

Challenging Government Overreach: Privacy Concerns in Financial Information Access for Tax Purposes

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ABSTRACT: This research examines the implications of Law No. 9 of 2017 on Access to Financial Information for Tax Purposes, which grants the Indonesian government, through the Directorate General of Taxes, extensive access to financial information from financial service institutions regarding any taxpayer. Article 6 of this law further provides immunity to government officials, including those from the Ministry of Finance, the Financial Services Authority, and financial institutions, from criminal or civil prosecution under the pretext of “carrying out duties.” This broad authority and immunity raise concerns about potential violations of taxpayer privacy rights, especially for those who have diligently fulfilled their tax obligations. The research argues that such unrestricted government access contradicts the right to privacy for all taxpayers, necessitating legal limitations to safeguard individual rights. The study emphasizes the importance of equitable treatment in ensuring that justice is maintained, particularly for compliant taxpayers. Utilizing a normative research methodology, which includes legislative, conceptual, and comparative approaches, this study highlights the potential conflict between Law Number 9 of 2017 and other existing regulations, such as Law No. 7 of 2021 on Harmonization of Tax Regulations and Law No. 27 of 2022 on Personal Data Protection (PDP). The research underscores the need for a balance between tax transparency and the protection of personal financial data. In conclusion, this study calls for legal efforts, such as judicial review, to prevent Law Number 9 of 2017 from undermining human rights and the supremacy of law. Protecting taxpayer privacy within a democratic legal framework is essential to achieving justice and upholding the principles of a *Rechtsstaat*.

KEYWORDS: Immunity, privacy right, financial information, taxpayer, supremacy of law, judicial review

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I. INTRODUCTION

Tax revenue is the primary source of state financing. Several other sources no longer make a significant contribution to state revenues. Revenue from the oil and gas sector, which has been the primary source of state revenue, is no longer what it used to be. Oil and gas resources as non-renewable natural resources are no longer the state's focus. While revenues from international trade activities are subject to tariff provisions required by the World Trade Organization (WTO).¹ Tight liquidity and the global financial crisis have made obtaining foreign debt and grants increasingly tricky. Apart from that, debt dependence on foreign countries will also impact fiscal imbalances in the future. This reduces state income.²

The government is actively working to increase revenue from the tax sector by exploring tax potential through increasing the number of taxpayers.³ An increase in government tax was implemented through the tax amnesty policy in 2017. This is because the more taxpayers there are, the greater the state revenue obtained from taxpayers. It is hoped that the tax amnesty will increase the number of taxpayers. The Panama Papers case in 2016 began the

¹ Roy Bahl & Richard M Bird, "Tax Policy In Developing Countries: Looking back and forward" (2008) LXI:2 National Tax Journal 289, online: <<http://www.jstor.org/stable/41790445>>.

² IMF, "Fiscal Implementation Of The Global Economic An Financial Crisis" (2009) 09:Fiscal Implementation Of The Global Economic An Financial Crisis IMF Staff Position Note SPN, online: <<https://www.elibrary.imf.org/view/journals/004/2009/013/article-A001-en.xml>>.

³ Ahmad Munir & Arifka Andini Dea, "Pengaturan Pajak Restoran atas Food Truck Menurut Undang-Undang Nomor 28 Tahun 2009 Tentang Pajak Daerah dan Retribusi Daerah" (2017) 1:ISSN Mimbar Yustitia 93, online: <<https://ejurnal.unisda.ac.id/index.php/mimbar/article/view/573>>.

reinstatement of the tax amnesty policy. The Panama Papers contained information regarding financial transactions and business transactions carried out by the Indonesian people; this highlighted the need for open access to tax information. Furthermore, the policy for regulating tax information disclosure is regulated in Government Regulation instead of Law of the Republic of Indonesia No. 1 of 2017 concerning Access to Financial Information for Tax Purposes, which subsequently became Law of the Republic of Indonesia No. 9 of 2017 concerning Stipulation of Government Regulations as a form of tax system reform.⁴

Reform of the tax system, which concerned open access to information for tax purposes, required the transfer of duties and responsibilities to the Directorate General of Taxes, which was previously the authority of the Minister of Finance.⁵ The Directorate General of Taxes, with the enactment of Law Number 9 of 2017, now has the authority to obtain access to financial information for tax purposes from financial service institutions, including automatic reports containing financial information and other evidence and information upon request. This power transfer makes taxpayer financial information easy to obtain. This has created further discourse on taxpayer financial data regarding the qualification of tax information and the extent to which of tax authorities can access and use taxpayer account information.

The broad authority granted to the Directorate General of Taxes (DGT) under Article 2 of Law Number 9 of 2017 regarding access to financial information for tax purposes imposes obligations on financial service institutions in the banking, capital markets, insurance, and other financial sectors. This raises concerns about potential misuse of authority. If not clearly limited, this could imply that the DGT may access the personal financial information of any

⁴ Belinda Carissa Santoso, "Akibat Adanya Keterbukaan Informasi Pajak Pasca Dikeluarkannya Perppu Nomor 1 Tahun 2017 Tentang Akses Informasi Keuangan Untuk Kepentingan Perpajakan" (2020) 13:1 *Mimbar Keadilan* 12–21, online: <<https://jurnal.untag-sby.ac.id/index.php/mimbarkeadilan/article/view/2640>>.

⁵ A Munir et al, "Diskresi Presiden dalam Pengaturan Keterbukaan Informasi Perpajakan Government Discretion in Regulation of Tax Information Disclosure" (2021) 5:1 *Halu Oleo Law Review* 79, online: <<https://ojs.uho.ac.id/index.php/holrev/article/view/14110>>.

taxpayer, without distinguishing between compliant and non-compliant taxpayers. This concern is particularly pertinent given that Article 2, paragraph (2) of Law Number 9 of 2017 mandates financial service institutions to report to the Directorate General of Taxes detailed financial information according to international standards for the exchange of financial information. This includes reports for every financial account identified as subject to reporting requirements and reports on financial information managed by these institutions over a calendar year. This provision suggests that periodic and continuous reporting to the DGT is required. Furthermore, Article 2, paragraph (3) stipulates that the reports submitted must, at a minimum, include:

- a) The identity of the account holder;
- b) The financial account number;
- c) The identity of the financial service institution;
- d) The balance or value of the financial account; and
- e) Income associated with the financial account.

Furthermore, the provisions deemed to exceed permissible limits are articulated in Article 2, paragraph (8), which negates or overrides the principle of confidentiality as required by existing regulations. As a result, financial service institutions bound by confidentiality obligations may be permitted to violate these obligations based on this provision (referring to Article 2, paragraph (1)). This implies that the principle of confidentiality no longer applies once financial service institutions are mandated to submit financial information reports to the Directorate General of Taxes (DGT), as clarified in Article 2, paragraph (8) of Law Number 9 of 2017. Moreover, there are criminal sanctions stipulated in Article 7, paragraph (1) for leaders and/or employees of financial service institutions and other entities who fail to submit reports as required in Article 2, paragraph (2) and Article 2, paragraph (4), with penalties of imprisonment for up to one (1) year or a fine of no more than IDR 1,000,000,000 (one billion rupiah).

The inconsistencies in these provisions create a belief that, normatively, financial service institutions are obligated to report financial information for all taxpayers without exception to the Directorate General of Taxes (DGT). Failure to comply with this obligation results in criminal sanctions for financial service institutions that violate it. The situation is further exacerbated by Article 6 of Law Number 9 of 2017, which grants immunity to the Minister of Finance and/or employees of the Ministry of Finance, leaders and/or employees of the Financial Services Authority, and leaders and/or employees of financial service institutions while “performing duties related to the implementation of access to and exchange of financial information for tax purposes.” This immunity extends to both criminal prosecution and civil lawsuits. It is evident that the provisions established by Law Number 9 of 2017 are in stark contradiction with other regulations, such as Law No. 7 of 2021 on the Harmonization of Tax Regulations (HPP) and Law No. 27 of 2022 on Personal Data Protection (PDP), as well as the Constitution.

