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Former Management Responsibility as Tax Guarantor of a Company in Indonesia

Al Araf Assadallah Marzuki[1], Mosgan Situmorang[2], Marulak Pardede[3], Ulang Mangun Sosiawan[4], Jamilus[5], Diana Yusyanti[6], Henry Donald Lbn Toruan[7]

Abstract

This study examines the legal dispute that arises regarding duties of former management as tax guarantor of corporate tax arrears upon the Minister of Finance Regulation Number 61 of 2023 concerning Procedures for the Implementation of Tax Collection of the Taxpayer Debt Due, particularly Article 9 of paragraph 8. This article provides that where registered management changes or are replaced in a deed of change, tax deduction is implemented in the name of the management appearing in the deed of change and not the former management. This rule poses serious legal issues in that it does so by placing the tax on former management who ultimately have no control or responsibility over management of the corporation. The Research Method This paper employs normative legal research using literature review and legal drafting methods on tax and corporate law. According to the results of the study: (1) The regulations of paragraph 8 of article 9 violate the principle of company law that limited liability principle that the obligation of the company's management is only present as long as the legal authority of the company is still in the hands of the management, (2) Such a provision also violates the principle of justice in tax law by putting the obligation to pay taxes on parties that are legally no longer the legal relationship of company management coordination. 1) The mechanism generates disparity in the rights and obligations of incumbent and former management in tax labyrinth; 3) The establishment of Article 9 paragraph 8 results in legal indetermination of the former management and corporation side. Then ex-management is exposed to tax liability forever and a day, whether they are active or inactive with the company. Accordingly, the one-sided morality in Article 9 paragraph 8 must be repealed.

Keywords: *Corporate liability; Corporate taxation; Prior management responsibilities.*

Introduction

The tax system is an important instrument of fiscal and economic policy and a factor in ensuring the financial stability of the country and the development of society. As the principal revenue, taxes play a strategic role in funding government requirements, including building roads and bridges, delivering services to the public and paying for social programs that make people's lives better. (Chugunov & Makohon, 2019; Lutsyk et al., 2025)

As regards the artificial structure of a corporation, nobody, and no individual can avoid tax responsibility and liability for the operations and management of the corporation, since the taxpayer, the party, and the individual that stands behind the corporate empty shell, is the

[1] Research Center for Law National Research and Innovation Agency (BRIN), Jakarta, Indonesia, Email al.araf23@gmail.com
[2] Research Center for Law National Research and Innovation Agency (BRIN), Jakarta, Indonesia
[3] Research Center for Law National Research and Innovation Agency (BRIN), Jakarta, Indonesia
[4] Research Center for Law National Research and Innovation Agency (BRIN), Jakarta, Indonesia
[5] Research Center for Law National Research and Innovation Agency (BRIN), Jakarta, Indonesia
[6] Research Center for Law National Research and Innovation Agency (BRIN), Jakarta, Indonesia
[7] Research Center for Law National Research and Innovation Agency (BRIN), Jakarta, Indonesia

individual who runs and operates the company.(Sari, 2023) Such members may be corporate executives, e.g., directors, commissioners, or others that have strategic control over the policies and management of the corporation. In many cases, the tax laws explicitly make these administrators accountable for the company's tax liabilities, including administering, reporting, and remitting the taxes.
Corporate management is an integral part of initializing corporate tax compliance. They must make sure that all company taxes are paid as required by the rule.(Brashers, 2024) This includes different types of unsetting, e.g. SPT, payments for PPh/income tax, VAT and other taxes that are related to company business. [4] In some situations, management is also responsible for ensuring that tax withholding and collection from third parties (including employees and business partners) is performed properly.
But the actual use of the tax norms regulating the obligations of company managers usually causes a lot of problems in the legal aspect, especially when company management is changed or when it is replaced in the organization of its holding. Management Changes in management are normal, especially if the change is a consequence of business strategy, internal dynamics inside the company or for personal reasons. But the tax dimension underlying management's duty gets a bit messy when the company's outstanding tax liability lingers during the search for a replacement.
One of the problematic regulations is the Minister of Finance Regulation Number 61 Year 2023 about Implementation of Tax Collection on The Outstanding Tax Amount,(Pasolo et al., 2023) particularly Article 9 verse 8 explaining that: (*PMK No. 61 Tahun 2023*, n.d.)

