandy, 2017; Siahaan, 2010).

From a constitutional perspective, taxation relations not only place the public as obligated to pay taxes, but also as legal subjects entitled to protection when errors occur in tax collection or payment. Article 11 of the General Provisions and Tax Procedures Law (UU KUP) provides the legal basis for the refund of overpaid taxes, while Article 17 of the Law regulates the issuance of Tax Overpayment

Assessment Letters. Furthermore, Article 17B of the Law KUP provides a procedural framework for resolving requests for the refund of overpaid taxes. Thus, tax restitution is essentially not only an administrative mechanism, but also a legal instrument to restore the rights of parties who have made payments in excess of their tax obligations (Bohari, 2012; Saidi, 2014; Waluyo, 2017).

Problems arise when the restitution mechanism is linked to types of taxes whose economic burden is directly or indirectly borne by consumers. In Value Added Tax (VAT), Taxable Entrepreneurs are formally obligated to collect and remit tax to the state. Article 4 of the VAT Law regulates the objects subject to VAT, while Article 9 regulates the mechanism for crediting Input Tax against Output Tax. However, the economic burden of VAT is generally transferred to consumers through the price of goods and/or services. This situation creates a difference between those who formally have administrative obligations in taxation and those who economically bear the tax burden (Resmi, 2019; Waluyo, 2017).

This issue is further complicated by the Certain Goods and Services Tax (PBJT) regulated in Law Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments. Article 50 of the HKPD Law stipulates that PBJT objects include food and/or beverages, electricity, hotel services, parking services, and arts and entertainment services. Article 56 paragraph (1) positions consumers of certain goods and services as the subject of PBJT, while Article 57 paragraph (1) determines the amount paid by consumers as the basis for imposing tax. These provisions demonstrate that in PBJT, consumers are not only the parties who economically bear the tax burden, but also have a normative position as tax subjects. Therefore, consumers have a more direct legal interest in the accuracy of tax collection and refunds (Law Number 1 of 2022; Mardiasmo, 2019).

In practice, tax overpayments can occur due to miscalculations, administrative errors, transaction cancellations, payment refunds, changes in the tax base, or the imposition of taxes that should not have been made. In transactions involving food and beverages, hotel services, parking services, electricity, and arts and entertainment services that are the objects of PBJT, consumers are the parties making payments for transactions that form the basis for tax imposition. If an overpayment occurs, legal issues not only concern the relationship between the business actor and the tax authority, but also concern consumers as parties who have paid or borne the burden of the tax. If refunds are only given to parties who formally submit restitution without a mechanism that guarantees the recovery of economic benefits to consumers, there is a potential imbalance between those who bear the burden and those who receive the benefits of the refund (Musgrave & Musgrave, 1989; Slemrod & Gillitzer, 2014).

The differences in character between VAT and PBJT indicate that a uniform mechanism for refunding overpaid taxes cannot be established. In VAT, consumers are generally the ones bearing the economic burden, while Taxable Entrepreneurs have a formal position as tax collectors and payers. Conversely, in PBJT, consumers are explicitly positioned as tax subjects. This difference raises questions about the relationship between administrative rights to restitution and economic rights to the benefits of tax refunds. Administrative rights may rest with those who formally fulfill the requirements for restitution, while the economic benefits of a refund should be considered by those who have actually paid or borne the tax burden (Rawls, 1999; Sen, 2009).

Regulatory developments demonstrate the government's efforts to expedite and simplify the process of refunding overpaid taxes through a preliminary refund mechanism. Minister of Finance Regulation Number 28 of 2026 concerning Procedures for Preliminary Refunds of Overpaid Taxes regulates the preliminary refund mechanism for Taxpayers and Taxable Entrepreneurs who meet certain requirements. This policy demonstrates an effort to strengthen services and provide certainty in fulfilling tax rights. However, the construction of this refund is still essentially oriented towards the administrative relationship between the state and Taxpayers or Taxable Entrepreneurs and does not explicitly regulate the mechanism for recovering economic benefits to consumers who have previously paid or borne the tax burden. This condition indicates a gap between the formal settlement of restitution and the substantive restoration of economic rights (Friedman, 2001; Soekanto, 2008).

