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## **Administrative Clemency and Legal Correction in Article 36 Of the UU KUP: A Proposal for Normative Redesign**

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### **ABSTRACT**

Article 36 of Indonesia's Law on General Provisions and Tax Procedures (UU KUP) serves as an important mechanism for addressing administrative sanctions, material errors, and procedural defects in tax administration. However, the provision applies a uniform discretionary formulation through the term "may" to fundamentally different forms of authority, creating ambiguity between administrative clemency and legality-based correction. This design has raised concerns regarding legal certainty, taxpayer protection, and the consistency of administrative decision-making. Therefore, this study aims to analyze the substantive characteristics of Article 36 paragraph (1) and evaluate the compatibility of its discretionary formulation with the principles of legality, legal certainty, and administrative justice. This research employed a normative juridical method using statutory and conceptual approaches. Primary legal materials consist of relevant legislation and Constitutional Court decisions, while secondary materials include scholarly books and journal articles on tax law and administrative law. Data were analyzed qualitatively through descriptive, analytical, and prescriptive legal reasoning. The findings reveal an ontological dualism within Article 36, where administrative clemency and legality-based correction are regulated under a single discretionary framework despite their distinct legal characteristics. While administrative clemency appropriately involves discretion, the correction of material inaccuracies and serious procedural defects constitutes a legal obligation that should be treated as bound authority. The study proposes a normative redesign separating these domains and transforming legality-based correction into an imperative duty. Such reconstruction enhances legal certainty, strengthens taxpayer protection, improves judicial review, and reinforces the rule of law within Indonesia's tax administration system.

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## **INTRODUCTION**

Tax reform places the self-assessment system as the foundation of Indonesia's tax collection, positioning taxpayers as the primary actors in calculating and reporting taxes, while the tax authority retains supervisory and enforcement functions through audits and administrative sanctions (Ariyanti & Mutiah, 2023). A corrective mechanism is needed to prevent overreach and rectify administrative errors functions that, in practice, are often attributed to Article 36 UU KUP as the administrative-justice "safety valve" (Agustina, 2020).

However, the design of Article 36 displays an element of ontological dualism: Instruments of administrative clemency namely the reduction or cancellation of sanctions imposed due to inadvertence (letter a) are placed within the same discretionary framework as

mechanisms intended for legality-based correction of material inaccuracies or procedural defects (letters b, c, and d), all of which are subordinated to the discretionary phrase “The Director General of Taxes ... may.” Conceptually, these domains are distinct. Clemency involves discretionary leniency grounded in considerations of equity, whereas legality-based correction concerns objective compliance with legal and procedural standards that ordinarily trigger a duty to correct (Nasriyan, 2019).

Doctrinally, discretion is essential in a welfare state but is confined by the General Principles of Good Administration (AUPB) and the specialty principle. Discretion allows officials to act where statutes are silent, subject to safeguards against arbitrariness. In the domain of clemency (e.g., reduction or cancellation of sanctions imposed due to taxpayer inadvertence), discretion is defensible so long as criteria are objective and proportionate. By contrast, where the issue concerns material correctness or serious procedural defects, such as the absence of a Surat Pemberitahuan Hasil Pemeriksaan (SPHP), the authority operates within a sphere of objective legality that gives rise to a bound authority (*gebonden bevoegdheid*) rather than policy discretion (Endang, 2018; Setiawan & Asyikin, 2020). The omission of the SPHP constitutes a violation of the taxpayer’s right to be heard, a procedural guarantee designed to ensure participation before a tax assessment is finalized (Kurniawan, 2025).

From the perspective of legal certainty, placing legality-based correction within a discretionary framework undermines predictability and weakens procedural safeguards. The positivist demand for clear and imperative legal consequences once conditions of illegality are established becomes diluted when correction is treated as optional. Variations in administrative practice and Tax Court jurisprudence concerning Article 36 further illustrate the uncertainty generated by this design (Nainggolan, 2023; Tanudjaja et al., 2025). Empirical and doctrinal literature consistently suggests that unclear remedial mechanisms increase dispute costs and discourage voluntary compliance, whereas mandatory correction of evident administrative errors fosters institutional trust (Purba et al., 2023; Wijaya & Urbanisasi, 2025).

Against this background, this study examines the substantive characteristics of Article 36 paragraph (1) of the UU KUP and evaluates the compatibility of its discretionary formulation with the nature of taxpayers’ procedural and substantive rights. Employing a normative juridical method through statutory and conceptual approaches, the research argues that Article 36 should be normatively redesigned by restricting its scope to instruments of administrative clemency, while reclassifying legality-based correction mechanisms as imperative duties binding upon the tax authority. Such a redesign would enhance transparency, promote procedural fairness, and strengthen legal protection for taxpayers within Indonesia’s tax administration (Dewi, 2016).

The importance of legal protection in tax administration is reflected in empirical evidence at the global level. According to the OECD Tax Administration Report 2024, countries with transparent dispute-resolution and correction mechanisms tend to achieve higher levels of voluntary compliance and institutional trust than jurisdictions where taxpayers encounter uncertainty in challenging administrative decisions. Furthermore, the World Bank’s Worldwide Governance Indicators continue to demonstrate a positive relationship between regulatory quality, legal certainty, and taxpayer confidence. These findings indicate that legal correction mechanisms are not merely procedural instruments but essential components of effective and sustainable tax governance.

Within the Indonesian context, the implementation of the self-assessment system places taxpayers as the primary actors responsible for calculating, reporting, and paying their tax obligations. Nevertheless, the tax authority retains extensive supervisory and enforcement powers through audits, assessments, and administrative sanctions. This structure inevitably creates the possibility of material errors and procedural defects in tax administration, making corrective mechanisms indispensable for protecting taxpayer rights and maintaining fairness within the taxation system.