> "If the management of the management in the registration shall have been changed or succeeded, the payment of taxes shall be made first to the management whose name is set forth in the deed of amendment and then to the management whose name is set forth in the next preceding deed."

This article prescribes that if the company has already affected on the transfer deed or change deed for transfer, the tax deduction shall be granted to the management whose name has been registered on the change deed, and then to the previous one. Nevertheless, this provision is not free from legal and administrative difficulties which might trigger polemic since this regulation lays a tax obligation on the Former Management which no longer have a power and participation in managing the company.
This is a considerable legal problem, not least because this contradicts the principle of only so-called limited liability in the company law, which means that the parties concerned are (only) liable to the management if they hold legal responsibility for the management of the company.(Fleischer, 2021) Moreover, this provision may also be at odds with the fairness principle of tax law that is supposed to strike a balance between the rights and duty of taxpayers.
Under these descriptions, the following problems can be derived: Whether the provisions of the Minister of Finance Regulation No 61 of 2013 on the Procedures for Implementing Tax Collection on the Amount of Unpaid Tax (especially Article 9 paragraph (8)) are contrary to the principle of limited liability company law and principle of justice in tax law? So in this case, the researcher will have to make an extensive legal analysis to consider these: (1) the tracking extent of collection of corporate tax imposed on non-corporate administrators here, not corporate administrators residing in Article 9 Paragraph 8 above regarding among corporate tax under Article 9 Paragraph 2, and (2) the other tracking to collect here too among others if the transitional change of management of the corporate organs is the one where such new administrators come to exist. What will be the issue here is about the Principle of Underpayment Tax Collection

Against Former Management as Corporate Taxpayer Insurers, Limited liability principle for the company's law of late taxes collection owed for the Former Management of the company, and Justice principle for tax law of the company's collection owed to the Former Management of the company.

RESEARCH METHOD

This is a qualitative study following normative legal methods.(Negara, 2023) Emphasis in literature review and legislative analysis whose object is the corporate controlled sector and the tax policy to be levied to legal entities. This method includes collecting and analyzing laws, including statutes, governmental regulations, and related policy documents, to determine how the law in this sphere of public policy influences corporate policy and the economy. On a normative standpoint, it examines the conformity of laws normatively toward legal principles, its sustainability, as well as the effect to collect tax from the corporate taxpayers toward the former administrators that are no longer to be an administrator in a company. The findings and suggestions of this research are that the conclusion and suggestion will be based on the results of the study of Minister of Finance Regulation number 61 of 2023 concerning Procedure Implementation of Tax Collection on the Amount of Tax Payable and not yet paid remain paragraph 9 paragraph 8 in conflict with the principles of limited liability and the principle of fairness in terms of tax law

RESULT

The corporate tax is an integral part of the national tax system. The purpose of this policy is that every legal person who is incorporated and domiciled in Indonesia meets its tax obligations in conformity with the prevailing laws and regulations. Here, the enforcement of tax policy is a collection of legal instruments which permit a government to enforce, enforce, and coercively intervene in legal entities individually or collectively that have not remitted their tax debts.

Policy for Collection of Underpayment Tax for Former Admins as Corporate Taxpayer Insurers

Legal person tax collection is organized in various laws and regulations, where the oldest regulated in various laws is began to be regulated in Law Number 6 of 1983 concerning General Provisions and Tax Procedures,(*UU No. 6 Tahun 1983*, n.d.) but because of several changes and the existence of new laws, then several changes are regulated in Law Number 20 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into a Law as referred to in article 80 paragraph (3) of the 1945 Constitution in the Seventh Part concerning Taxation.(*UU No. 20 Tahun 2023*, n.d.) Article 113 provides that there are several provisions of Law Number 6 of 1983 on General Provisions and Tax Procedures, which have been revised in several laws Law Number 7 of… 2021 on the Harmonization of Tax Regulations. as for the provisions concerning authority of the tax collection policy as was amended in Article 15, which reads: (*UU No. 7 Tahun 2021*, n.d.)

