

Legal Certainty of The Status of 3 (Three) Kilograms of Gas As A Strategic Goods Free From VAT (Value Added Tax)

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ABSTRACT

This study aims to examine in depth the normative conflict arising from the enactment of Minister of Finance Regulation (PMK) Number 62/PMK.03/2022 concerning Value Added Tax (VAT) on the delivery of certain Liquefied Petroleum Gas (LPG), specifically subsidized 3 kg LPG cylinders, against regulations that have a higher position in the hierarchy of laws and regulations. The PMK stipulates that the unsubsidized portion of the price of 3 kg LPG is subject to VAT and must be collected by agents down to the base level, which is then passed on to the end consumer. This policy has caused controversy because it conflicts with several higher regulations, such as Law Number 42 of 2009 concerning VAT, Law Number 7 of 2021 concerning Harmonization of Tax Regulations (UU HPP), and Presidential Regulation Number 71 of 2015 concerning Determination and Storage of Basic Necessities and Important Goods. Through a normative legal approach, this study sought to obtain the necessary data related to the problem. The data used were secondary data, consisting of primary legal materials, secondary legal materials, and tertiary legal materials. In addition, premium data was also used as secondary data. Data analysis was conducted using a normative legal analysis method. This study found that PMK 62/2022 does not align with the principle of the hierarchy of legal norms as proposed by Hans Kelsen, where lower norms must not contradict higher norms. This study concludes that PMK 62/2022 constitutes a form of vertical norm conflict that not only contradicts higher positive law but also contradicts the principles of social justice as stipulated in Pancasila and the 1945 Constitution. Therefore, policy revision or revocation of this regulation is necessary to ensure legal harmony, legal certainty, and protection for vulnerable communities.

Keywords: Normative Conflict, 3 Kg LPG, Legal Certainty

INTRODUCTION

A modern legal state like Indonesia, There are at least three elements or conditions for establishing a state, firstly the existence of a people, secondly the existence of a territory and thirdly the existence of a sovereign government. Even if the requirements for a nation-state are met, a nation will be weak if it lacks the funds to sustain itself. Most of the money for state needs comes from taxes collected from the public. Therefore, government tax collection must be based on law. There is a legal term in England known as "No taxation

without representation," and in America, "taxation without representation is robbery," meaning taxation without a legal basis, created by representatives, is robbery.

Philosophically, law aims to realize justice, benefit and legal certainty simultaneously. These three basic legal values are known in Gustav Radbruch's theory and are the identity of an ideal legal system. The principle of justice demands that the law treat everyone fairly and proportionally; the principle of utility ensures that the law brings real benefits to society; and the principle of legal certainty requires rules that are clear, logical, and consistent. These three values must be met in a balanced manner in every legal product. In the context of the VAT policy on 3 kg LPG, the goal of justice means that tax policies should not unduly burden the vulnerable, while the goal of benefit means that tax regulations should benefit the general welfare. and the aim of legal certainty means that the rules must be formulated clearly without giving rise to doubt or conflicting norms.

The data also underscores the significant socio-economic impact of 3 kg LPG. The government allocates a substantial annual subsidy for 3 kg LPG—for example, it reached IDR 117.85 trillion in the 2023 State Budget, precisely because this product is crucial to the livelihoods of many. Such a substantial subsidy reflects the dependence of tens of millions of poor households on 3 kg LPG. Mismatches or conflicts in VAT regulations can hinder the distribution of targeted subsidies, thus missing social protection targets. Sociological principles demand that tax policy be in sync with subsidy policy: the ultimate goal is public welfare. If the lower tax norm (PMK) is not aligned with the higher legal framework or its social objectives, the disadvantaged are the lower classes, as the most vulnerable group. In short, a sociological approach confirms that the conflict over VAT norms for 3 kg LPG is not merely an abstract issue, but concerns the real welfare of the people.

From a legal perspective, the conflict of norms in PMK No. 62/2022 arises due to the alleged conflict between the provisions of the PMK and higher statutory regulations, namely the Law and even the 1945 Constitution. Hierarchically, the position of Ministerial Regulations is below the Law. Article 7 paragraph (1) of Law No. 12 of 2011 concerning the Formation of Legislation confirms the level of legal hierarchy, where the 1945 Constitution occupies the highest position, followed by the Law, then its implementing regulations. Consequently, lower regulations must not conflict with higher regulations. the higher (*lex superior derogat legi inferiori*). This principle of hierarchy is in line with Hans Kelsen's theory of *stufenbau* (a hierarchical structure of legal norms), where the *grundnorm* (constitution) is the peak, and the norms below it must be in accordance with and must not conflict with the norms

above it. If a conflict arises, the higher-level norm must take precedence, and the lower-level norm may be declared invalid or null and void. Therefore, if PMK 62/2022 is found to contain material that conflicts with the VAT Law as stipulated in the HPP Law, or violates constitutional principles, serious legal issues will arise regarding the validity and legality of the PMK.