This gap also needs to be analyzed from a consumer protection perspective. Article 4 of Law Number 8 of 1999 concerning Consumer Protection grants consumers the right to obtain correct, clear, and honest

information, while Article 7 requires business actors to provide accurate and transparent information to consumers. In the context of consumption tax, this principle is relevant to ensure transparency regarding tax components in transactions as well as information regarding corrections and tax refunds related to consumer payments. Consumers should not only be placed as parties obliged to pay, but also not receive information or protection when there is an overpayment of tax (Miru & Yodo, 2015; Shidarta, 2006; Kristiyanti, 2014).

From a legal certainty perspective, the tax overpayment refund mechanism must provide clarity regarding the eligible parties, the filing procedure, the verification process, the settlement period, and the mechanism for utilizing the refund proceeds. Legal certainty is not sufficient to be achieved only through restitution procedures for parties who formally meet the requirements, but must also provide clarity regarding the consumer's position as the party who economically bears the tax or is normatively a tax subject. Meanwhile, fiscal justice demands a balance between the burdens and benefits of taxation. Consumers who have paid or borne the burden of tax should not lose the economic benefits of a refund simply because they do not have the administrative standing to file a restitution claim (Mertokusumo, 2007; Rawls, 1999; Sen, 2009).

This issue is also related to the principles of legality, legal certainty, justice, proportionality, transparency, and accountability. The principle of legality requires that tax collection have a valid legal basis, while the principle of legal certainty demands clarity regarding rights and procedures for repayment. The principles of justice and proportionality require that the distribution of tax burdens and benefits does not create an imbalance between the state, businesses, and consumers. Transparency and accountability require that the processes of tax collection, correction, and repayment be traceable and accountable (Hadjon et al., 2011; Mertokusumo, 2007; Marzuki, 2017).

In legal system theory, the effectiveness of a regulation is determined not only by the substance of the law, but also by the legal structure and legal culture (Friedman, 2001). Therefore, the existence of Articles 11, 17, and 17B of the KUP Law, VAT provisions, Articles 50, 56, and 57 of the HKPD Law, and regulations regarding preliminary refunds do not automatically guarantee the achievement of justice in the refund of tax overpayments. An administrative system is needed that can trace transactions, identify parties bearing the tax burden, and ensure transparency and accountability in the refund process. In this context, the law needs to be developed responsively so that it does not stop at fulfilling formal procedures, but is also able to provide protection to parties who are substantively affected by tax collection (Nonet & Selznick, 2001; Rahardjo, 2000).

Thus, the main problem of this research lies in the gap between the restitution mechanism oriented towards administrative relations and the reality that consumers can be the parties who economically bear the tax burden or normatively have the status of tax subjects. Positive law has provided a mechanism for the return of tax overpayments to parties who meet the formal requirements, but has not yet comprehensively regulated the relationship between restitution and the recovery of economic benefits for consumers. Therefore, a study is needed on the legal construction of the return of tax overpayments that can integrate legal certainty with fiscal justice through transparency, transaction traceability, payment verification, and proportional distribution of refund benefits.

Based on the above description, this study focuses on the analysis of the legal construction of the tax refund mechanism for consumers, particularly in the context of VAT and PBJT. This study also examines legal protection for consumers as parties who economically bear or normatively become tax subjects, and analyzes how the refund mechanism can be developed to achieve legal certainty and fiscal justice. Thus, this study is expected to contribute to the development of tax law that is not only oriented towards the interests of state revenue, but also ensures the protection of rights and balance of interests between the state, business actors, and consumers.

2. METHODS

This research uses a normative juridical method by examining legal norms, principles, doctrines, and regulations related to the mechanism for refunding tax overpayments and consumer protection. The approach used includes a statutory approach to analyze provisions regarding tax refunds, VAT, PBJT, tax administration, and consumer protection, as well as a conceptual approach to examine the concepts of legal certainty, fiscal justice, consumer protection, and the difference between legal and economic tax burdens. The legal materials for this research consist of primary legal materials in the form of the 1945 Constitution of the Republic of Indonesia and related laws and regulations, secondary legal materials in the form of books, scientific journals, research results, and expert opinions, and tertiary legal materials as supporting materials in understanding relevant legal terms and concepts (Marzuki, 2017).