It should be understood that taxpayers' financial data constitutes a specific privacy right.⁶ Even though the protection of the right to privacy is regulated in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states “everyone has the right to recognition, guarantees, protection and legal certainty that is fair and equal treatment before the law”, as well as Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states “Everyone has the right to protection of himself, his family, honor, honor and dignity, as well as the property under his control, as well as the right to a sense of security and protection from the threat of fear of doing or not doing something that is a human right”. Protection of citizens' privacy rights is clearly the state's responsibility and obligation.⁷ Based on

⁶ Sekaring Ayumeida Kusnadi, “Perlindungan Hukum Data Pribadi Sebagai Hak Privasi” (2021) 2:1 AL WASATH Jurnal Ilmu Hukum 9–16, online:< <https://journal.unusia.ac.id/index.php/alwasath/article/view/127>>.

⁷ Herini Siti Aisyah et al, “Legal protection of citizens: The alcoholic beverages in licensing, taxation, and supervision in indonesia” (2020) 9 Journal of Drug and Alcohol Research 1, online:< <https://www.ashdin.com/abstract/legal-protection-of-citizens-the-alcoholic-beverages-in-licensingtaxation-and-supervision-in-indonesia-52988.html>>.

these constitutional rights, it is clear that there should be discourse regarding how the enactment of Law Number 9 of 2017 affects the privacy rights of taxpayers as citizens.

Before the enactment of Law Number 9 of 2017, there were still many cases of tax officers abusing their authority. The case of Gayus Tambunan is one that has tarnished the world of Indonesian taxation.⁸ Gayus Tambunan was proven to have received bribes from several companies. In addition, a case involving tax officers was rediscovered in 2018, with the arrest of the Head of the Ambon Pratama Tax Service Office and Sulaimin Ratmin as the tax audit supervisor for accepting bribes from Anthony Liando with the aim of reducing individual tax payments for the 2016 fiscal year in Ambon.⁹ In 2019, four DGT tax officers were arrested for accepting bribes from luxury car dealers to approve tax refund applications.¹⁰ The expansion of the authority of the Directorate General of Taxes (DGT) since the enactment of Law Number 9 of 2017 creates a vulnerability to the potential legitimization of legal violations committed by DGT tax officials, particularly regarding the infringement of financial information privacy. In fact, regulations governing access to financial information for tax purposes must ensure the fulfillment of legal protection for all citizens, rather than serving the interests of specific groups or factions.¹¹

The protection of taxpayers' privacy rights must be a concern for the government. Law No. 27 of 2022 concerning Personal Data Protection was ratified on October 17, 2022, protecting citizens' data.¹² Personal data protection guarantees the security of personal

⁸ Raja Eben Lumbanrau, "Rentetan Kasus Korupsi yang Menjerat Pegawai Pajak", (2016), online: <<https://www.cnnindonesia.com/nasional/20161122162351-12-174492/rentetan-kasus-korupsi-yang-menjerat-pegawai-pajak>>.

⁹ Taufiq Shiddiq, "KPK Menahan 3 Tersangka Kasus Suap Pajak di Ambon Hasil OTT", *Tempo* (2018) 1, online: <<https://www.tempo.co/hukum/kpk-menahan-3-tersangka-kasus-suap-pajak-di-ambon-hasil-ott-810583>>.

¹⁰ Y Mohammad, "Korupsi dan Pengkhianatan Petugas Pajak Ambon", *Berita Tagar* (2018), online: <https://beritagar.id/artikel/berita/korupsi-dan-pengkhianatan-petugas-pajak-ambon>.

¹¹ Munir et al, *supra* note 5.

¹² Muhammad Yudistira & Ramadhan, "Tinjauan Yuridis Terhadap Efektivitas Penanganan Kejahatan Siber Terkait Pencurian Data Pribadi Menurut Undang-Undang No. 27 Tahun

data as a manifestation of the right to privacy.¹³ Unfortunately, many reports of data leaks occurring in Indonesia have come out since the law came into force. In 2023, reports emerged regarding alleged data leaks from the Directorate General of Population and Civil Registration of the Ministry of Home Affairs involving 337 million data records.¹⁴ The most shocking report thus far in 2024 was a cyber attack on the National Data Center. The attack took the form of ransomware, which disrupted a number of government websites and public services, including the DJP website.¹⁵

This research focuses on the legal actions that can be undertaken to ensure that the government, through the Directorate General of Taxes (DGT), cannot arbitrarily access personal financial information, particularly for taxpayers who have complied with their tax obligations. While there has been extensive research on privacy rights, there has yet to be an examination of legal measures for constitutional prevention against privacy rights violations carried out legally by the DGT citing Law Number 9 of 2017 as justification. On the other hand, legal protections as stipulated in Law No. 7 of 2021 concerning Harmonization of Tax Regulations and the PDP Law regarding the confidentiality of personal information cannot be implemented due to regulatory conflicts between these laws and their contradiction with the Constitution, particularly concerning Article 28D and Article 28G of the 1945 Constitution of the Republic of Indonesia.

2022 Oleh Kominfo" (2023) 5:4 Unes Law Review 3802–3815, online:< <https://review-unes.com/index.php/law/article/view/698>>.

¹³ Diah Puspitasari et al, "Urgensi Undang-Undang Perlindungan Data Pribadi Dalam Mengatasi Masalah Keamanan Data Penduduk" (2023) 4:2 Journal of Administrative and Social Science 195–205, online:< <https://journal-stiayappimakassar.ac.id/index.php/jass/article/view/403>>.

¹⁴ Indriana Firdaus & Bangka Belitung, "Upaya Perlindungan Hukum Hak Privasi Terhadap Data Pribadi dari Kejahatan Peretasan" (2023) 12:4 Jurnal Rechten: Riset Hukum Dan Hak Asasi Manusia 24, online:< <https://rechten.nusaputra.ac.id/article/view/98>>.

¹⁵ Sulaeman, "Server PDN Diretas, Data Wajib Pajak Ikut Bocor?", (27 June 2024), online: *liputan6.com* <<https://www.liputan6.com/bisnis/read/5629702/server-pdn-diretas-data-wajib-pajak-ikut-bocor>>.

II. METHODS

Normative legal research methods solve practical legal problems, thereby distinguishing it from other fields of research.¹⁶ This research uses normative research methods, including the statute approach, the conceptual approach, and the comparative approach.

The statute approach is necessary to examine the authority of tax collection concerning access to tax information. Fundamental laws and regulations provide the basis for decision-making and actions. Additionally, the conceptual approach is used to analyze the theoretical foundations. The aim of the research is to determine the limits of governmental authority in accessing financial information, taking into consideration human rights and legal protection. The comparative approach is employed to illustrate how governments in modern democratic countries in Asia and Europe regulate the extent of government intervention in accessing information and privacy protection, particularly regarding personal financial information. Legal protection for taxpayers in relation to government intervention in accessing financial information for tax purposes is compared across three countries: Australia, France, and Singapore.

III. SYNCHRONIZATION OF THE TRILOGY PRINCIPLES OF THE RULE OF LAW, DEMOCRACY, AND HUMAN RIGHTS IN REALIZING JUSTICE-BASED SUPREMACY OF LAW

The view of the rule of law is related to democratic theory and the principle of legality contained in the terminology of the rule of law. The idea of democracy requires that every legislation created must obtain the approval of the people's representatives while still prioritizing the interests of the people. This is similar to rule of law,

¹⁶ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta - Indonesia: Kencana Prenada Media Grup, 2010).

in which every state and government administration must be based on law and provide guarantees for the basic rights of the people as stated in the law.¹⁷

Indonesia is a democratic country governed by the rule of law principle, so all government actions must be based on law,¹⁸ and the law must be able to reflect democratic principles. One measure that can be traced is whether the formation of a legislative regulation has been based on democratic principles. Based on Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, it states that “Sovereignty is in the hands of the people and is implemented according to the Constitution”. This article derives from the application of democratic principles.¹⁹

Democracy is not only applicable to Western culture, but is a universal idea for the welfare of the people.²⁰ Democracy has an accurate view of humans, where this view is not based on certain religious or cultural beliefs. Based on this view, the conceptualization of democracy desired by government officials in that country becomes the values that guide the implementation of state power. The conceptualization of democracy is thus accepted as the principle underlying the administration of state government. The focus on democracy is fundamental to support the creation of a legal state that is truly based on law.