Juridical indications of normative conflict can be seen in several aspects. First, the principle of legality in tax law. Article 23A of the 1945 Constitution explicitly states, "Taxes and other compulsory levies for state purposes are regulated by law." This means that all matters determining tax objects, tax subjects, rates, and collection mechanisms must be based on statutory provisions, not merely ministerial regulations. This principle of legality (juridical principle) is also reflected in the tax doctrine that "all tax levies must be based on law." In the case of VAT on 3-kg LPG, the basic regulations are stipulated in the VAT Law (Law No. 8/1983 in conjunction with Law No. 42/2009 in conjunction with Law No. 7/2021 on HPP). The 2021 HPP Law provides a new framework, including increasing the VAT rate to 11% and regulating the reduction of VAT exemptions starting in April 2022. However, it is important to examine whether the law clearly regulates subsidized 3 kg LPG.

If the law does not explicitly regulate the VAT object for 3 kg LPG or its exemption, and the VAT policy is issued solely through Minister of Finance Regulation 62/2022, this is where the potential for a conflict of legal norms arises. This means that the Minister of Finance Regulation should not include new norms that should be regulated by law. Given that taxes are compulsory levies, each type of taxable object should ideally be defined by law to ensure legal certainty and protect taxpayer rights. When a ministerial regulation appears to "create" a tax object (or taxation procedure) whose impact burdens the people, without a clear regulatory basis in the law, then this can be considered to violate the principle of legality and contradict Article 23A of the 1945 Constitution.

Second, regarding the principle of the hierarchy of norms and the authority of implementing regulations, Article 8 of Law 12/2011 recognizes the existence of ministerial regulations as part of the legislation outside the main hierarchy, provided they are mandated by higher regulations or established based on authority. In other words, a Ministerial Regulation (PMK) is only valid and binding if its regulatory mandate stems from a higher-level law or delegated regulation (e.g., a Government Regulation). In the context of PMK 62/2022, it is necessary to examine whether the determination of the VAT mechanism for subsidized LPG has been delegated by the VAT Law (amended from the HPP Law) or its

derivative government regulations. If there is no explicit delegation, the PMK is vulnerable to being deemed *ultra vires* (exceeding its authority).

Such a fiscal policy ensures that taxes do not erode the benefits of subsidies for the poor. Against this backdrop, PMK 62/2022 is actually intended to continue the principle that VAT on 3 kg LPG is applied. Subsidies are not passed on to end consumers. The problem is, if the collection procedures create ambiguity or hidden burdens, the spirit of the subsidy itself is anomalous. Normative conflicts can take the form of conflicts between PMK regulations and the objectives of the law (vertical conflict) or internal conflicts between articles in the PMK and other regulations (horizontal conflict).

Based on the above description, it can be legally concluded that PMK No. 62/2022 must be reviewed for its compliance with the principle of norm hierarchy, the principle of legality, and the objectives of higher tax law. Any conflicting norms must be resolved by prioritizing the higher-ranking regulations. If the PMK is proven to be inconsistent with the law (e.g., exceeding authority or contradicting the intent of the law), then improvements can be pursued through regulatory amendments or even judicial review at the Supreme Court or the Constitutional Court. Ultimately, resolving this conflicting VAT norm on 3 kg LPG is crucial to ensure legal certainty for all parties: the government, business actors/agents, and especially the public using 3 kg LPG.

Therefore, to protect the socio-economic function of 3-kg LPG, the state has fortified this policy with a series of strong legal frameworks. The goal is to ensure the price of this strategic commodity remains affordable. One of the most important legal instruments is exemption from Value Added Tax (VAT). This series of regulations forms a coherent legal framework, namely:

- Law No. 42 of 2009 concerning VAT (VAT Law): Article 4A paragraph (2) states that basic necessities that are needed by the people and are strategic are not subject to VAT.
- Law No. 7 of 2021 concerning Harmonization of Tax Regulations (HPP Law): Article 16B paragraph (1b) Jo. paragraph (1a) letter j number (1), which delegates further regulations regarding goods that are not subject to VAT or are of a strategic nature to be regulated by Government Regulation (PP), not Ministerial Regulation (PMK).
- Government Regulation No. 49 of 2022 concerning Value Added Tax Exemption and Value Added Tax or Value Added Tax and Sales Tax on Luxury Goods Not

Collected on Imports and/or Delivery of Certain Taxable Goods and/or Delivery of Certain Taxable Services and/or Utilization of Certain Taxable Services From Outside the Customs Area: This regulation is the pinnacle of legal confirmation. In Article 2b Jo. Article 6 paragraph (1p) and paragraph (2q), which explicitly states that strategic goods and/or certain goods in the group of basic necessities for households and micro-businesses that are needed by the general public are not subject to VAT.