All legal materials were analyzed qualitatively and descriptively through interpretation of legal norms and conceptual studies of consumers' positions in the tax overpayment refund mechanism. The analysis was conducted by linking positive legal provisions with the concepts of legal certainty, fiscal justice, and consumer protection to identify gaps and problems in the applicable restitution mechanism. The results of the analysis were then used to formulate legal arguments regarding a tax overpayment refund mechanism that could provide more proportional protection to consumers and achieve legal certainty and fiscal justice (Soekanto & Mamudji, 2015).

3. FINDINGS AND DISCUSSION

Legal Construction of Tax Overpayment Refunds

Refunds of overpaid taxes are a legal consequence of the principles of legality and legal certainty in tax collection. The state is only authorized to collect taxes up to the amount determined by statutory regulations. Therefore, if payments exceed the tax due, the legal system must provide a mechanism for correction and restitution. Restitution is thus not only an administrative procedure but also an instrument for restoring the rights of parties who have made excessive payments (Mardiasmo, 2019; Suandy, 2017; Saidi, 2014).

In Indonesian positive law, this mechanism is established through the General Provisions and Tax Procedures Law. Article 11 of the Tax Procedures Law provides the legal basis for refunds of overpaid taxes, Article 17 regulates the issuance of Tax Overpayment Assessment Letters, while Article 17B regulates the resolution of refund requests. These regulations are then strengthened through a preliminary refund mechanism stipulated in Minister of Finance Regulation Number 28 of 2026. This construction indicates that the right to restitution is essentially granted through an administrative relationship between the state and Taxpayers or Taxable Entrepreneurs who formally fulfill legal requirements (Waluyo, 2017; Pohan, 2017).

Problems arise when this formal mechanism is applied to consumption tax. Under VAT, Taxable Entrepreneurs are obligated to collect and remit tax, while consumers generally bear the economic burden through the price of goods and/or services. This situation demonstrates a distinction between legal incidence, namely the party legally obligated to pay taxes, and economic incidence, namely the party actually bearing the economic burden of the tax. Therefore, the party administratively entitled to claim restitution is not necessarily the same as the party bearing the economic burden of the tax (Musgrave & Musgrave, 1989; Slemrod & Gillitzer, 2014).

This difference raises legal issues when excess tax payments are refunded only to the party formally registered as the collector or depositor. If the tax burden has been transferred to the consumer, but the benefit of the refund is fully received by the business actor, then there is a mismatch between the party bearing the burden and the party receiving the economic benefit. Therefore, the construction of restitution needs to consider the principle of substance over form, namely that the legal relationship is not solely determined by formal status, but also by the economic reality arising from a transaction (Rosenbloom, 2000; Avi-Yonah, 2006).

This issue has a different character in the Certain Goods and Services Tax (PBJT). Article 50 of Law Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments stipulates PBJT objects, including food and/or beverages, electricity, hotel services, parking services, and arts and entertainment services. Article 56 paragraph (1) positions consumers as the subject of PBJT, while Article 57 paragraph (1) uses the amount paid by consumers as the basis for imposing tax. Thus, consumers in PBJT not only bear the economic burden but also have a normative position as tax subjects. This position provides a stronger basis for developing consumer protection mechanisms in the event of tax overpayments (Law Number 1 of 2022; Mardiasmo, 2019).

Based on the different characteristics of VAT and PBJT, a strategy for reimbursing overpaid taxes needs to be developed proportionally. For VAT, Taxable Entrepreneurs can still file for restitution based on the applicable tax administration structure. However, if the overpayment stems from taxes already charged to consumers, there is an obligation to reimburse the economic benefits to consumers. This reimbursement can be achieved through direct refunds, reductions in subsequent invoices, or other forms that can be proven and verified. This model maintains the administrative structure of restitution while preventing the benefits from ending with the party formally submitting the request.