(1) "The Director General of Taxes may issue an Additional Underpayment Tax Determination Letter within a period of 5 (five) years after the time of tax due or expiring of Tax Period, part of Tax Year, or Tax Year if there is new data, found new data which causes additional amount of payable tax after the conducting the investigation An audit action in the context of the issuance of an Additional Underpayment Tax Determination Letter.

(2) The tax deficiency in the Amount of Tax Deficiency Payable as stipulated in the Additional Underpayment Tax Determination Letter is subject to penalties in the form of an additional sanction of 100% (one hundred percent) of the tax deficiency.
(3) The increase as referred to in paragraph (2) shall not be applied when the Additional Underpaid Tax Determination Letter is issued upon the Taxpayer's written statement at his discretion, unless the Tax Revenue Director General commenced the audit process in connection with the issuance of the Additional Underpayment Tax Determination Letter.
(4) Deleted.
(5) In respect of (1), the issuance of the AUSTD Letter is subject to or shall be based on the Regulation of the Minister of Finance."

From these stipulations, it is obvious that the power to collect tax is unconditionally in the possession of the Director General of Tax which enable taxpayers to be enforced to implement their duties in conformity with tax regulations in force. As to the subject matter of Additional Underpayment Tax Determination Letters, this is regulated by the minister of finance regulation, which is a technical guideline in implementation of this power. This regulation is in accordance with Article 13 Paragraph (6) of Law Number 7 of 2021 about Harmonization of Tax Laws, that is:

(2) The Underpaid Tax Determination Letter as provided for in paragraph (1) shall be stipulated by regulation of Minister of Finance or under or in lieu of the regulation of Minister of Finance.

The questioned regulation of the minister of finance is Regulation of the Minister of Finance Number 61/PMK.03 of 2023 concerning Procedures for the Implementation of Tax Collection on the Amount of Tax Still to Be Paid. The Regulation of Minister of Finance Number 61 of 2023 stipulates that a Taxpayer refers to “a person or an entity, including tax subjects, taxpayers, tax with holders, and also tax collectors, who have tax rights and/or obligations based on the prevailing 75 provisions of tax laws and regulations.” Then in Article 9 of those who grouped as a tax bearer of corporate taxpayers that are set forth in article 9 paragraph (1) that reads:

(1) "Tax collection towards the Taxpayers on the Corporate Taxpayer as meant by Article 7 letter b is made do in respect of:
   a. The Corporate Taxpayer in question bears all Tax Debts and Tax Collection Fees, including those of the parent and branch entities; and
   b. managers of the Corporate Taxpayer who are liable for the Tax Debt and Tax Collection Fee, including the Tax Debt and Tax Collection Fee of its parent and branch.

These sections clearly provide that the tax the corporate taxpayers owed by the taxpayer by tax collection burden will be imposed on the corporate taxpayer and the management of corporate taxpayer. Thus, this reinforces that to meet their tax obligations the full power of legal entity has the duty(Huebner & Giuffre, 2022) as the most important legal subject and further represents the authorized management in managing legal entity itself.

In addition, the Minister of Finance Regulation Number 61 of 2003 has explicitly explained the meaning of the term management of corporate taxpayers mentioned in Article 9 Paragraph (2) as follows:

a. a. Regarding a Limited Liability Company, including but not limited to the Board of Directors, the Board of Commissioners, those who actually have the authority to set policies and/or make decisions to carry out business activities within the Limited Liability Company, and shareholders.

b. In relation to the Commanditary Alliance, the complementary allies/active allies/management allies, those individuals with the power to consider the advisability and/or adopt the decisions to perform business operations in the Commanditary Alliance, and the commander-in-chief/passive allies.
c. In relation to Civil Partnerships and firms, for example: affiliates; and/or a person that has a vested interest who is empowered to decide the authority or to execute business transactions for business transactions in civil partnerships and firm partnerships.
d. In relation to Cooperatives such as management/ supervisor and/or those who have control over policy and/or decision making to enter transactions for business operations of cooperatives.
e. For foundations: chairman or equivalent, secretary, treasurer, trustee, managing members as well as persons who are clearly vested with the power to set up the policies and/or to make decisions to execute business operations in the foundation.