- Presidential Regulation No. 71 of 2015 concerning the Determination and Storage of Basic Necessities and Important Goods: Article 1 paragraph (2) Jo. Article 2 paragraph (6) letter (b) number (3) namely the status of 3 kg LPG as "Important Goods of a strategic nature" which concerns the livelihood of many people and its accessibility must be maintained, as well as determining 3 kg LPG gas as "Important Goods" which are strategic in nature and play an important role in the smooth running of national development.

This series of regulations from the level of Law, Government Regulation to Presidential Regulation systematically builds an ideal legal condition (*das Sollen*), where 3 kg LPG is legally and convincingly exempted from VAT objects.

In addition to the emergence of Minister of Finance Regulation No. 62/PMK.03/2022 concerning Value Added Tax on the Delivery of Certain Liquefied Petroleum Gas, there is also Minister of Finance Regulation No. 252/PMK.011/2012 concerning Natural Gas, which is included in the types of goods that are not subject to VAT, making a solid legal structure and the established ideal conditions then experienced fundamental disruption with the issuance of Minister of Finance Regulation (PMK) No. 62/PMK.03/2022. This ministerial-level regulation, which is hierarchically below the Law, Government Regulations and Presidential Regulations, actually regulates the opposite. This PMK establishes the mechanism for collecting VAT on the delivery of certain LPG, in this case 3 kg LPG, from the agent level, base to the end consumer.

The issuance of this PMK directly creates a very clear norm gap or vertical legal conflict. The actual legal situation (*das Sein*) is as follows:

- On the one hand (Superior Norm): Law on Value Added Tax, Law on Harmonization of Tax Regulations, Government Regulation on Value Added Tax Exemption and Value Added Tax or Value Added Tax and Sales Tax on Luxury Goods Not Collected on Imports and/or Delivery of Certain Taxable Goods and/or

Delivery of Certain Taxable Services and/or Utilization of Certain Taxable Services from Outside the Customs Area and Presidential Regulation on Determination and Storage of Basic Necessities and Important Goods expressly states that 3 kg LPG IS NOT SUBJECT TO VAT.

- On the other hand (Inferior Norm): The Regulation of the Minister of Finance concerning Value Added Tax on the Delivery of Certain Liquefied Petroleum Gas actually regulates the VAT COLLECTION mechanism for the same goods.

RESEARCH METHODS

The normative legal research method (Normative Legal Research) is a scientific research procedure to find the truth based on the logic of legal science from its normative side. This qualitative research analyzes a problem-solving issue by collecting data as research material. The legal sources used in the research can be data obtained through literature and/or directly from the community. Data obtained directly from the community is called primary data, while data obtained through literature and documentation is called secondary data.

RESULTS AND DISCUSSION

Analysis of the Legal Implications of the Normative Conflict Between the Minister of Finance Regulation No. 62/PMK.03/2022 and Higher Legislation Regarding the Value Added Tax (VAT) Status of 3 kg LPG.

The Stufenbau Theory, proposed by Hans Kelsen, explains that the legal system consists of lower-level legal norms that must be derived from and not contradict higher-level norms. In this context, regulations are ranked from the highest level (Laws) to implementing regulations (Government Regulations and Presidential Regulations) to demonstrate consistency and coherence. This sub-chapter will discuss the issuance of Minister of Finance Regulation No. 62/PMK.03/2022 concerning Value Added Tax on the delivery of certain Liquefied Petroleum Gas (LPG), which not only creates inconsistency but also violates the legal order in Indonesia.

The application of the Norm Hierarchy Theory in the Indonesian context provides a framework for testing the validity of the PMK. Kelsen stated that the validity of an inferior norm is determined by its conformity with a superior norm. In this case, Pancasila as the fundamental norm of the state and the 1945 Constitution as the basic norm provide validity for the regulations below it. Article 7 paragraph (1) of Law No. 12 of 2011 emphasizes that

laws, government regulations, and presidential regulations are superior to the Minister of Finance Regulations.

PMK No. 62 creates a total antinomy with superior norms, where inferior norms not only differ from but also negate the essence of the superior norms. This constitutes an act of legal defiance, where implementing regulations act as antagonists to the higher norms, undermining the logic, coherence, and integrity of the legal pyramid.