Strengthening these mechanisms requires transparency and transaction traceability. Information regarding the type of tax, tax base, rate, and amount charged to consumers must be readily available through transaction documentation. In digital transactions, traceability can be enhanced through electronic invoices and administrative systems that link transactions to the paying party. This data is crucial for verifying overpayments, preventing duplicate claims, and identifying parties with an economic interest in tax refunds.

Furthermore, a transaction-based verification mechanism is needed that not only assesses the administrative completeness of restitution requests but also examines the basis for overpayments, such as transaction cancellations, returns of goods or services, changes in transaction value, tariff errors, or administrative corrections. This way, tax corrections can be followed by restitution to the party that previously made the payment. In PBJT, developing a more direct repayment mechanism for consumers has a stronger basis because consumers are explicitly designated as tax subjects. Implementation still requires regulations regarding proof of payment, submission deadlines, verification procedures, the authority of regional tax authorities, and the prevention of duplicate submissions.

This construction aligns with the theory of distributive justice, which demands that rights, burdens, and benefits be distributed proportionally. Consumers who bear the economic burden of taxes should not be deprived of the benefits of restitution simply because they lack the administrative standing to file for restitution. According to Rawls (1999), the distribution of benefits and burdens must be based on the principle of justice, while Sen (2009) emphasizes the importance of considering the actual impact of a policy on affected parties. Therefore, restitution that only fulfills formal procedures but does not provide restitution to those who bear the economic burden does not fully reflect substantive justice.

From a responsive legal perspective, tax law also needs to be developed to address real-world issues that arise in the relationship between the state, businesses, and consumers. The law is not sufficient to simply provide administrative procedures; it must also be able to provide protection for parties substantively affected by tax collection (Nonet & Selznick, 2001). This principle aligns with the doctrine of certainty in tax law, which requires clarity not only regarding the obligation to pay taxes but also regarding the right to receive a refund if the payment exceeds the expected obligation. The principle of tax neutrality also requires that the tax system not produce undue economic benefits for certain parties due to a refund mechanism that does not align with the distribution of the tax burden (Smith, 1776/1976; Cnossen, 2015; Keen, 2013).

Thus, the construction of a tax overpayment refund needs to be built through a linkage between three aspects: administrative procedures, transaction reality, and protection for the party bearing the tax burden. In the case of VAT, Taxable Entrepreneurs retain administrative status in the restitution process, but the economic benefits of the refund need to be linked to consumers if the tax has been

charged to them. Meanwhile, in PBJT, the consumer's position as a tax subject provides a stronger normative basis for developing a consumer-oriented recovery mechanism.

Therefore, the reimbursement of tax overpayments should not be solely determined by who formally remitted the tax to the state, but should also consider the parties who actually paid or bore the economic burden of the tax. However, direct reimbursements to consumers require a clear legal basis to avoid uncertainty, duplicate claims, or administrative difficulties. Therefore, regulations are needed to address transaction transparency, payment traceability, overpayment verification, and a mechanism for recovering economic benefits to consumers. This approach allows the restitution system to continue operating within the framework of tax administration, while providing more balanced protection and supporting legal certainty and fiscal justice.

Legal Protection Aspects for Consumers in Refunds of Excess Tax Payments

Consumers in transactions of goods and/or services have the right to obtain correct, clear, and honest information regarding the price and payment components charged to them. In the context of taxation, this right includes information regarding the type of tax, the basis for imposition, the rate, and the amount of tax collected. Transparency is important because consumers are generally not directly involved in the process of calculating, collecting, and paying taxes to the state. Therefore, transparency of information regarding taxes is a form of preventive legal protection that allows consumers to understand their obligations and prevents levies that are not in accordance with legal provisions (Miru & Yodo, 2015; Shidarta, 2006; Kristiyanti, 2014).