Pancasila is a philosophy of life and the ideology of the nation and state that inspires the implementation of democracy in

¹⁷ Faisal Akbar Nasution, “Hak Imunitas Anggota DPR RI Sebagai Pejabat Publik dalam Hal Menjalankan Tugas dan Wewenangny” (2021) 8:2 Jurnal Ilmiah Penegakan Hukum 10, online, <<https://ojs.uma.ac.id/index.php/gakkum/article/view/5123>>.

¹⁸ Fauzan Khairazi, “Implementasi Demokrasi dan Hak Asasi Manusia di Indonesia” (2015) 8:1 Inovatif: Jurnal Ilmu Hukum 72–94, online: <<https://online-journal.unja.ac.id/jimih/article/view/2194>>.

¹⁹ Bambang Ady Gunawan, “Tantangan Penjabaran Prinsip-prinsip Demokrasi dalam Pembentukan Peraturan Daerah” (2019) 1:2 Al-Azhar Islamic Law Review 112–126, online, <<https://www.ejournal.staialazhar.ac.id/index.php/ailrev/article/view/20>>.

²⁰ Lismanto Lismanto & Yos Johan Utama, “Membumikan Instrumen Hukum Administrasi Negara Sebagai Alat Mewujudkan Kesejahteraan Sosial dalam Perspektif Negara Demokrasi” (2020) 2:3 Jurnal Pembangunan Hukum Indonesia 416–433, online: <<https://ejournal2.undip.ac.id/index.php/jphi/article/view/8810>>.

Indonesia.²¹ The essence of Pancasila democracy is that people's sovereignty must be imbued and integrated with Pancasila. First, there is equality for all Indonesian people, in that they are the same and equal in having rights and obligations. Second, there is a principle of balance between rights and responsibilities, namely that requests received by the state must be balanced with the obligations of citizens. Third, social justice is realized for all citizens. Fourth, there is a moral responsibility towards God Almighty, oneself and others in exercising freedom. Human rights must be respected and recognized in implementing these four principles as the basis of a Pancasila democratic state.²² In carrying out its authority, the state must ensure that its citizens move towards a state of prosperity.²³

Democratic countries that recognize the sovereignty of law have a joint agreement to guarantee human rights and protect all citizens. Citizen security can be achieved through public openness and citizen participation in determining service values and standards. This was stated by Greg Palast et al.; the provisions of democracy are explained as two important components, namely: full openness of public access to information *and full public participation in setting prices and service standards*.²⁴

The element of citizen participation as part of democracy is an essential requirement. This was stated by Marijke Malsch: “...*citizen participation in the legal system is a requirement for democracy*”.²⁵ The realization of the principle of democracy in the perspective of administrative law, especially in the field of taxation, emphasizes openness, which is in line with the essence of democracy. Further

²¹ Saan Mustopa et al, “The Development of Indonesian Pancasila Democracy” (2023) 10:3S J Surv Fish Sci 533–547.

²² Bobi Aswandi & Kholis Roisah, “Negara Hukum Dan Demokrasi Pancasila Dalam Kaitannya Dengan Hak Asasi Manusia (Ham)” (2019) 1:1 Jurnal Pembangunan Hukum Indonesia 128, online:<<https://ejournal2.undip.ac.id/index.php/jphi/article/view/4286>.

²³ Agus Riwanto & Sukarni Suryaningsih, “Realizing Welfare State and Social Justice: A Perspective on Islamic Law” (2022) V:1 Volksgeist: Jurnal Ilmu Hukum dan Konstitusi 41–51, online:< <https://ejournal.uinsaizu.ac.id/index.php/volksgeist/article/view/6430>>.

²⁴ Et All Greg Palast, *Democracy And Regulation, How The Public Can Govern Essential Service* (London: Pluto Press, 2003).

²⁵ Marijke Malsch, *Democracy In The Courts, Lay Participation In European Criminal Justice System* (England: Ashgate, 2009).

developments in the application of the principle of democracy in government sometimes limit openness in the implementation of government, especially when the government needs to protect taxpayers' personal data. Openness in the implementation of government allows taxpayers to participate in taxation matters. Conversely, a lack of openness from the government can result in difficulties and obstacles for taxpayers in exercising their rights.

The meaning contained in a democratic rule of law is that legal actions carried out by the government and its citizens must comply with applicable regulatory provisions while still providing legal protection for taxpayers. For this reason, the government's authority in carrying out tax affairs must be based on justice and legal certainty to protect taxpayers. Even though tax revenue is an essential pillar supporting the country's financial system, the important thing that the state must provide to its citizens is legal protection of human rights.

Tax revenue is an important foundation in supporting the state's financial system and helping it realize the ideals and go The realization of the principle of democracy in the perspective of administrative law, especially in the field of taxation, emphasizes openness, which is in line with the essence of democracy. Further developments in the application of the principle of democracy in government sometimes limit openness in the implementation of government, especially when the government needs to protect taxpayers' personal data. Openness in the implementation of government allows taxpayers to participate in taxation matters. Conversely, a lack of openness from the government can result in difficulties and obstacles for taxpayers in exercising their rights. The realization of the principle of democracy in the perspective of administrative law, especially in the field of taxation, emphasizes openness, which is in line with the essence of democracy. Further developments in the application of the principle of democracy in government sometimes limit openness in the implementation of government, especially when the government needs to protect taxpayers' personal data. Openness in the implementation of

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The rule of law system requires government administrative actions to be based on aspects of legality and protection of human rights.²⁷ Likewise, the division of power within a country requires limitations on the existing power within a country. This is a characteristic of a rule of law state. The rule of law is absolute, as

²⁶ Agustina Enny, "Hukum Pajak dan Penerapannya Untuk Kesejahteraan Sosial" (2020) 18:3 Solusi 407–418, online: < <https://jurnal.unpal.ac.id/index.php/solusi/article/view/311> >.

²⁷ Bambang Arwanto, "Legal Protection for the People due to Government Factual Actions" (2017) 31:3 Yuridika 375, online: < <https://e-journal.unair.ac.id/YDK/article/view/4857> >.

stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia: “The State of Indonesia is a state of law”.

The foundation of the rule of law rests on the terminology from the European continent, namely “*Rechtsstaat*”, as well as from Anglo-Saxon, “*Rule of Law* “. Both terms of the rule of law emphasize the provision of legal protection for the people, namely their freedoms and rights related to human rights.²⁸ The terminology of the rule of law originated in Europe, where FJ Stahl introduced it with the language “*Rechtsstaat*” which includes the recognition and protection of human rights, the principle of legality as a basis for legal certainty, the division of powers, and an independent judicial body.²⁹ Although “*Rule of Law*” is different from “*Rechtsstaat*”, which in terminology can be interpreted as state law, the habits that developed in the United States can be analogous to a *constitutional government* or *state constitutional state*.

The most crucial goal of the rule of law, according to Hilaire Barnett, is to limit government power and protect the rights of individuals.³⁰ The history of human rights establishment is the forerunner of legal protection for taxpayers. The protection of human rights was actually born in modernity from revolutionary movements in England, the United States, and France at the end of the 17th century.³¹ The protection of human rights in England was symbolized by the birth of the Bill of Rights in 1689, titled “An Act Declaring the Rights and Liberties of the Subject and Setting the Succession of the Crown” which was the result of Parliament's struggle against the king. The Act of Declaration of the Rights and

²⁸ Muhammad Syahnan, Harahap “Perbedaan Konsepsi *Rechtsstaat* Dan the Rule of Law Serta Perkembangan Dan Pengaruhnya Terhadap Hukum Administrasi Negara” (2014) 5:1 Jurnal Ilmiah Hukum Dirgantara 50, online:<
<https://journal.universitassuryadarma.ac.id/index.php/jihd/article/view/102>>.