Apart from the management fees, there are also other taxes payable to corporate taxpayers of the order of management fees as referred to corporate management regulated in the Regulation of the Minister of Finance Number 61 Year 2023 as stipulated in Article 9 Paragraph (8) which states:

> "Because, as to premises for which there has been changed or substituted a management of the character named in said deed, such tax or revenue shall first be due and payable to the managers whose names stand in said deed of amendment and then and only then to the managers named in the former deed".

The provision states that although no longer made an administrator of the corporate organ, the tax liability and responsibility were nevertheless imposed on the corporation, of which the taxpayer was an officer or director. That is an issue when the previous management no longer has control to call the shots for policy and make decision making on the agency level you can go after the corporate entity with whom the Former Management has no longer a relationship with the agency with it has produced tax bills on the agency time under servicing as management. It differs from the previous clause for corporate taxpayers exercising their rights and obligations articles in Law Number 7 of the year 2021 concerning Harmonization of Tax Laws which is read in Article 32:

(1) The following options are available for Taxpayers to exercise their rights and fulfill their obligations as stipulated in tax laws and regulations:
    a. body by the manager;
    b. body declared bankrupt by the curator;
    c. the body in liquidation by the individual or body responsible for settling;
    d. the body being wound up by the liquidator;
    e. an undivided inheritance belonging to one of his heirs, executor of his will or person administering his inheritance; or
    f. adult child or ward looking to a guardian or guardian.

(2) The representative as mentioned in paragraph (1), is an individually and/or jointly responsible person for the paying of taxes due, unless he can prove or convince the Director General of Taxes that they, as the delegation is not possible, were finally burdened responsible for taxes due.

(3) By derogation from paragraph 1, point a, included under the definition of management is an individual who is in fact entitled to participate in the establishment of the company's policy and/or decision-making and has the power to exercise the decision-making powers of the company.

The above-mentioned Article 32(1) is the provision that says the representative of corporate tax is the administrator. This is made explicit in Article 32(4), where management is described as a person in a position to establish policy/ take decisions on the day to day running of the undertaking. Thus, in the Guinness case, and by analogy in this case, the interpretation of the term management(Todorova, 2024) refers to those managing the organs of the company, the people who have the powers and are effectively engaged in the management of the legal entities. This rule indirectly underscores that the unfair duty of being a corporate tax representative must shift to the Former Management, since there does not exist legal grounds nor legal grounds of duty in its counterpart new management.

And then also on Law number 19 of 2000 concerning amendments to Law Number 19 Year 1997 on STP Obligatory Collection, [footnoteRef:18] In article 1 number 3 it is written that:(*UU No. 19 Tahun 2000*, n.d.)

> "Tax Insurer" means the person or institution that obliges you to pay taxes, including people/professional taxpayers who exercise their rights and fulfill the obligations of the Taxpayer according to the provisions in tax laws and decrees'

According to this definition, as to tax collection object, it gives us a clear description that who the person paying for tax levy is, that is, the legal entity itself that has the obligation of taxes subject to the provisions of laws and regulations. The body exercises the rights and obligations of the taxpayer, i.e. people and entities having competence in acting on its behalf in performing its tax duties, are also included in this obligation. From this concept, it is evident that the tax burden is something ascribable to an active legal entity and its management or representatives who intervene in the company's management,(Giambrone, 2023) and is indivisible from what is included in choice-making and setting company policy.

In such matter within the meaning of the provisions of Article 9 Paragraph (8) of Minister of Finance Regulation No.61/2023, the Former Management should not be categorized in the definition category. It is also provided in this clause that: "Payment of tax can be made to the Former Management if there is tax collection to the new management whose name is written in the deed of change." But after the term of the current administrators, the old ones have essentially no legal ties (Akdemir & Yeşilyurt, 2023) to the legal entity. So, legally and from a strategic perspective, then were not the ones in command of the string of policies nor appoint-up policymakers or managing the corporation. Accordingly, it does not appear in this situation that the Former Management is a representative or person in whom under general principles of tax liability can be found the responsibility to pay the unpaid taxes as contemplated by the tax regulations.