In the event of a tax overpayment, consumer protection is not only related to the refund of the amount, but also includes the right to obtain information regarding the basis for the overpayment, the corrected amount, and available recovery mechanisms. This problem arises because consumers generally do not have a direct administrative relationship with the tax authorities. Consumer relationships are formed through transactions with business actors, while tax collection, reporting, and remittance activities take place between the business actor and the state. This situation creates an imbalance in information and legal access because consumers do not always know whether taxes have been remitted, whether there has been an overpayment, or whether the business actor has received restitution. Therefore, the law needs to provide protection for consumers as parties in a weaker position and do not control the tax administration process (Hadjon, 1987; Rahardjo, 2000; Soekanto, 2008).

Business actors hold a strategic position in this relationship because they act as a link between consumers and the state. In consumption taxes, business actors can receive payments containing tax components and then fulfill administrative obligations to the state. Therefore, if the tax overpayment stems from a burden previously paid or borne by consumers, business actors should not be viewed solely as having formal access to restitution. Business actors also have a responsibility to ensure that the economic benefits of the refund are not unilaterally appropriated. In this context, a distinction must be made between administrative rights to restitution and economic rights to the benefits of the refund. Administrative rights relate to parties who formally fulfill the requirements to submit a refund to the state, while economic rights relate to parties who actually pay or bear the tax burden. This distinction is important because the party who formally receives restitution is not necessarily the party who economically bears the tax burden (Musgrave & Musgrave, 1989; Slemrod & Gillitzer, 2014; Keen, 2013).

Legal protection for consumers in the refund of tax overpayments must be based on at least several principles. First, transparency, namely the obligation to provide clear information regarding the tax charged in the transaction. Second, traceability, namely the ability to link tax payments to the transaction, the payment amount, and the party making the payment. Third, verification, namely an examination of the basis for the overpayment, including calculation errors, transaction cancellations, changes in transaction value, or administrative corrections. Fourth, proportionality, namely the return of economic benefits to the party actually bearing the tax burden in accordance with the amount that can be proven. Fifth, accountability, namely the obligation of each party to be accountable for the process of tax collection, correction, and refund. These principles are necessary to prevent double

claims, misuse of restitution, and the unauthorized control of economic benefits (Keen, 2013; Cnossen, 2015; Slemrod & Gillitzer, 2014).

From a consumer protection perspective, consumers who have made payments based on information and legitimate transaction mechanisms should be viewed as acting in good faith. Consumers should not suffer losses due to errors in calculation, reporting, or tax administration beyond their control. Therefore, if a tax overpayment can be proven to originate from a transaction for which the consumer has borne the burden, the economic benefits should be recovered to the consumer through direct refunds, payment reductions in subsequent transactions, or other legally based and verifiable mechanisms. This approach reflects the principle of distributive justice because the economic benefits of tax corrections should not be fully enjoyed by parties who only have formal standing in the restitution process (Hadjon, 1987; Rawls, 1999; Sen, 2009).

This protection has a different character between Value Added Tax (VAT) and Certain Goods and Services Tax (PBJT). In VAT, Taxable Entrepreneurs have a formal position in collecting, calculating, and remitting tax, while consumers generally bear the economic burden of VAT through the price of goods and/or services. Therefore, if there is an overpayment of VAT related to a particular transaction, a mechanism is needed that connects the administrative restitution of the Taxable Entrepreneur with the recovery of economic benefits to consumers as the party bearing the tax burden. However, the refund must be based on a clear evidentiary relationship between the transaction, payment, tax amount, and the occurrence of the overpayment (Waluyo, 2017; Resmi, 2019; Slemrod & Gillitzer, 2014).

Meanwhile, in PBJT, the consumer's position has a stronger normative basis. Law Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments positions consumers as the subject of PBJT and uses the amount paid by consumers as the basis for tax imposition. This construction indicates that consumers are not only parties who economically bear the tax burden, but also have the status of tax subjects in regional tax legal relations. Therefore, if there is an overpayment of PBJT, consumers have a more direct legal interest in the correction and recovery process compared to consumers in other types of taxes that only bear the economic burden (Mardiasmo, 2019; Siahaan, 2010; Suandy, 2017).