²⁹ Agus Widodo, “Telaah Terhadap Perlindungan Hak Asasi Manusia Dalam Negara Hukum Indonesia” (2014) 12:1 Jurnal Ilmiah Hukum Dan Dinamika Masyarakat 4, online:<
<http://jurnal.untagsmg.ac.id/index.php/hdm/article/view/335>>.

³⁰ Hilaire Barnett, *Constitutional & Administrative Law* (London: Cavendish Publishing Limited, 2004).

³¹ Hwang Jaehyun, “The Bill Of Rights (1689) As A Source For Regulation Of Human Rights: Comparative Legal Aspect” (2023) 19:1 Theology Philosophy Law 85–98, online:<
<https://cyberleninka.ru/article/n/the-bill-of-rights-1689-as-a-source-for-regulation-of-human-rights-comparative-legal-aspect/viewer>>.

Freedoms of Subjects and the Ordinance of Succession were crucial in limiting the arbitrary power of the King's.³² During the reign of William III and Mary II and the echo of the "Glorious Revolution" in 1688, the Bill of Rights was declared as a form of law that placed the monarchy under the authority of Parliament, which stated that the King's power to determine something based solely on the King's will was illegal. In the Bill of Rights, Article 4 originally stated that "to levy money for or for the use of the Crown under the pretext of a prerogative, without the permission of Parliament, for a longer period, or by any other means not granted or to be granted, is illegal". The Bill of Rights is a law that prohibits the collection of taxes without parliamentary approval.³³ The basic provisions in the Bill of Rights (1689) have resulted in a major principle in taxation known as the "principle of no taxation without law".³⁴ The concept of human rights and its protections have a significant influence on the idea of taxpayer rights. Human rights must be taken into account as a starting point for analyzing taxpayer rights.³⁵ In the 1980s, the tax authorities also conducted research, resulting in the view that justice, transparency, trust, and legal action were very important in implementing taxpayer compliance.³⁶

Ultimately, the obligation to fulfill the rights of taxpayers who are compliant and conscientious in paying taxes—for, example, by participating in tax amnesty programs—requires the government to provide protections for confidentiality and privacy concerning their financial information. Thus, the synchronization of the trilogy between the rule of law, democracy, and human rights will foster the

³² Akhil Reed Amar, "Articles The Bill of Rights as a Constitution" (1991) 100:31 Yale Law Journal 1131–1210, online:<<https://openyls.law.yale.edu/handle/20.500.13051/8609>>.

³³ Ranjana Gupta, "The Case for Tax in Democracies" (2020) 31:March Austl Tax F 3, online:<<https://heinonline.org/HOL/LandingPage?handle=hein.journals/austraxrum35&div=4&id=&page=>>>.

³⁴ Kislay Chauhan, "Human Rights Diminished with Delayed Justice. Issue 4 Int'l JL Mgmt. & Human., 2022, 5: 1668." (2022) 5:4 Int'l JL Mgmt & Human 1668, online:<<https://ijlmh.com/paper/human-rights-diminished-with-delayed-justice/>>.

³⁵ LY Hari Sih Advianto, "Pengakuan Dan Perlindungan Hukum Atas Hak-Hak Wajib Pajak Dalam Sistem Hukum Pajak Indonesia" (2018) 1:1 Simposium Nasional Keuangan Negara 404.

³⁶ Duncan Bentley, *Revisiting Rights Theory and Principles to Prepare for Growing Globalisation and uncertainty* (Washington DC: International Conference on Tax Payer Rights, 2015).

realization of a justice-based supremacy of law. Should the government fail to fulfill these obligations and act otherwise, it would be clear and evident that the government has neglected its constitutional duties to compliant taxpayers, failing to uphold their right to privacy. In other words, regulations that result in non-compliance or violations of the constitutional rights of law-abiding taxpayers can be qualified as unconstitutional actions.

IV. DEPRIVATION OF PRIVACY RIGHTS BY THE GOVERNMENT/DGT THROUGH LAW NUMBER 9 OF 2017

To meet the tax revenue targets, broad access for tax authorities to relevant financial information is necessary for tax purposes. Before August 2017, Indonesia's tax authorities faced significant limitations in accessing financial information, as governed by various laws related to taxation, banking, Islamic banking, capital markets, as well as other formal legal regulations.³⁷ These limitations hindered the strengthening of the tax data base, which is essential for achieving tax revenue targets and maintaining the effectiveness of tax amnesty policies.³⁸ Furthermore, Indonesia is bound by international tax agreements that require participation in the implementation of the Automatic Exchange of Financial Account Information (AEOI). Consequently, the establishment of legislative regulations is necessary to govern access to financial information for tax purposes. In response, the President issued Government Regulation in Lieu of Law No. 1 of 2017 on Access to Financial Information for Tax Purposes, which was later enacted as Law Number 9 of 2017 on Enactment of Government Regulation in Lieu of Law Number 1 of 2017 concerning Access to Financial Information for Tax Purposes to Become Law on August 23, 2017.

³⁷ K E Sutrisni, "Analisis Yuridis Terhadap Keterbukaan Akses Informasi Keuangan Nasabah Untuk Kepentingan Perpajakan" (2023) 14:3 Jurnal Hukum & Pembangunan Masyarakat 31–44, online:< <https://jurnalhost.com/index.php/jhpm/article/view/107>>.

³⁸ Destiana Sembiring, "Analisis Kebijakan Penanganan Tindak Pidana di Bidang Perpajakan Oleh Direktorat Jendral Pajak" (2024) 6:3 Unes Law Review 9390–9420, online:< <https://review-unes.com/index.php/law/article/view/1895>>.

This step was taken because efforts to collect taxes to support national development faced various challenges, stemming from both internal and external factors. To address internal obstacles, the government implemented tax reforms through legal instruments outlined in Law Number 9 of 2017. These reforms grant broader authority to the Directorate General of Taxes (DGT), with the aim of improving organizational structure, work processes, data and information management from the banking sector, and enhancing the quality of human resources. On the other hand, external factors such as economic downturns and global trade challenges³⁹, coupled with the widespread practice of tax avoidance by taxpayers who transfer their assets abroad⁴⁰, posed significant challenges. The presence of tax haven jurisdictions⁴¹ and the lack of mechanisms and regulations requiring information exchange between countries complicate tax collection efforts in Indonesia, which relies on a self-assessment system. Effective oversight of taxpayers in fulfilling their tax obligations through self-assessment is crucial for increasing tax revenues.

Supervision can run optimally if the tax authorities have broad access to receive and obtain the financial information needed to build a stronger and more accurate tax database. Before the enactment of Law Number 9 of 2017 concerning taxation, banking, Islamic banking, capital markets, and Commodity Futures Trading, access to tax authorities was limited, both in terms of procedures and requirements. These limitations are often exploited by taxpayers to not report their income and assets correctly, which ultimately hinders the effectiveness of the tax amnesty policy and efforts to

³⁹ Erma Wulan Sari, Mareta Putri Hapsari & Nadiva Arti Salsabila, "Pengaruh Resesi Ekonomi Global 2023 bagi Perpajakan di Indonesia" (2023) 4:3 *Ekonomi, Keuangan, Investasi dan Syariah (EKUITAS)* 1022–1027, online:< <https://ejurnal.seminar-id.com/index.php/ekuitas/article/view/3145>>.

