



IMPLICATIONS OF LEGAL PROTECTION FOR TAXPAYERS IN THE IMPLEMENTATION OF HOSTAGE TAKING (*GIJZELING*)

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Article history:	Abstract:
<p>Received: July 4th 2023 Accepted: August 4th 2023 Published: September 6th 2023</p>	<p>This article analyzes the use of <i>gijzeling</i> as an instrument for tax law enforcement in Indonesia, focusing on the context of its implementation, psychological impact, and the effect of compliance on tax debt. Within the framework of Law Number 19 of 2000 concerning Collection of Taxes by Forced Letter (UU PPSP), <i>gijzeling</i> is enacted as the last step to encourage taxpayers or guarantor taxes settle tax debts. The analysis underlines that the criminal sanctions stipulated in Article 41 A of the PPSP Law put significant financial pressure as well as psychological pressure on taxpayers or guarantor tax . The threat or execution of <i>gijzeling</i> has the potential to motivate the payment of tax debts quickly in order to avoid criminal risks and fines. In addition, this study reviews the legal provisions governing <i>gijzeling</i> , <i>considering</i> aspects of human rights and legal protection for taxpayers . or guarantor tax . The results of the analysis show that <i>gijzeling</i> is not only a financial collection tool, but also has psychological implications that can encourage compliance with tax obligations. This research provides an in-depth look at the effectiveness and impact of <i>gijzeling</i> in encouraging the payment of tax debts, and emphasizes the importance of a balance between law enforcement and individual human rights in the context of tax collection in Indonesia.</p>

Keywords: *Gijzeling* , tax debt, tax, legal protection, taxpayer,

INTRODUCTION

The Indonesian Directorate General of Taxes (DGT) has the responsibility of collecting taxes from all registered taxpayers in Indonesia. However, there are often difficulties in collecting this tax, especially when taxpayers are reluctant to pay the taxes they should be paying. The goal is to force taxpayers to pay the taxes they should. However, these actions have generated controversy, particularly in the use of excessive force by tax officials when seizing or holding assets. This practice is called *gijzeling* and can be a complex matter.

On the one hand, this action is considered important to enforce tax compliance and prevent state losses due to tax evasion. However, there are legal issues regarding the use of *gijzeling* in Indonesian tax law. Wijaya noted a weakness in the *gijzeling practice* carried out by DGT. ^[1] According to him, this practice often violates human rights and the principle of justice. ^[1] Therefore, he suggested reforming the taxation system to apply *gijzeling* fairly without violating the rights of taxpayers. ^[1] This view is also shared by Setyowati and Rusli who highlight similar issues and emphasize the need to protect human rights in tax law enforcement. ^[2]

Gijzeling , which originates from a Dutch term, refers to the detention of a person to ensure repayment

of a debt or achieve a certain goal. ^[3] In the context of tax law, some experts consider the use of *gijzeling* to violate human rights, such as freedom and privacy. ^[4] They also question the effectiveness of using *gijzeling* in tax collection. Rebecca M. Goede, an international law expert from Leiden University, believes that the use of *gijzeling* in tax collection in the Netherlands is not in line with international human rights instruments, such as *the International Covenant on Civil and Political Rights* and *the European Convention on Human Rights* . He emphasized that the right to personal freedom guaranteed by article 9 of the ICCPR and article 5 of the ECHR is closely related to the use of *gijzeling* . According to him, *gijzeling* can violate this right because it takes individual freedom without a fair legal process and independent courts. This can result in the detention of financially challenged individuals simply because of an inability to pay taxes, while the better off can pay taxes without *gijzeling* . He proposed that the Netherlands stop using *gijzeling* in tax collection and look for alternatives in accordance with international human rights principles. ^[5]

There have been other studies looking at the use of *gijzeling* , including by Luis Schoueri, professor of tax law at the University of São Paulo. He detailed the impact of using acts of civil compulsion, such as



gijzeling, in tax collection as well as seeking alternative, more humane solutions such as mediation and arbitration. [6] Professor David Rosenbloom of New York University School of Law and Professor Richard P. Vann of the University of Sydney Law School support the use of *gijzeling* in tax law enforcement. They acknowledge its effectiveness against wealthy tax evaders, but insist on fair and proportionate use. [7]

The importance of maintaining proportionality in the use of *gijzeling* in tax law enforcement was highlighted by the two legal experts. There are concerns regarding abuse of power or unfairness in procedures for confiscation or detention of property. [8] Although the act of *gijzeling* can encourage taxpayer compliance, it also has negative impacts and needs to be carried out with fairness and appropriate proportions. Research by Ardiyanto states that this action is legally valid in Indonesia, but needs to be followed by fair and proportional law enforcement. [9]