By not having such a law, the Former Management is no longer empowered with any rights or duties regarding the tax liability of the authority itself. Only those actively directing the affairs of the enterprise should be subject to tax. (Manahaar et al., 2021) Those with continued legal authority to do so under the deed act as guarantors of the future tax liability of the legal entity. The stipulation that the Former Management be liable, such as the obligation in Article 9 Para (8), is in danger of violating the principle of limited corporate liability as provided in the company law.(Mahandara, 2022) This principle is a protection for the former management and means that their obligations should follow them only where they are still in tenure and still in a legal relationship with the company.

Principle of Limited Liability in Corporate Law Regarding the Collection of Outstanding Taxes from Former Corporate Management

Principle of Limited Liability (Kisswani & Farah, 2022) is the one of the pillars in company law to have legal security to the management of the Agency. This rule states that the management cannot hold themselves as responsible for the agency's liabilities beyond the time that they have worked for the company in their capacity of management of the agency. Its implications are far ranging, including in the field of tax law for identifying those on whose account corporate taxes can be assessed. But the utilization of the concept of limited liability can also be an issue, particularly if the tax claim is directed against or held against the old corporation management. This is in regard the article Paragraph 9 (8) of the Minister of Finance Regulation Number 61 of 2023 on Procedures for The Scrutiny of Tax Collection on The Tax Still to be paid in accordance with paragraph, tax collection must be fulfilled to Former Management in the presence of a transfer of management, within its deed of the company. This situation also presents numerous legal issues and may also be seen as conflicting with the principle of limited liability found in the Company's ordonnance

The limited liability principle in the corporate setting is a legal basis that delineates the point of responsibility between the entity's obligations and duties to its management and shareholders.(Manggalupang, 2024) In this respect, we noted that against responsible managers, this principle is applicable only if the responsible managers use their power in the (day today) conduct of the company. It is not possible to continue discussing accountability for the company's obligations, including tax liabilities, on the Former Management once the latter is no longer in a business relationship with the company.(Dahana, 2024) Such a principle as expressly stipulated by Law No.40 of 2007 concerning Limited Liability Companies. This despite that in [Article] 97 Paragraph (1) is specified that 'the management runs the company according to its own discretion for the company's counselling period'. Accordingly, management's functions are transitory and cease to be the company's directors. This rule is intended to afford legal protection against legal uncertainty that would hinder managers from doing their tasks without fear of future legal problems after they have ceded control of the company.

In addition, the concept of limited liability is a foothold in a tax context to determine who may be held liable for the tax liabilities of companies. This is derived from the article 32 paragraph (1) Law Number 6 Year of 1983 Regarding General Guidance and Processing Tax Apart from Article 2 Paragraph (2) of the same law, the Legal entity represents the authorized management, in the capacity of a holder of an income-tax subject for the legal entity. Then in Article 32 Paragraph (4) the management referred here are those who effectively have the right to set the policy and/or the decision in managing the company. This stipulation provides that management which can be held responsible for the tax debts of the corporation is an effective administrator who continues to be in a position in the legal relationship with the legal person. And so, old directors who don't have any authority or legal ties with the company should not be accountable for the company's tax liabilities. This notion is consistent with the concept of restricted responsibility, i.e. the restriction of managers' responsibility for as long as they are corporative managers.

Additionally, Article 9 Paragraph (8) of the Minister of Finance Regulation Number 61 of 2023 it also mentions that tax collection can be imposed on the Former Management after the management change in the deed of company 2. Such a provision provides that collection may be

made in the first instance from the management reflected in the deed of change, and if such collection is unavailable, then from the preceding management. The provision is problematic in terms of law, as it is viewed as being against (Tektona, 2022) limited liability principle under the company law. Ex-administrators of the company who lose authority or legal ties with the company may not be held responsible for the company's tax debt. Moreover, this provision can generate legal uncertainty for the former management, as they could still be liable for the tax liabilities incurred after they ceased their duties as directors.
The implementation of Article 9 Paragraph (8) of the Regulation of the Minister of Finance Number 61 of 2003 has implications that are potentially legally for the Former Management including:

a. Legal Uncertainty (Mochalov, 2021): The ex-managers become exposed to the tax claim, although they legally disassociated from the company. This can result in legal uncertainty and psychological stress for the Former Management.
b. Violation of the Principle of Fairness (Itfilarasati, 2022): Putting the tax liability of the Former Management of the company can amount to a violation of the principle of fairness in the tax law. The principle of justice demands that liabilities on tax be put only upon as much of the parties as have legal connection with the legal person.
c. Possible abuse (Maulana & Umein, 2021): This paragraph can be abused to relieve one party of his tax obligations by swiftly changing management or appointing a puppet manager. Innocent old administrative simple men can as a result be targeted by these manipulated actions.
d. Financial Burden (Lu et al., 2023): Compelling parties to pay taxes to old management may impose an unreasonable financial burden, particularly where the Former Management is no longer in control or possession of the company to effectuate tax payments.

Regarding company law, limited liability plays a substantial role in finding an anchor in relation to the liability part for the companies' debt and in this case tax liabilities. Nevertheless, the existence of the rule of subparagraph 9 letter c) article 9-chapter VIII Minister of Finance Regulation Number 61 Year 2003 will actually open the room for the tax collecting against the Former Management, in cases when the policy is regarded as non-compliance against this principle and can act as the breaking the legal uncertainty or principle of justice in the tax law.

The Principle of Justice in Tax Law Regarding the Collection of Outstanding Taxes from Former Corporate Management

As a corollary to that rule of justice, it is a fundamental principle in the tax law which binds the government, and which seeks to maintain an equilibrium between the rights and the obligations of taxpayers. (Rosembuj, 2022) Very difficult problem would be ascertaining regarding the Former Management of the company as to who is liable to tax collection due and payable standing against them where responsibility of the management which is no more in the management of the company. This needs to be further examined more, particularly in the context of Article 9 Sub (8) of The Minister of Finance Regulation Number 61 Year 2023 regarding The Procedures for Tax Collection Implementation on the Remaining Amount, which authorizes the Former Management to execute tax collection when the management identity has been replaced in the company's deed.
In the field of tax law, equity dictates that taxes should be proportionately (Mudrecki, 2021) and only on parties that have liabilities under the legal relation or economic value upon which the

company is built in the process of securing its income. This is also embedded in several tax laws and regulations, for example, Article 23 Paragraph (2) of the 1945 Constitution, stating taxes are to be laid and previously regulated by law and for the welfare of the largest possible number of people. The principle is also contained in Article 3 of Law Number 6-year 1983 regarding General Provisions and Taxation Procedures (KUP) shall be justified with applying the provisions of taxation in fair and reasonable.

There are three key dimensions of justice in taxation:

a. Income Equity (Kennedy et al., 2022): Taxpayers with the same capabilities for economic value should bear the same tax burden.
b. Vertical Fairness (Black et al., 2022): taxpayers who are more capable of bearing taxes should do so.
c. Fair Procedures (Challoumis & Constantinou, 2024): Administration is fair, in that tax collection and similar processes follow laws and regulations and are transparent.

Further to that, Article 9 Paragraph (8) of the Minister of Finance Regulation No.61/PMK.03/2023 stipulates that in the event of a change or change management in a deed of company, the collection of tax can be directly to the management recorded in the deed of change and if the collection to the new management is not possible, the next collection can be charged up to the former (previous) management. This rule does raise an issue towards the justice principle, because may indeed give rise for tax liabilities for former administrators who are no longer connected legally with the corporation.

That way one of the ramifications of the implementation of Article 9 Paragraph (8) is the legal uncertainty that the former management will be faced with. This paper provides that the liability of tax can be claimed against officers ceased to manage the businesses of the company. Indeed, it can be a substantial issue when a provision does not impose a specific time restriction within which the Former Management will be viewed as having incurred the existing tax. In other cases, former directors have already left the company should not be held liable for the company's debts anymore notably debts towards the taxman. This concept is based on the company law principle of limited liability which provides that the obligation of the management ought to finish once they cease to hold the power or privilege to manage the company.