From a distributive justice perspective, businesses should not receive the dual benefit of receiving tax components from consumers while simultaneously retaining full control over the restitution resulting from those payments. If the tax burden has been shifted to consumers, but the benefits of corrections and refunds are fully enjoyed by businesses, there is an imbalance between those bearing the burden and those receiving the benefits. However, refunds to consumers cannot be made automatically without proof. A system is needed to ensure the link between transactions, payments, excess tax, and consumers entitled to receive the refund. If consumers cannot be individually identified, alternative mechanisms must be developed that still ensure accountability and prevent the unauthorized appropriation of restitution benefits (Rawls, 1999; Sen, 2009; Pohan, 2017).

Within the positive legal framework, the restitution mechanism is essentially built through an administrative relationship between the state and taxpayers or taxable entrepreneurs. Minister of Finance Regulation Number 28 of 2026 provides a procedural framework for preliminary refunds of overpaid taxes. However, this mechanism is still oriented toward fulfilling the administrative requirements of the party requesting the restitution and does not specifically regulate the distribution of the economic benefits of the refund to consumers, as the parties bearing the tax burden. This situation indicates that there is room for legal development to link administrative restitution with the restoration of consumers' economic rights (Ministry of Finance of the Republic of Indonesia, 2026; Suandy, 2017; Mardiasmo, 2019).

From a responsive legal perspective, the tax system needs to be developed so that it is not only oriented towards formal procedures, but also able to respond to the real impacts that arise in the economic relations between the state, business actors, and consumers. Therefore, the mechanism for refunding overpaid taxes needs to integrate tax law with consumer protection law. The KUP Law and its implementing regulations provide the basis for the restitution mechanism, the VAT Law regulates

the construction of VAT collection and credit, the HKPD Law provides a normative position for consumers as PBJT subjects, while the Consumer Protection Law provides the basis for the right to information, good faith, and compensation or reimbursement. PMK Number 28 of 2026 strengthens the procedural aspects of preliminary refunds, but there is still a need to develop norms that specifically link administrative refunds with the recovery of consumer economic benefits (Nonet & Selznick, 2001; Rahardjo, 2000; Miru & Yodo, 2015).

Thus, legal protection for consumers in the restitution of overpaid taxes must be aimed at creating a balance between administrative certainty and substantive justice. Consumers should not be treated solely as payers or bearers of taxes, without access to information and protection when overpayments occur. Conversely, business actors should not unilaterally control the economic benefits of restitution derived from consumer payments. Refunds must be implemented based on a clear legal basis, traceable transaction evidence, accountable verification procedures, and proportional recovery mechanisms. This construction can strengthen consumer protection while realizing legal certainty and fiscal justice in the Indonesian tax system (Rawls, 1999; Sen, 2009; Nonet & Selznick, 2001).

Tax Overpayment Refund Mechanism

Legal certainty in the taxation sector requires provisions that provide clarity regarding the rights, obligations, procedures, and responsibilities of each party in the process of refunding overpaid taxes. The constitutional basis can be found in Article 23A of the 1945 Constitution of the Republic of Indonesia, while technical regulations regarding the refund of overpaid taxes are contained in the General Provisions and Tax Procedures Law, specifically Articles 11, 17, and 17B. However, the application of this mechanism to consumption taxes requires a broader approach because the parties formally connected to tax administration are not always the same as those who actually bear the economic burden of the tax. Therefore, legal certainty in restitution must include not only clarity of administrative procedures but also protection for those who actually bear the burden of tax payments (Mertokusumo, 2007; Mardiasmo, 2019; Saidi, 2014).

The refund process should begin with the determination of an overpayment based on the results of administrative investigations, audits, transaction corrections, transaction cancellations, refunds, or requests from parties with legal interests. In the Indonesian tax system, this process is carried out based on the provisions of the KUP Law and its implementing regulations, including provisions regarding preliminary refunds in Minister of Finance Regulation Number 28 of 2026. However, if the tax is related to consumption, determining the overpayment is not sufficient by simply comparing the amount of tax paid with the amount of tax that should be owed. The audit also needs to be directed at the origin of the payment and its relationship to specific transactions to identify the parties who actually bear the economic burden (Waluyo, 2017; Pohan, 2017; Friedman, 2001).