If viewed from a law enforcement perspective, controversy arises regarding the effectiveness and fairness of the use of *gijzeling*. Some argue that this action can cause discomfort, while others see it as an incentive for taxpayers to fulfill their obligations. [10] Under Indonesian tax law, the practice of tax evasion creates problems, demanding fair treatment. Law Number 19 of 2000 concerning Tax Collection by Forced Letter permits *gijzeling* as a law enforcement action. Even though it is legally legal, there are concerns regarding the implementation of *gijzeling* which may violate human rights. Nevertheless, justice and humanity still need to be considered in implementing tax regulations. [11]

There are three tax collection systems: *Official Assessment, Self-Assessment, and Withholding*. [12] Regarding *gijzeling*, each system may consider this action as a last resort in tax collection, depending on local legal regulations. However, other alternatives such as mediation or negotiation is also suggested. Use *gijzeling* as effort final in billing tax Still become debate, with a number of propose alternative like mediation. Although legitimate law, necessary be careful in apply *gijzeling* so as not to violate right basic human and caring principle justice.

Taxpayer

In Article 1 point 2 of the Law of the Republic of Indonesia Number 19 of 2000 concerning Collection of Taxes by Forced Letter, what is meant by "Taxpayers are individuals or entities which according to the provisions of the tax laws and regulations are determined to carry out tax obligations, including tax collection or withholding certain taxes." [16] Meanwhile, according to Aji Prasetyo et al, that "Taxpayers are everyone involved in taxation activities including taxpayers,

tax collectors, and tax collectors." [17] Taxpayers can be individuals, companies, or other organizations that earn income or carry out taxable transactions in accordance with the provisions of the laws in force in that country. As a taxpayer, a person or legal entity has the obligation to report income and pay taxes in a timely manner, as well as carry out other tax responsibilities such as following administrative procedures and reporting important changes related to taxation to the local tax authority.

Tax Insurer

In Article 1 number 3 of Law of the Republic of Indonesia Number 19 of 2000 concerning Tax Collection by Force Letter, what is meant by "Tax Bearer is an individual or body responsible for paying taxes, including representatives who exercise the rights and fulfill the Taxpayer's obligations according to the provisions tax laws and regulations." [16] Meanwhile, according to Pasaribu, a tax bearer is a person or entity who is responsible for fulfilling tax obligations on behalf of another person or entity that is the subject of tax. [18] Sutedi agrees that a tax bearer is a person or entity who is obliged to carry out tax obligations on behalf of another person or entity that is the subject of tax. [19]

Tax collection

In Article 1 number 9 of the Law of the Republic of Indonesia Number 19 of 2000 concerning Tax Collection by Force Letter, what is meant by "Tax Collection is a series of actions so that the Tax Insurer pays off tax debts and tax collection costs by reprimanding or warning, carrying out collection immediately and simultaneously, notifying Forced Letters, proposing prevention, carrying out confiscations, carrying out hostage-taking, selling goods that have been confiscated." [16]

Hostage (Gijzeling)

In Article 1 number 21 of Law of the Republic of Indonesia Number 19 of 2000 concerning Tax Collection with Forced Letters, what is meant by "Hostage taking is the temporary restraint of the Tax Insurer's freedom by placing him in a certain place." [16] Implementing *Gijzeling* is actually the last resort after all efforts to collect tax have failed, especially if there are indications that the taxpayer is not cooperative as stated in Article 3 paragraph 1 letter d of the Directorate General of Taxes Decree Number K EP -218 / PJ . / 2003. [13] Hostage-taking or Gijzeling is one of the tax collection efforts which involves temporarily restricting the freedom of the tax bearer by placing him in a certain place for a maximum period of 6 (six) months from the time the tax bearer is placed in the place of hostage and can be extended indefinitely. duration of 6 (six) months.



METHOD

This research uses a normative juridical method, namely a type of research that focuses on analyzing the application of rules or norms in positive law. [20] In research, there are two types of data, namely primary data obtained directly from the community and secondary data obtained from library materials. Primary data is often referred to as basic data, while secondary data consists of primary legal materials, secondary legal materials and tertiary legal materials which are used as research material. [21] To interpret and discuss research results, researchers will refer to the meaning of law, legal norms, legal theories, and principles related to the problem under study. Legal norms are used as major premises, and then correlated with relevant legal facts (*legal facts*) which are used as minor premises. Through a syllogistic process, a *conclusion* can be generated for the problem under study.