With the lack of clarity, and the ambiguity as to when the (ex) management is no longer responsible for the tax debts incurred by entities that are no longer in play, policy also suffers from legal uncertainty. Old managers who are no longer part of the business become targets for tax claims that can be filed any minute but not necessarily for a specific period. This position is unfair, as the unchanged management of the company which has lost its management rights to the company surely can't be responsible for tax liabilities, if has no control and influence over them. As an example, if, the manager, who has been there for long is made liable for the tax dues that arise after he has ceased to have anything to do with the company, he will feel aggrieved because the tax dues will not be for the period of time for which the responsibility vests, in him or the management of the company.

For management of the old days, the one that leads to the company from, the fear of that the collection period on tax will never end becomes fear. The former administrators don't know when the hammer will fall, or which tax debts they might be sued for. This insecurity can cause mental problems and influences the old management's self-confidence to act in business life. In a worst-case scenario, the Former Management, which already feels freed from the companies' liability (duty of care), is entrapped by unexpected tax assessments that cost the "old" management money. Not only does this hurt the Former Management, but the legal uncertainty triggered by Article 9 Paragraph (8) can be quite detrimental to the company as well. A direct effect may be also that the process of reorganization and management changes in the company has been prevented. If a company is looking to alter or update the company's position, it creates a number of murky possible legal issues, like tax exposures that could be imposed for an unlimited amount of time in an unforeseeable time frame. This may disrupt the scheme for the organization of the company. New shareholders and leadership interested in leading the company in a better direction might feel hamstrung by the lingering legal risks surrounding corporate tax liability.

And the presence of legal ambiguity may also lead to the degradation of company reputation. If the company is perpetually litigating in relation to tax liability, (Kartikowati, 2024) with the previous management, as well as with the present management, it sends a wrong signal in society and in the marketplace. If the reputation is bad, it can create a downward pressure on the price of the company's stock or even the viability of the business itself in the distant future. In this competitive environment perception is everything, and the perception of a business that is not in control of its taxes is not one that it is likely to want to convey to a potential investor, shareholder or member of the public. The legality involved in Article 9 Paragraph (8) not only add to the risks of the company's reputation and causes jeopardy to the company's long-term development. A business that is uncertain when a claim might be brought which could impose a liability on it for tax would be inhibited in the conduct of its business. Managers who want to make changes or other management decisions may delay or prohibit them, just because the legal liability regarding the former management is already uncertain.

What's more, there is the worry that new administrators who wish to implement policies may be concerned that anything they decide will still potentially have legal consequences for them in terms of tax liabilities left by their predecessors. This can affect all the company's business processes, such as cash flow and investment judgements. When the company thinks that the Former Management still needs to shoulder some murky legal responsibilities the Former Management itself may make more cautious decisions for proposal like those outlined in the intro. Furthermore, this uncertainty can lead companies to allocate more resources in solving these legal challenges rather than work on business activities or innovation to secure their position in the market.

The legal uncertainty created because of the application of Article 9 Paragraph (8) is worse for the sustainable future of the company (for both the old and new management) than the present uncertainty. The uncertainty of deadlines in tax collection can also bring disadvantages to Former Management who are no longer involved in the company and have a bad effect on the reputation and stability of the company with fatal effect. In such a situation, an attempt should be made to frame specific and stricter rules with respect to the cut-off date of the liability for Former Management. Such clarity will offer better protection to those who are no longer managing the company and provide confidence that the company may carry out its business without impediment due to legal uncertainty.

The tax collection policy for the company's former management, as stipulated in Article 9 Paragraph (8) of the Minister of Finance Regulation (PMK) Number 61 of 2023, raises a few legal issues, especially related to the principles of justice and legal certainty. From the perspective of Islamic law, this policy needs to be studied by considering the basic principles of sharia, such as justice ('adl), maslahah (public interest), and responsibility (dhamanah).(Arodha, 2025)

Islamic law emphasizes the importance of justice in every public policy, including in the tax system. The Qur'an expressly states that Allah commands humans to act justly and do good (QS.