⁴⁰ Ludvig Wier Johannesen, Niels, Thomas Tørsløv, "Are less developed countries more exposed to multinational tax avoidance? Method and evidence from micro-data" (2020) 34:2 *The World Bank Economic Review* 790–809, online:< <https://academic.oup.com/wber/article/34/3/790/5606636?searchresult=1>>.

⁴¹ Sheila Killian et al, "Regulating havens: The role of hard and soft governance of tax experts in conditions of secrecy and low regulation" (2022) 16:3 *Regulation and Governance* 722–737, online:< <https://onlinelibrary.wiley.com/doi/10.1111/rego.12347>>.

strengthen the tax database. Furthermore, this situation increases the risk of Indonesia becoming a destination for illegal fund placement. Based on this argument, the Directorate General of Taxes (DGT) is given broad authority to obtain complete financial information reports from financial services institutions regarding the tax obligations of all taxpayers without exception. However, this raises new problems related to violations of the privacy rights of compliant taxpayers, especially regarding the confidentiality of their personal financial information.

The purpose of Law Number 9 of 2017 is to enhance state revenue through taxation. However, the effects of the expansive authority attributed to the Directorate General of Taxes (DGT) give rise to factual legal issues, specifically the infringement of privacy rights concerning personal financial information by the State, thereby undermining the essence of legal protection for compliant taxpayers. Every Indonesian citizen has rights and obligations as mandated by the Constitution, including taxpayers. What is meant by taxpayers' rights are the property rights of taxpayers or other people whose interests are based on tax law.⁴² The terminology of taxpayer rights is very much in meaning. Taxpayer rights in the context of compliance have different perspectives, resulting in very different results.⁴³ However, even though the interpretation of taxpayer rights may have various meanings, these rights cannot be denied or eliminated by the State through infringement using any legal instrument, including Law Number 9 of 2017. Such actions can be identified as veiled unconstitutional acts.

Article 70 of Law No. 39 of 1999 on Human Rights states that the State has a vital role in ensuring recognition and respect for the rights and freedoms of every individual. Legal scholars Judith Freedman and John Vella stated that taxes are an essential point in connecting individuals with the government. Taxes require a certain amount of money to be negotiated and regulations ensure that, on

⁴² Avan Rijn, *A Comparative Study of Taxpayer Protection in Five Member Countries of the European Union* (1998).

⁴³ Bentley, *supra* note 35.

the one hand, taxes proposed by the authorities (legislators) are collected or collected efficiently, and on the other hand, that taxpayers' rights are respected.⁴⁴ Tax is an instrument of state revenue but legal protection for taxpayers' rights must be provided. Taxpayer rights are closely related to human rights. Respect for taxpayers' rights must be prioritized so that justice can be felt. For this reason, the human rights perspective is absolute as a form of protection for taxpayers' privacy rights in accessing financial information for tax purposes.

The state must provide legal protection for taxpayers' rights as a form of respect for human rights. As a state administrator, the government has the obligation to carry out tax affairs. In this case, a relationship arises between the government and taxpayers. Regarding tax relations, these relations exist in public law, especially state administrative law. Likewise, Rochmat Soemitro stated that “regarding taxation, tax law is a collection of regulations that regulate the relationship between the government as tax collectors and the public as tax payers”.⁴⁵

Legal protection can be interpreted as meaning that the law protects humans in carrying out their interests by providing measurable correctness attached to actions. John Locke put forward the theory of legal protection of human rights in his social contract theory as quoted by Bernard L. Tanya et al., arguing that the essence of the ruler's power is not something absolute, so that human rights are not simply handed over to the ruler.⁴⁶ The power of the ruler provides protection for natural rights against threatening dangers. Therefore, the authorities make laws as a form of protection of

⁴⁴ Judith Freedman And John Vella, “HMRC’s Management Of The U.K. Tax System: The Boundaries Of Legitimate Discretion” (2012) 73 Legal Research Paper Series 79, online:< <https://oxfordtax.sbs.ox.ac.uk/hmrCs-management-of-the-uk-tax-system-the-boundaries-of-legitimate-discretion>>.

⁴⁵ Rochmat Soemitro, *Dasar-Dasar Hukum Pajak dan Pajak Pendapatan 1944* (Jakarta-Bandung: Eresco, 1997).

⁴⁶ Dkk Bernard L Tanya, *Teori Hukum: Strategi Tertib Manusia Lintas Ruang dan Generasi* (Yogyakarta: Genta Publishing, 2010).

human rights.⁴⁷ The public must pay for the protection provided by the government in proportion. So, payments made must obtain the approval of the community through their elected representatives in the legislative body. Therefore, the government's demands regarding tax collection cannot be carried out without the consent of the community.⁴⁸

Regarding tax administration in administrative law, legal protection of taxpayers' rights aims to provide guarantees to taxpayers regarding the implementation of tax administration by the government.⁴⁹ Legal protection against government actions is divided into two types, namely preventive legal protection and repressive legal protection.⁵⁰ Under preventive legal protection, the public is allowed to submit objections (*inspraak*) or opinions before the government's decision takes a definite form. Preventive legal protection is intended to prevent disputes from arising, while repressive legal protection is used to resolve conflicts.⁵¹ Therefore, legal protection aims to protect taxpayers from abuse of government authority and control the administrative process so that taxpayers receive their rights.

Legal protection in a broad sense not only provides recognition for rights, but also creates a form of respect for rights. Of course, the government must provide regulations to carry out its responsibility for legal protection of the basic rights of taxpayers. The principle of protecting human rights for taxpayers is more focused on protecting the right to privacy which is confirmed

⁴⁷ Vincentius Patria Setyawan, "Asas Legalitas Dalam Perspektif Filsafat Hukum" (2021) 37:1 *Justitia Pax* 141.

⁴⁸ Ilham Aji Pangestu, Zakka Pranggapati Janges, "Eksistensi Pajak Bagi Pembangunan Nasional" (2021) 17:1 *Supremasi Hukum* 49, online:<<<https://ejournal.unis.ac.id/index.php/JSH/article/view/1161>>>.

⁴⁹ Advianto, *supra* note 34.

⁵⁰ Philipus M Hadjon, *Perlindungan Hukum Bagi Rakyat Di Indonesia, Sebuah Studi Tentang Prinsip-Prinsipnya, Penanganannya Oleh Pengadilan Dalam Lingkungan Peradilan Umum dan Pembentukan Peradilan Administrasi* (Peradaban, 2007).

⁵¹ Eric Eric & Wening Anggraita, "Perlindungan Hukum Atas Dikeluarkannya Peraturan Kebijakan (Beleidsregel)" (2021) 7:1 *Jurnal Komunikasi Hukum (JKH)* 473, online:<<https://ejournal.undiksha.ac.id/index.php/jkh/article/view/31820>>.

through various constitutions or statutory regulations which are subjective rights.

The principles underlying taxpayer protection are then implemented in various principles contained in various legal instruments and rules, by paying attention to the process of formulating policies regarding tax law. Furthermore, comprehensive and progressive legal protection can be pursued by individuals whose constitutional rights are deemed violated by a law. In the context of this discussion, if it is believed that the norms or phrases contained in Articles 2, 6, and 7 of Law Number 9 of 2017 infringe upon privacy rights as stipulated in Articles 28D and 28G of the 1945 Constitution of the Republic of Indonesia, there are legal remedies available to the applicants (individual legal subjects or groups) when their constitutional rights are violated and/or infringed upon. This includes filing a judicial review through the Constitutional Court as regulated in Article 51 paragraph (1) of Law Number 24 of 2003 concerning the Constitutional Court, as a legal remedy accommodated by the rule of law. This affirms that Indonesia, as a democratic state, provides a space for legal action that upholds the values of human rights within the framework of equitable legal supremacy.