RESULTS AND DISCUSSION

The implementation of *gijzeling* in tax collection has an important connection with the legal provisions for execution regulated in legislation. In an in-depth analysis of how the implementation of *gijzeling* affects taxpayers to settle or pay off tax debts, factors such as the principles of execution, write-off and limitation explained in the text play a key role.

1. Hostage Removal and Restrictions:

The abolition of hostage-taking provisions (*gijzeling*) by the Supreme Court through Circular Letter (SEMA) No. 2/1964 juncto SEMA No mor 4/1975 highlights the consideration of the humanitarian aspect. This elimination reflects concern for individual rights and avoids practices that conflict with the humanitarian principles of Pancasila. [23] However, the need to encourage tax compliance resulted in hostage-taking regulations being reinstated through Supreme Court Regulation No. 1 of 2000. This shows that the consideration between the protection of individual rights and the goal of encouraging tax compliance must be balanced. [22]

2. Hostage Taking Criteria:

Connection with PERMA No. 1 of 2000 and Law No. 19 of 2000 in conjunction with Law No. 19 of 1997 concerning Tax Collection by Forced Letter confirms that the implementation of *gijzeling* in tax collection has special criteria. Hostage-taking is only imposed on taxpayers who have tax debts above a certain limit and whose good faith in paying taxes is doubtful. [24] This reflects the application of the principles of execution, where the implementation of the execution must fulfill certain conditions, such as the decision having permanent legal force and the

act of execution being carried out under the leadership of the Chairman of the District Court.

3. Impact of Execution on Tax Compliance:

An in-depth analysis of how the implementation of *gijzeling* influences taxpayers to settle tax debts needs to consider the execution principles that underlie this implementation. The implementation of *gijzeling* in tax collection is based on a number of execution principles which form the legal framework for its implementation. These principles regulate how executions are carried out, respect individual rights, and maintain a balance between legal objectives and the protection of individual rights. In the context of tax collection, these execution principles play an important role in ensuring tax compliance while respecting the rights of taxpayers. As follows: [24]

- a) Executable Decisions: This principle requires that execution can only be carried out against court decisions that have permanent legal force. This ensures that executions are not carried out haphazardly, but only on the basis of decisions that have gone through a fair trial and appeal process.
- b) Not Executed Voluntarily: Execution is carried out when the party required by a court decision does not carry out its obligations voluntarily. This principle emphasizes the need for state intervention to ensure court decisions can be implemented and legal compliance is met.
- c) *Condemnatoir* in nature : This principle refers to the punitive nature of court decisions. That is, the execution was carried out as a result of a violation of a court decision that punished a party that did not comply with its obligations.
- d) Leadership by the Chairman of the District Court: Executions, including *gijzeling* , are carried out under the leadership of the Chairman of the District Court. This ensures that executions are carried out proportionally and in accordance with legal provisions.

Law No. 19 of 2000 regulates hostage in tax collection. The main requirement is a minimum debt of IDR 100,000,000 and good faith that is doubtful. Hostage-taking requires a warrant from an authorized official with permission from the Minister of Finance or the Governor. The hostage-taking area must meet the criteria and be separate from other detainees. Tax bearers in hostage-taking have the right to worship, health services, food, complaints, readings, family visits, and lawsuits. They can be released in case of paying off debts, expiration of time, or court rulings. Claims can only be filed in district court. Qualified tax insurers can apply for rehabilitation and compensation,



as well as action against those who escape from being held hostage. Compensation is Rp 100,000 per day during the hostage. The following is how this law regulates legal protection for taxpayers in *gijzeling situations* :