An-Nahl: 90). In the context of tax collection, justice requires that the tax burden must be imposed on the party who has the authority and ability to fulfill it. However, policies that impose tax responsibilities on old managers who no longer have control over the company are considered unfair, as they no longer have access to the company's financial assets or decisions. This is contrary to the principles of sharia which prohibits the imposition of burdens beyond their ability (QS. Al-Baqarah: 286).(*Al-Quran Online Terjemah Dan Tafsir Bahasa Indonesia | Quran NU Online*, n.d.)

In addition, Islam recognizes the concept of maslahah, which emphasizes that every policy must bring benefits and avoid harm. In fiqh muamalah, taxes (such as kharaj, jizyah, or ushr) are recognized as instruments for the benefit of the public, if their application does not cause tyranny.(M Fauzan, 2014) The policy of collecting taxes to old administrators who are no longer authorized can be categorized as a form of tyranny, because they no longer have the capacity to fulfill these obligations. The Prophet Muhammad (SAW) said, "You should not harm yourself and you should not harm others" (HR. Ibn Majah). (Eliana et al., 2025) Thus, policies that force old administrators to bear tax debts even though they are no longer involved in the management of the company can be considered as dharar (harm) that is prohibited in Islam.

The principle of responsibility in Islamic law is also relevant to be studied in this context. In fiqh muamalah, financial responsibility (dhamanah) is closely related to ownership (milkiyyah) and mastery (qabd). (Ismail et al., 2021) A corporate administrator, who acts as a representative of the company, has responsibilities only as long as he is still in the office and has authority. If the management has been replaced, then the financial responsibility should shift to the new management, unless there is an indication of fraud or deliberate negligence (ta'addi or tafrith). (Umar, 2022) Article 9 Paragraph (8) of PMK No. 61/2023 ignores this principle by still imposing responsibility on the Former Management, even though they no longer have a legal relationship with the company.

Several fiqh rules can be applied to assess this policy. First, the rule of "*Al-Ashl fi al-af'al at-ta'abbud*" (Gustanto & Mubarok, 2023) emphasizes that every legal action must have a clear and fair basis. A tax collection policy that burdens the Former Management without a clear time limit is contrary to this principle. Second, the rule of "*La dharar wa la dhirar*"(Karimuddin Abdullah Lawang, 2025) prohibits all forms of policies that pose danger, both to oneself and others. Imposing taxes on old administrators who are no longer authorized can cause financial and psychological losses that should not be allowed. Third, the rule of "*Al-Ghunmu bi al-ghurm*" (Ananda et al., 2021)states that whoever bears the risk, is entitled to profit. If the Former Management no longer has rights to the company, then it is unfair if they are still burdened with tax obligations.

To create a fairer policy that is in line with sharia principles, several improvement steps are needed. First, the time limit on the responsibility of the Former Management, for example, a maximum of one to two years after the change of management. Second, an exception for old administrators who can prove that they were not involved in tax violations. Third, law enforcement that focuses more on legal entities and active administrators who still have authority.

CONCLUSION

In the first place, Article 9(8) is inconsistent with the principle of limited liability, one of the fundamental principles of company law, according to which company officers are liable only in so far as they act in an official capacity and retain prerogatives and duties in the decision-making organs of the company. This means that when the management has ceased to be effectively and actively involved in the corporation, the executives' duties, including tax liabilities, should cease. But this Article taxes those administrators who have no legal responsibility for management of the company and this creates an injustice in that those who are no longer involved are held responsible for the activities of those who should be responsible for the management. Second, this Article is also antithetical to the notion of tax law fairness - the balance between taxpayers' rights and obligations and those of the state. In taxing the Former Management that no longer controls or manages the company, an unfairness exists that offends the concept of tax fairness. 3) while implementing the present Article another issue arises – it means the substantial legal uncertainty as t/here are not any clear limits for recovering of due amounts of taxes – the former manager may be claimed for paying taxes 'till the end of the world' (though the old manager is no more the company's manager). This uncertainty not only damages the former management but could also damage the image and the stability of the company and obstruct any changes or restructurings caused by unclear aspects of the possible legal liability.

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