Furthermore, a verification process is required to ensure the validity of the transaction, the amount of the overpayment, and the parties involved in the payment. Transaction evidence, payment documents, invoices, electronic records, and other administrative data can be used as evidentiary instruments. In the PBJT system, the consumer's position as a tax subject under Law Number 1 of 2022 concerning HKPD provides a stronger foundation for linking tax payments to the consumer's legal interests. This differs from VAT, where the Taxable Entrepreneur has a formal position as the party collecting and remitting the tax, while consumers generally bear the economic burden through the price of the goods or services. This distinction between formal legal obligations (legal incidence) and actual economic burden (economic incidence) must be considered in determining the parties interested in the benefits of the refund (Musgrave & Musgrave, 1989; Slemrod & Gillitzer, 2014; Keen, 2013).

Once the overpayment has been proven, the next step is to determine who is entitled to the economic benefits from the refund. This determination cannot be based solely on the party submitting the restitution request or the party administratively remitting the tax to the state. If it is proven that the tax burden has been shifted to the consumer, the benefits of the refund must be recovered to the consumer through a mechanism appropriate to the nature of the transaction. In this case, the business

actor can still act as the party submitting the administrative restitution request, but does not automatically become the absolute owner of the economic benefits from the refund. The separation between administrative and economic rights is necessary to prevent an imbalance between the party bearing the tax burden and the party receiving the benefits of the restitution (Rawls, 1999; Sen, 2009; Rosenbloom, 2000).

The implementation of restitution can be tailored to the transaction conditions and the ease of consumer identification. If the consumer can be identified individually, direct restitution is the most representative form of economic rights restoration. However, if consumer identification is not possible, restitution can be achieved through payment deductions in subsequent transactions or other forms of compensation that have a clear evidentiary basis and oversight mechanism. Each restitution model must ensure transparency, prevent abuse, and ensure that economic benefits are not unilaterally controlled by the business actor. Therefore, the principles of proportionality and accountability are important foundations in determining the most appropriate form of restitution (Hadjon, 1987; Miru & Yodo, 2015; Kristiyanti, 2014).

Oversight is an integral part of the restitution mechanism. Tax authorities need to ensure that restitution does not stop at issuing a decision or disbursing funds to the party requesting restitution, but also addresses the restoration of the rights of those actually bearing the tax burden. To this end, transaction recording, payment receipts, reporting requirements, and the use of digital systems that allow for traceability of the payment and restitution process are required. Such oversight can reduce the risk of duplicate claims, data manipulation, and unauthorized parties appropriating restitution benefits. Within the framework of legal system theory, the success of such a mechanism depends on the integration of legal norms, the institutions implementing them, and a culture of compliance among the parties (Friedman, 2001; Soekanto, 2008).

Thus, a legal certainty-oriented tax overpayment refund mechanism needs to be designed in stages, starting from determining the existence of an overpayment, examining the source of payment, verifying transactions, determining parties who have an interest in the refund, and monitoring its implementation. All stages must remain guided by the KUP Law and its implementing regulations, including provisions regarding preliminary refunds, taking into account the characteristics of VAT and PBJT. This model allows the restitution system to continue operating within the framework of tax administration, while simultaneously providing space for the recovery of economic benefits to consumers as parties who pay or bear the tax burden. With this approach, legal certainty does not stop at the clarity of formal procedures, but develops into certainty regarding who is substantively entitled to benefit from the tax refund (Mertokusumo, 2007; Nonet & Selznick, 2001; Rahardjo, 2000).

Tax Overpayment Refund as an Instrument of Fiscal Justice

Fiscal justice demands that the tax system not only focuses on state revenue but also maintains a balance between those who bear the tax burden and those who benefit from tax policy. In the context of consumption tax, this issue is crucial because consumers often bear the economic burden of taxes through the price of goods and/or services, while the administrative obligation to collect, deposit, and manage restitution rests with businesses. This situation demonstrates the difference between legal incidence, namely those who formally have tax obligations, and economic incidence, namely those who actually bear the tax burden (Musgrave & Musgrave, 1989; Slemrod & Gillitzer, 2014).