1. **Hostage Taking Requirements (Article 1 Number 21 of the PPSP Law and Article 3 PP 137/2000):** These two articles strictly stipulate that hostage taking can only be carried out against taxpayers who meet certain quantitative and qualitative requirements. The quantitative requirements relate to the minimum amount of tax debt that must exist so that the hostage taking process can begin. Qualitative requirements refer to the taxpayer's good faith in paying off their tax debt. Thus, legal protection is provided by regulating the conditions that must be met in order for hostage taking to be carried out.
2. **Hostage Taking Permit (Article 33 paragraph (2) and paragraph (4) letter c PPSP Law; Article 4 PP 137/2000):** These articles regulate that to carry out hostage taking, there needs to be written permission from the Minister of Finance for central tax collection or from governor for local tax collection. This guarantees that hostage-taking processes are only carried out under official permits and legitimate government oversight.
3. **Place and Conditions of Hostage Taking (Article 33 paragraph (4) letter e of the PPSP Law and Article 6 PP 137/2000):** These articles state that the place of hostage taking must meet certain requirements such as being closed, isolated from society, limited facilities, and a security system and adequate supervision. This ensures that the hostage setting not only meets security standards but also maintains the dignity of the taxpayer.
4. **Rights During Hostage-Taking (Article 40 of the PPSP Law and Article 14 of PP 137/2000):** Article 40 paragraph (1) is intended to provide legal certainty and protection of rights for buyers of confiscated goods through auction sales. Meanwhile, Article 14 PP 137/2000 provides a list of rights that taxpayers still have while being held hostage, including the right to worship according to their beliefs, adequate health services, adequate food, communication with family, and so on. This ensures that taxpayers are still treated humanely during the hostage period.
5. **Lawsuit Mechanism (Article 34 paragraph (3); Article 37 of the PPSP Law and Article 15 PP 137/2000):** These articles stipulate that taxpayers who feel their rights have been violated during the hostage-taking process can file a lawsuit with the District Court. This provides a way for

taxpayers to protect their rights through a valid legal process.

6. **Rehabilitation and Compensation (Article 37 paragraph (1a), (1b), (1c) of the PPSP Law and Article 16 PP 137/2000):** Several of these articles regulate reputation rehabilitation and compensation. If the taxpayer files a lawsuit and the court declares the hostage taking illegal, the official who issues the hostage warrant must provide rehabilitation of his good name through an official announcement. In addition, taxpayers can obtain compensation for losses suffered due to illegal hostage taking.

In enforcing tax law in Indonesia, *gijzeling* as a tax collection tool is regulated in Law Number 19 of 2000 concerning Tax Collection by Forced Letter. Article 2 paragraph (3) of the Law authorizes Tax Officials to take hostage the property of Taxpayers who do not immediately pay their tax debts after being given a Warning Letter. Article 41 A of the same law threatens criminal sanctions and fines for tax violators. This criminal threat has the potential to encourage taxpayers to settle debts more quickly. Article 23 paragraphs (2) and (3) of the Law regulates penalties for parties who violate tax provisions. The use of *gijzeling* is not only a financial sanction, but also a psychological pressure that motivates tax compliance.

context of hostage - taking sanctions against taxpayers or guarantor taxes , it is necessary to maintain a balance between law enforcement and human rights principles. Criminal sanctions, including taking hostages, must meet criminal requirements. The principles of legality and error regulate the limits of criminal sanctions, in accordance with the law. *Gijzeling* in billing tax is option final (*ultimate remedium*), after effort administrative . A Hostage Warrant by state officials confirms this action. Taking hostages in taxes is not a criminal offense, focuses on the psychological impact, encouraging the fulfillment of obligations. Hostage-taking is limited to 6 months and is not like criminal detention. Different from criminal law, tax holding does not involve criminal violations, it focuses on tax obligations. Taking hostages is the last option for fulfilling tax obligations .

CONCLUSION

Implementation of *gijzeling* on mandatory taxes _ or guarantor Taxes have a great impact on psychological and practical aspects. The threat and implementation of hostage-taking can cause psychological burdens such as shame and stress, as well as exert practical pressure through restrictions on personal freedom, encouraging the settlement of tax debts. The Relative Theory or Prevention Perspective shows that this practical impact realizes the goal of



prevention. Factors and legal requirements regulated in Law no. 19 of 2000 concerning Tax Collection by Force Letter (UU PPSP) and the Supreme Court Regulations are important determinants in the implementation of *gijzeling*. The PPSP Law provides legal protection for taxpayers, prevents abuse of power, and confirms the government's commitment to effective tax collection. The threat of criminal sanctions, stated in Article 41 A of the PPSP Law, places great pressure on taxpayers. *Gijzeling* is considered the final step after an administrative approach by the Directorate General of Taxes, maintaining a balance between tax collection and individual human rights. Legal protection regulations for taxpayers or guarantor Taxes in *gijzeling situations* include hostage requirements, hostage permits, place and conditions of hostage taking, rights during hostage taking, mechanism of action, as well as rehabilitation and compensation.

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billion rupiah). Minimum hostage period is 6 (six) months and maximum is 3 (three) years. Another provision in the PERMA is that hostage-taking can be imposed on heirs who have received an inheritance from a debtor who has bad intentions. Hostage cannot be imposed on a debtor with bad intentions who is 75 years old.

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