V. JUDICIAL REVIEW OF LAW NUMBER 9 OF 2017 AS A LEGAL RECOURSE FOR SOCIETY AND PUBLIC CONTROL AGAINST PRIVACY VIOLATIONS BY THE GOVERNMENT/DGT

The right to privacy is an important part of human rights, including in the context of financial information. In the tax system, the government has the authority to access taxpayers' financial information in order to improve tax compliance and prevent tax evasion. However, this authority must be balanced with protection of taxpayers' privacy. It is the state's responsibility to protect

taxpayers' privacy rights.⁵² In Article 29 paragraph (3) of Law No. 28 of 2007 concerning General Provisions and Tax Procedures was most recently amended by Law No. 7 of 2021 concerning Harmonization of Tax Regulations which requires Taxpayers to show documents or financial records related to tax calculations; provide tax officers with the opportunity to examine related assets, inventory, or electronic data; and provide information and/or evidence to support information in the tax report. The implementation of taxpayers' privacy rights generally takes the form of granting taxpayers the right to refuse to provide information or to give permission to tax officials to obtain information and other matters that are not related to tax law enforcement purposes.

Personal information or other information about taxpayers that is not related to tax obligations needs to be protected in order to protect individuals, families, honor, dignity, and property under their control, as well as the right to a sense of security and protection from threats of fear to do or not do something which is a human right, as intended in Article 28G of the 1945 Constitution of the Republic of Indonesia. In addition, tax officers must pay attention to applicable legal principles, including the principle of presumption of innocence and a focus on equality before the law.⁵³

Private data and information about taxpayers must be kept confidential and used for tax purposes. The right to confidentiality means that information available to the tax authorities regarding the taxpayer's affairs is confidential and will only be used for the purposes specified in the regulations. This is regulated in Article 34 of Law No. 7 of 2021 concerning Harmonization of Tax Regulations which states that every official in the context of their work or position to implement tax laws and regulations is prohibited from

⁵² Zaid Zaid, "Ketika Keamanan Privasi Data Pribadi Semakin Rentan, Bagaimana Negara Seharusnya Berperan? (2021): 25-37." (2021) 4:1 *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi* 27, online:<
<https://ejournal.uinsaizu.ac.id/index.php/volksgeist/article/view/4492>>.

⁵³ Syavira Alzena Qinayya et al, "Perlindungan Hak Wajib Pajak Dalam Proses Pemeriksaan Dan Penegakan Hukum Pajak Di Indonesia Ditinjau Dari Perspektif Hukum Dan Etika" (2024) 2:3 *Jaksa: Jurnal Kajian Ilmu Hukum dan Politik* 108, online:<
<https://journal.stekom.ac.id/index.php/Jaksa/article/view/1886>>.

informing other parties who are not interested in something that is reported or known to the taxpayer. This article is an application of the right to confidentiality. However, this is not regulated in Law Number 9 of 2017. Therefore, the provisions of Article 34 paragraph (1) and paragraph (2) apply to Law No. 7 of 2021 concerning Harmonization of Tax Regulations. This article stipulates that all officials, both tax officials and other officials such as experts working in the field of tax administration, must maintain confidentiality and do not provide information relating to taxpayers to any party unless permitted or required by law.

All financial information obtained from financial institutions in the implementation of Law Number 9 of 2017 must still have its privacy protected in accordance with Article 34 paragraph (1) and Paragraph (2) of Law No. 7 of 2021 concerning Harmonization of Tax Regulations. Those who leak, distribute and/or disclose customer financial information to unauthorized parties will be subject to criminal sanctions in accordance with statutory provisions. Tax employees and those who carry out duties in the field of taxation, as well as experts appointed by the Director General of Taxes who violate the obligation to maintain confidentiality, whether through negligence or intention, are subject to criminal sanctions in accordance with the provisions of the Minister of Finance Regulation. Article 41 paragraph (1) of Law No. 7 of 2021 concerning Harmonization of Tax Regulations states that “Officials who, due to their negligence, do not fulfill their confidentiality obligations as intended in Article 34 shall be punished with a maximum imprisonment of 1 (one) year and a maximum fine of Rp. 25,000,000.00 (twenty-five million rupiah)”. Even though tax officials are given immunity in Law Number 9 of 2017, every authority has responsibilities. This is in accordance with the principle “*geen bevoegdheid zonder verantwoordelijkheid*” meaning “there is no authority without accountability”, or “*zonder*

bevoegdheid geen verantwoordelijkheid” meaning “without authority there is no accountability”.⁵⁴

However, in a limitative and expressive manner, there is a phrase in Article 6 paragraph (1) that grants immunity (legal immunity) to the Minister of Finance and/or employees of the Ministry of Finance in carrying out tasks related to the access and exchange of financial information for tax purposes, which cannot be prosecuted criminally or sued civilly. Article 6 paragraph (2) also provides immunity to the leaders and/or employees of the Financial Services Authority when fulfilling reporting obligations as specified in Article 3 paragraph (1) letter a. Similarly, Article 6 paragraph (3) grants immunity to the leaders and/or employees of financial service institutions and other entities referred to in Article 2 paragraph (1) who fulfill the obligation to submit reports as referred to in Article 2 paragraph (2), and/or provide information, evidence, or statements as referred to in Article 4 paragraph (2) of Law Number 9 of 2017. If the norms and phrases related to immunity in criminal law and civil law are not annulled by the Constitutional Court, then the actions of the Directorate General of Taxes (DGT), tax officials, and/or financial service institutions can conduct examinations of the personal financial information of compliant taxpayers without measurable limitations. This means that, in legal terms, there are no unlawful criminal and/or civil actions against the monitoring of private data related to financial information conducted by the DGT, tax officials, and/or financial service institutions, solely under the subjective pretext of tax interests.

The absence of clear and definitive objective parameters for the government regarding when and under what conditions this authority is granted to access private data related to financial information, which is part of human rights, further complicates the situation. Moreover, if the provisions concerning this phrase are “normalized” without any legal cancellation efforts regarding Article 2 paragraph (8) and Article 6 of Law Number 9 of 2017 through

⁵⁴ Kummeling, HRBM, & van Schagen, J.A. *Verkenningen van Verantwoordelijkheid* (Deventer: W.E.J. Tjeenk Willink, 1999).

judicial review in the Constitutional Court, then the criminal provisions as referred to in Article 67 of the Personal Data Protection Law will not apply to the DGT, tax officials, and/or financial service institutions. In summary, unconstitutional actions receive legitimacy and even legal protection in the sense of immunity for the government when accessing private data related to personal financial information indiscriminately.

Correlating aspects of the state's interest in collecting taxes and protecting personal data, these two aspects can be summarized in the relationship between rights and obligations as citizens. As a rule-of-law country, Indonesia adheres to the principle of legality. All government actions and policies, including tax collection and personal data protection, must be based on applicable legal provisions. On the other hand, the state also has the right to receive a portion of the people's wealth in the form of taxes to meet the needs of the state and the welfare of the people. This understanding leads to the principle that the balance between rights and obligations is an important one in the rule of law. The state has the right to collect taxes from its citizens, and citizens have the right to have their data protected by the state. Therefore, the establishment of a balance between rights and obligations is an indicator of the quality of the relationship between the state and the people in a legal state. Maintaining this balance, especially in the context of tax collection and personal data protection, will be an indicator that the state has succeeded in carrying out its mandate within a legal and democratic framework.

Tax data protection covers taxpayers' personal data, both specific and general. This is important because this data is used in various tax processes, from identifying taxpayers to determining tax liabilities, tax collection, and tax audits.⁵⁵ Personal data is described in Article 1 of the EU GDPR as “any information relating to a person

⁵⁵ Nafis Dwi Kartiko et al, “Konsekuensi Yuridis Pengaturan Perlindungan Data Pribadi Terhadap Data Wajib Pajak Dalam Perspektif Perpajakan” (2023) 5:1 National Conference on Law Studies (NCOLS) 355–365, online:<
<https://conference.upnvj.ac.id/index.php/ncols/article/view/2698>>.