This difference can raise fairness issues if excess tax payments are fully refunded to the party formally paying the tax, while the economic burden has been borne by the consumer. In such circumstances, the party experiencing a reduction in economic capacity may not necessarily receive the benefits of the recovery. Therefore, restitution mechanisms need to consider not only the administrative relationship between the state and the taxpayer or taxable entrepreneur, but also the economic realities underlying the tax payment (Keen, 2013; Cnossen, 2015).

Theoretically, this issue can be analyzed through John Rawls's concept of distributive justice, which calls for a fair distribution of rights, burdens, and benefits. Consumers who have borne the

economic burden of taxes should not be deprived of the benefits of refunds simply because they lack the administrative standing to file for restitution. Similarly, Sen emphasizes that fairness must be assessed based on the actual impact of a policy, not solely on procedural equality. Thus, formal equality does not necessarily result in fairness if consumers are in a weaker position in accessing tax information and administration (Rawls, 1999; Sen, 2009).

Under Indonesian positive law, the refund of tax overpayments is legally based through the provisions of the General Taxation and Tax Administration Law, including Articles 11, 17, and 17B, which regulate the refund mechanism for tax overpayments. However, in consumption tax, this mechanism must be linked to the party actually bearing the tax burden. In VAT, Taxable Entrepreneurs have an administrative position as tax collectors and payers, while consumers generally bear the economic burden through prices. In contrast, in PBJT, based on Law Number 1 of 2022 concerning HKPD, consumers are normatively positioned as tax subjects. These differences in characteristics indicate that the refund mechanism cannot be applied uniformly but must consider the legal status and economic burden of each party.

Based on the principle of proportionality, the benefits of refunds should be commensurate with the party bearing the tax burden. If the overpayment is entirely attributable to consumer payments, the economic benefits should be directed to consumers. If the tax burden is shared between consumers and businesses, refunds can be made based on a demonstrable proportion of the burden. Thus, restitution serves not only as an administrative correction but also as a means of restoring economic balance between those who pay or bear the tax and those who receive the benefits of the refund.

Nevertheless, refunds to consumers must remain based on legal certainty and a clear evidentiary mechanism. Transaction traceability, proof of payment, verification of the source of excess tax, and prevention of duplicate claims are necessary to ensure the refund process is accountable. Therefore, fiscal justice is inseparable from legal certainty, transparency, and accountability in tax administration (Mertokusumo, 2007; Hadjon, 1987).

From a responsive legal perspective, the tax system must adapt to economic realities and provide protection to those substantially impacted by tax collection. Therefore, the refund of overpaid taxes needs to be developed as a mechanism that links administrative restitution with the restoration of consumers' economic rights. This approach can prevent disproportionate control of refund benefits and strengthen the balance between the state, businesses, and consumers (Nonet & Selznick, 2001; Rahardjo, 2000).

Thus, the refund of overpaid taxes can be an instrument of fiscal justice if implemented based on three key principles: appropriateness between those bearing the burden and those receiving the benefit, proportionality of the refund, and protection of those in a weaker position. Applying these principles allows restitution to go beyond fulfilling formal procedures and also provides fair restitution and strengthens legal certainty in the Indonesian tax system.

4. CONCLUSION

The mechanism for refunding overpaid taxes in the Indonesian tax system is still oriented toward an administrative relationship between the state and taxpayers, or the parties formally collecting and remitting taxes. This construction creates problems in consumption tax because the party administratively managing the tax is not necessarily the party economically bearing the burden. Therefore, consumers need protection through information transparency, transaction traceability, verification of the source of overpayments, and a recovery mechanism that allows the benefits of the refund to be received by the party actually bearing the tax burden. Strengthening this mechanism can achieve legal certainty and fiscal justice if supported by clear rules regarding procedures, entitled parties, proof, and oversight of refunds. Therefore, the restitution mechanism needs to be developed not only based on the formal relationship between the state and taxpayers, but also by considering the reality of transactions and the distribution of the economic burden of taxation. This approach allows

the refund of overpaid taxes to function as a consumer protection instrument while creating a balance between the interests of the state, businesses, and consumers.

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