Further analysis has shown that PMK 62 constitutes an illegal legal recharacterization that creates new taxable objects, contrary to higher norms. This action violates the principle of *lex superior*, which states that higher law overrides lower law, and the principle of tax legality, which guarantees that taxes can only be imposed based on law.

PMK 62 also ignores well-known facts, such as the status of 3 kg LPG as a basic necessity and the subsidies it receives, demonstrating that the regulation fails to consider socio-economic realities. Thus, PMK 62 not only violates the hierarchy of norms but also creates legal uncertainty and undermines the legitimacy of the legal system.

Analysis of the resolution of these normative conflicts should be carried out to achieve legal certainty.

The theory of legal certainty emphasizes the importance of clarity, predictability, and consistency in law so that the public can behave in accordance with applicable law. The existing series of regulations, including Presidential Regulation 71/2015, which clearly refers to "3 kg LPG gas," creates a high level of legal certainty by eliminating ambiguity, allowing businesses to predict the treatment of 3 kg LPG gas as a VAT-exempt good, and supporting the state's goal of maintaining public purchasing power and controlling inflation. However, the hierarchical violations resulting from Minister of Finance Regulation No. 62/PMK.03/2022 not only create formal flaws but also have damaging substantive impacts. Based on Radbruch's Basic Legal Values Theory, the law must balance legal certainty, utility, and justice. The conflict of norms caused by this Minister of Finance Regulation undermines all three values, creating a legal pathology where regulations that should uphold order instead become sources of chaos.

1. The Collapse of the Pillar of Legal Certainty: PMK 62 creates institutionalized legal uncertainty, where two contradictory norms concerning the same object. This violates the principle of non-contradiction and creates an impossible compliance dilemma for businesses, who are trapped in the risk of violating laws/government regulations or

facing administrative sanctions. This uncertainty also undermines citizens' constitutional rights to fair legal certainty.

2. **Loss of Benefit:** The VAT exemption policy for 3 kg LPG cylinders has clear social and economic objectives, but PMK 62 betrays this objective by focusing on increasing tax revenue. This creates an inversion of value priorities, where fiscal benefits are prioritized over socio-economic benefits, potentially causing greater harm to society.
3. **Mortgaging the Value of Justice:** PMK 62 violates the principle of equality by treating 3 kg LPG, a subsidized strategic commodity, the same as other commercial goods. In this context, the "Radbruch Formula" suggests that positive law must be obeyed unless it conflicts with extreme justice. PMK 62 can be considered an "incorrect law" whose validity must be invalidated for the sake of justice.

Conflict resolution can be achieved through legal interpretation that prioritizes the public interest (the principle of *in dubio pro populo*) and through judicial review at the Supreme Court to revoke PMK 62. Another alternative is through executive review by the government to correct flawed regulations. If PMK 62 is maintained, it will lead to a spiral of uncertainty and delegitimization of the legal system. Conversely, if it is revoked or revised, it will restore legal certainty, protect the public's constitutional rights, and strengthen the rule of law, which supports the principle of the rule of law.

CONCLUSION.

The legal implication of this normative conflict is that Minister of Finance Regulation (PMK) No. 62/PMK.03/2022 is fundamentally flawed and void *ab initio*. This legal flaw occurs because the PMK illegally eliminates the legal status of 3 kg Gas as a strategic good exempt from VAT. This legal status is a solid and layered legal construction: the VAT Law delegates authority to Government Regulations to determine strategic goods exempt from VAT; Government Regulations then determine strategic goods exempt from VAT; and Presidential Regulations have explicitly categorized 3 kg Gas as a strategic good. Thus, from a systematic legal interpretation, the status of 3 kg Gas as a strategic good exempt from VAT is a superior norm that cannot be negated by ministerial regulations. The PMK's actions constitute a form of legal defiance, an excess of authority (*ultra vires*), and a violation of the principle of tax legality guaranteed by the Constitution, thus undermining the pillars of legal certainty.

Resolving this conflict of norms demands a total restoration of legal certainty by restoring the supremacy of superior norms. Imperatively, the resolution must reaffirm the solid legal status that 3 kg Gas is a strategic good exempt from VAT. This affirmation is based on a systematic legal interpretation: the VAT Law and its derivative Government Regulations explicitly exempt strategic goods from VAT, while the Presidential Regulation has specifically categorized 3 kg Gas as a strategic good. Therefore, its VAT-free status cannot be challenged by lower regulations. This restoration can be achieved through two paths: (a) Executive Review, where the Government proactively revokes the legally flawed PMK as a form of good governance; or alternatively, (b) Judicial Review, where the Supreme Court annuls the PMK to restore legal order and protect citizens' constitutional rights.

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