(data subject) who can be identified or not identified, either directly or indirectly, especially by reference to an identifier such as name, number, identity, identification data online or on one or more factors about the person's physical, psychological, genetic, mental, economic or social identity". Personal data can be divided into two categories, general and specific.⁵⁶ Article 4 of the PDP Law clearly outlines these categories. Specific data includes health data and information, biometrics, genetics, records, crimes, children's data, personal financial data, and other data by the provisions of statutory regulations. Meanwhile, general data includes an individual's full name, gender, nationality, religion, marital status, and/or personal data combined to identify a person. Based on Article 4 of the PDP Law, personal financial data is data that is specific in nature and therefore requires special treatment. Even though the PDP Law states that exceptions for public interests in the government administration can grant access to personal financial data, there is a need to limit the government's authority in protect taxpayers' privacy rights.

There are compliant taxpayers and non-compliant taxpayers. The parameter for a compliant, law-abiding taxpayer is carrying out their obligations as a taxpayer should. Assessing the motivations for tax compliance, Chow and Kirchler et al. divides tax compliance into voluntary compliance and *mandatory compliance*.⁵⁷ Therefore, the parameters of a compliant taxpayer can be interpreted as a situation where the taxpayer has exercised his taxation rights and fulfilled all his tax obligations in accordance with the provisions of the tax law.

Tax representation as a citizen's obligation is a form of applying the principles of social justice. The focus on social justice is the fundamental basis for the promulgation of Law Number 9 of

⁵⁶ Erlina Maria Christin Sinaga, "Formulasi Legislasi Perlindungan Data Pribadi" (2020) 9:2 Jurnal RechtVinding 237–256, online:<
<https://rechtsvinding.bphn.go.id/ejournal/index.php/jrv/article/view/428>>.

⁵⁷ Supriyadi, "Automatic Exchange of Information sebagai Sarana Meningkatkan Empat Pilar Kepatuhan Pajak" (2019) 6:6 Reformasi Administrasi 118, online:<
<https://ojs.stiami.ac.id/index.php/reformasi/article/view/525>>.

2017. Social justice must create a proportional situation between compliant and non-compliant taxpayers. As Aristotle in his work “Nichomachean ethics” quoted by Raymond Wacks that “Justice consists in treating equals equally and unequals unequally, in proportion to their inequality”.⁵⁸ For this reason, there needs to be proportional treatment, which can be done by providing different treatment between compliant and non-compliant taxpayers regarding the supervision of financial information. Taxpayers who comply must receive legal protection for their financial information, while controlled access to financial information must be carried out on taxpayers who do not comply. Therefore, fairness will be created in the implementation of access to financial information for tax purposes.

Privacy or private space can be briefly interpreted as “the opportunity to create solitude”. To make this happen, humans manipulate space. Attempts to manipulate can take the form of: (a) physical manipulation, for example by closing the door, closing the room, covering your eyes with a newspaper as a sign that you are tired or do not want to be disturbed; (b) manipulate through social behavior, for example by heavily concentrating while working, in hopes that one’s privacy will not be disturbed; and (c) psychological ways, where someone forms a private world that is psychologically impenetrable, for example a psychotic person talking to a wall, then the wall answers back. In this case, he forms privacy by building a psychic construction that cannot be penetrated by outsiders. Basically, these three forms of privacy are a person's reaction to distance themselves from the outside world and other people which is displayed by behaviors that manipulate the environment, including the “human environment”.⁵⁹ All these forms of privacy are the privacy that everyone wants and needs in their social life.

⁵⁸ Raymond Wacks, *Jurisprudence* (London: Blackstone Press Limited, 1995).

⁵⁹ Alex Sobur, “Pers, Hak Privasi, dan Hak Publik” (2001) 2:1 Mediator: Jurnal Komunikasi 81–91, online:< <https://ejournal.unisba.ac.id/index.php/mediator/article/view/709>>.

Personal rights or private rights (Privacy Rights) can be interpreted as the right to autonomy that a person has.⁶⁰ Alan Westin defines privacy as “the right of individuals, groups, or institutions to decide for themselves when, how, and to what extent information about themselves is disclosed to others.”⁶¹ The right to privacy is one of the rights inherent in every human being. The right to privacy is the dignity of every human being that must be protected. Personal data is data regarding individual characteristics, name, age, gender, educational background, employment, address, and family status. Personal data is sensitive information that everyone has.⁶² Personal data is included in an individual's right to privacy and must be protected in various areas of life.

Protection of the right to privacy over personal data, namely the “right to be alone” is a basic principle of citizen privacy. Considering that protecting personal data is a constitutional right of every citizen, regulation is a form of respecting and protecting this right.⁶³ As we observe, the regulations concerning private data protection in several advanced countries in Asia and Europe serve as a legal comparison reference, explicitly addressing the serious concerns related to access to information and the protection of personal data.

a. Singapore

Singapore has a law that legally protects personal data, namely the Personal Data Protection Act No. 26 of 2012 (PDPA 2012). Institutions in Singapore are required to notify individuals about the collection of their personal information and obtain their consent

⁶⁰ Samuel D Warren and Louis D Brandeis, “The Right to Privacy” (1890) 4:5 Harv Law Rev 193–220, online: <<https://www.jstor.org/stable/1321160>>.

⁶¹ Siti Yuniarti, “Perlindungan Hukum Data Pribadi Di Indonesia” (2019) 1:1 Business Economic, Communication, and Social Sciences Journal (BECOSS) 147–154, online:<<https://journal.binus.ac.id/index.php/BECOSS/article/view/6030>>.

⁶² Lisa Nur Azizah Mahira, Dararida Fandra Fandra, Emilda Yofita, “Consumer Protection System (CPS): Sistem Perlindungan Data Pribadi Konsumen Melalui Collaboration Concept” (2020) 3:2 Legislatif 287–302, online:<<https://journal.unhas.ac.id/index.php/jhl/article/view/10472/0>>.

⁶³ Esther Hanaya, “Perlindungan Data Pribadi di Era Digital Dalam Perspektif Perbandingan Hukum” (2023) 1:9 Jurnal Bevinding 11–22, online:<<https://www.uniba.ac.id/journal.uniba.ac.id/index.php/JB/article/view/1027>>.

before collecting, using, or disclosing their personal information. If a person wishes to provide personal information for a specific purpose, that person can also authorize an institution to collect, use, and share his or her personal information.⁶⁴ Apart from that, the confidentiality of banking information in Singapore is legally regulated in Section 47 of the Banking Act (Chapter 19), which states that the obligation to keep banking information confidential is the relationship between the bank and the customer.⁶⁵ Without the customer's consent, banks established in Singapore or foreign banks that have branches in Singapore cannot divulge information relating to customer accounts and transactions to third parties unless a court order, public disclosure obligations, or the protection of the bank's own interests require this. Exceptions to disclosure may be made through requests for information from police officers, public officials, or the courts for the purposes of investigation or prosecution.

In 2009, Singapore was included in the OECD gray list of regions that have committed to the OECD Standard on the Exchange of Information but have not substantially implemented the standard.⁶⁶ Singapore also changed its legal regulations to implement these standards, primarily by allowing the Inland Revenue Authority of Singapore (IRAS) to disclose information protected by banking information confidentiality arrangements. In 2013, the Ministry of Finance, Monetary Authority of Singapore, and Tax Authority of Singapore issued a joint statement stating that Singapore had significantly strengthened its international cooperation framework to combat cross-border tax evasion.⁶⁷

⁶⁴ Setyawati Fitri Anggraeni, "Polemik Pengaturan Kepemilikan Data Pribadi: Urgensi Untuk Harmonisasi Dan Reformasi Hukum Di Indonesia" (2018) 48:4 Jurnal Hukum & Pembangunan 821, online:< <https://scholarhub.ui.ac.id/jhp/vol48/iss4/7/>>.

⁶⁵ Yun Hui Tan, "Banking secrecy in Singapore", (2014), online:<<https://dentons.rodys.com/en/insights/alerts/2014/september/1/banking-secrecy-insingapore>>.

⁶⁶ Christiana HJI Panayi, *Current Trends on Automatic Exchange of Information* (Rochester, NY: Social Science Research Network, 2016).

⁶⁷ Ministry of Finance et Al, "Singapore to Significantly Strengthen Framework for International Tax Cooperation", *Inland Revenue Authority Of Singapore* (2013), online:<<https://www.iras.gov.sg/news-events/newsroom/singapore-to-significantly-strengthen-framework-for-international-tax-cooperation>>.

Furthermore, in 2014, Singapore and the United States signed an intergovernmental agreement to facilitate the implementation of the Foreign Account Tax Compliance Act (FATCA) in Singapore. Singapore has also committed to implementing Common Reporting Standards in 2018. Singapore ratified the Convention on Mutual Administrative Assistance in Tax Matters in May 2013. The Income Tax Act (Chapter 134) was also amended to include provisions for exchanging information.⁶⁸

Singapore provides flexibility for its tax authorities in obtaining banking information. The provisions in Article 105J of the Income Tax Act state, “The purpose of this Part is to implement Singapore's obligations under an international tax compliance agreement, and to enable country-by-country reports to be filed with the Comptroller in accordance with the Action 13 Report”. Singapore also eliminated provisions regarding banking confidentiality in Article 47 paragraph (1) of the Banking Act which states that “Customer information shall not, in any way, be disclosed by a bank in Singapore or any of its officers to any other person except as expressly provided in this Act”.

Tax officers can use banking information for tax purposes, even to exchange information with other countries. It is regulated in the Income Tax Act Article 105L as follows that “ (1) Subject to subsection (5), a person falling within any description of persons prescribed by regulations (called in this section a prescribed person) must provide the Comptroller (or such other person as may be authorized by the Comptroller) with information of a description prescribed by those regulations”. Furthermore, the provisions in Article 105L paragraph (5) regulate that a person who meets the provisions as intended in the regulation must provide information or details as intended in the regulation to the Inland Revenue Authority

⁶⁸ David Voreacos, “Swiss Bank UBS Hands Over Records on U.S. Citizen’s Account in Singapore”, *BloombergCom* (2016), online: <<http://www.bloomberg.com/news/articles/2016-06-22/ubs-gives-irs-recordson-u-s-citizen-s-account-in-singapore-iprjhqd9>>.

of Singapore (IRAS). The authority to obtain financial information obtained by tax officials must, of course, be based on good faith.

b. Australia

Australia implements recognition of the rights of its taxpayers in the form of the relationship of rights and obligations between tax authorities and taxpayers. This recognition is made in the Australian Taxpayers' Charter of Rights. Fulfilling the rights of taxpayers is an obligation for the tax authorities, and vice versa. These rights and obligations are formulated as follows:

What you (taxpayers) can expect from us (tax authority): your rights and obligations, what you can do if you are not satisfied. Your rights, you can expect us to: Treat you fairly and reasonably, Treating you as being honest unless you act otherwise, Offering you professional service and assistance, Accepting you can be represented by a person of your choice and get advice, Respect your privacy, Keeping the information we hold about you confidential, Giving you access to information we hold about you, Help you to get things right, Explaining the decisions we make about you, Respect your right to a review, Respecting your right to make a complaint, Make it easier for you to comply, Be accountable.⁶⁹

The authority to request all types of information from third parties (including banks and other financial institutions) is vested in the Australian Tax Authorities under sections 263 and 264 of the Income Tax Assessment Act 1936 , sections 330-10 and 353-15 of the Tax Administration Act 1953 , sections 127 and 128 of the Fringe Benefits Tax Assessment Act 1986, and sections 76 and 77 of the Superannuation Guarantee (Administration) Act 1992. Although Australia recognizes the principle of confidentiality of information as stated in the Privacy Act 1988, Section 28, which regulates the functions of the Privacy Commissioner, banks and financial institutions cannot refuse requests for information made by the tax authority. This is regulated in the context of the obligation of

⁶⁹ *Taxpayers' Charter - what you need to know*, by Australian Government (2020).

financial institutions to comply with valid information requests, particularly concerning the collection and exchange of data for tax compliance purposes.

c. France

The authority of the French tax authorities to collect and request information is regulated in the *Livre Des Procedures Fiscales* (Tax Procedures Code). The obligation to keep bankings data confidential, as regulated in Article 511-33 of the Monetary and Financial Code, can be implemented upon request from the French tax authorities. This basis is clarified that “Persons receiving such information are bound by professional secrecy under the terms and subject to the penalties provided for in Article L. 511-33 in respect of all information or documents which they might receive or hold”.

France as a member country of the European Union and complies with the European Union General Data Protection Regulation (EU GDPR). The data protection principles stated in EU GDPR Article 4, namely lawfulness, fairness and transparency, purpose limitation, data minimization, appropriate data, storage limits, guaranteed integrity, confidentiality, and accountability must be applied as guidelines and basis in drafting personal data protection regulations. Apart from that, there are restrictions on the classification of personal data regulated in Article 9 of the EU GDPR which explains in detail regarding the classifications of general and specific personal data, namely between sensitive and non-sensitive data based on the level of risk to the public if data misuse occurs.⁷⁰ The government's policy duty is to maintain the privacy rights of taxpayers so that taxpayers' personal data does not become leaked or known to unauthorized parties.

From the comparison of the three countries, it is shown that legal protection for taxpayers regarding access to financial information is highly respected in other countries, therefore there

⁷⁰ Indira Despuanitar Batara Randa & Imam Haryanto, “Perlindungan Hukum Atas Data Wajib Pajak Dalam Sistem Automatic Exchange Of Information (AEoI) Studi Perbandingan Indonesia Uni Eropa” (2021) 5:1 *Legal Standing: Jurnal Ilmu Hukum* 33–34, online:<<https://journal.umpo.ac.id/index.php/LS/article/view/3563>>.

needs to be legal efforts through a judicial review of Law Number 9 of 2017. The substance of regulations concerning the protection and attention to data privacy for citizens in Singapore, Australia, and France can serve as a reference and be used as legal grounds for pursuing judicial review proceedings before the Constitutional Court in Indonesia.

VI. CONCLUSION

Law Number 9 of 2017 grants excessively broad authority to the Directorate General of Taxes and financial institutions to access financial information data, without establishing measurable and objective parameters for accessing taxpayer financial information, including private data, without exception. This authority is not limited to non-compliant taxpayers, thereby creating significant risks of privacy data breaches, which undermine fundamental human rights that should be protected by the Constitution and the government. Additionally, the law provides criminal and civil immunity to the Minister of Finance and/or employees of the Ministry of Finance, leaders and/or employees of the Financial Services Authority, leaders and/or employees of financial institutions, and other entities as stipulated in Article 6 of Law Number 9 of 2017. The principle of confidentiality under Article 2, paragraph (8) of Law Number 9 of 2017 can be disregarded without being constrained by the requirement of good faith, thereby allowing the principle of confidentiality to be arbitrarily dismissed. Consequently, the provision that imposes criminal sanctions on those who unlawfully disclose personal data in violation of confidentiality principles under Article 67 of the Personal Data Protection Law (PDP Law) becomes ineffective.

These provisions are considered contrary to human rights, as personal financial information is a specific aspect of the right to privacy. Therefore, legal action through a judicial review in the Constitutional Court is necessary to annul the phrases in Article 2, paragraph (8), and Article 6 of Law Number 9 of 2017, as they

conflict with Articles 28D and 28G of the 1945 Constitution of the Republic of Indonesia. It is essential to impose limits on the government's authority to access financial information for tax purposes. The restriction of governmental control over the right to privacy should include objective and measurable parameters, as well as limitations on the use of such information solely for tax-related purposes. There should no longer be any unchecked governmental authority that could lead to abuses of power concerning privacy violations, especially in relation to the principle of confidentiality as a fundamental right concerning financial information. This must be protected particularly for compliant taxpayers who have fulfilled their tax obligations as responsible citizens.

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