One of the most important corrective provisions in Indonesian tax law is Article 36 paragraph (1) of the Law on General Provisions and Tax Procedures (UU KUP). This provision authorizes the Director General of Taxes to reduce or cancel administrative sanctions, correct tax assessments, correct tax collection letters, and annul tax decisions affected by procedural defects. However, these distinct forms of authority are placed under a single discretionary formulation through the phrase “may,” creating conceptual ambiguity regarding whether such actions constitute discretionary administrative clemency or mandatory legal correction.

Several previous studies have examined Article 36 from different perspectives. Nainggolan (2023) analyzed legal certainty in Article 36 paragraph (1) letter a and highlighted the risk of inconsistent decisions resulting from broad administrative discretion. Purba et al. (2023) emphasized the significance of legal certainty in taxation, while Marmiyati et al. (2024) discussed the need for more efficient tax dispute-resolution mechanisms. Other studies have addressed administrative discretion, taxpayer protection, and procedural fairness, demonstrating the continuing relevance of Article 36 within Indonesia’s tax law framework.

Despite these contributions, existing studies predominantly focus on the practical implementation of Article 36, legal certainty, or dispute settlement procedures without thoroughly examining the ontological distinction between administrative clemency and legality-based correction. Consequently, there remains limited scholarly attention to whether the discretionary formulation applied uniformly across Article 36 is conceptually compatible with the nature of the authority being exercised. This unresolved issue reveals an important theoretical and normative gap in the literature.

The existence of such a gap creates significant legal and administrative consequences. When the correction of material inaccuracies or serious procedural violations is treated as a matter of administrative discretion rather than legal obligation, taxpayers may face uncertainty regarding the protection of their rights. Moreover, inconsistent administrative practices may increase dispute costs, prolong litigation processes, and weaken public confidence in the fairness of tax administration. Therefore, a critical re-evaluation of the normative structure of Article 36 is urgently needed.

The novelty of this research lies in its effort to reconstruct Article 36 through an ontological approach that distinguishes between administrative clemency and legality-based correction. Unlike previous studies that primarily examine implementation issues, this research investigates the fundamental nature of the authority regulated under Article 36 and argues that different legal objects require different forms of administrative authority. By introducing this conceptual distinction, the study offers a new perspective on the relationship between discretion, legality, and taxpayer protection.

Based on this perspective, the research aims to analyze the substantive characteristics of Article 36 paragraph (1) of the UU KUP and evaluate the compatibility of its discretionary

formulation with the principles of legal certainty, legality, and administrative justice. The study further seeks to develop a normative redesign that limits discretionary authority to administrative clemency while transforming legality-based correction into an imperative obligation of the tax authority whenever objective conditions of error or procedural defects are established.

The findings of this research are expected to contribute theoretically to the development of administrative law and tax law scholarship, particularly regarding the distinction between discretionary and bound authority. Practically, the proposed redesign may strengthen taxpayer protection, enhance legal certainty, improve the effectiveness of tax dispute resolution, and reinforce public trust in Indonesia's tax administration system. Ultimately, the study seeks to support the realization of a taxation framework that is not only efficient in revenue collection but also consistent with the principles of justice and the rule of law.

## **METHOD**

This study employed a normative juridical research design aimed at examining the legal structure, conceptual coherence, and normative implications of Article 36 paragraph (1) of the Law on General Provisions and Tax Procedures (UU KUP). The research focuses on legal norms regulating administrative clemency and legality-based correction within the Indonesian tax administration system. The population of the study consists of legal sources related to taxation and administrative law, while the sample comprises selected primary and secondary legal materials relevant to the research objectives. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, Law Number 6 of 1983 concerning General Provisions and Tax Procedures as amended by Law Number 6 of 2023, Law Number 30 of 2014 concerning Government Administration, and relevant Constitutional Court decisions. Secondary legal materials consist of scholarly journal articles, legal textbooks, legal commentaries, and previous studies indexed in Google Scholar and Scopus. Purposive sampling is employed to select legal materials that directly address administrative discretion, legal certainty, taxpayer protection, and tax dispute resolution.

The research instrument is the researcher as the primary instrument, supported by document review and legal content analysis guidelines. Data collection is conducted through a comprehensive literature study and document analysis involving legislation, court decisions, doctrinal writings, and academic publications. To ensure the credibility and trustworthiness of the findings, source triangulation is applied by comparing statutory provisions, judicial interpretations, and scholarly opinions. The research procedure consists of four stages: identification of relevant legal issues, collection and classification of legal materials, critical examination of doctrinal and conceptual frameworks, and synthesis of findings to formulate normative arguments concerning the redesign of Article 36 of the UU KUP.

Data analysis is carried out using a qualitative legal analysis technique based on descriptive, analytical, and prescriptive approaches. The collected legal materials are systematically interpreted to identify inconsistencies between the discretionary formulation of Article 36 and the principles of legality, legal certainty, and taxpayer protection. Furthermore, conceptual analysis is employed to distinguish between administrative clemency and legality-based correction, while normative evaluation is used to assess the appropriateness of the existing regulatory framework. The analysis process is supported by reference management

software such as Mendeley and qualitative document organization tools to facilitate the categorization and interpretation of legal sources. The final stage involves developing a normative reconstruction model aimed at enhancing coherence, transparency, and legal protection within Indonesia’s tax administration system.

## RESULTS AND DISCUSSION

### Ontological Dualism: Between Administrative Clemency and Legality-Based Remedy

Legal ontology concerns the nature or “being” of a norm. Article 36(1) of the UU KUP comprises four letters (a), (b), (c), and (d) that regulate distinct objects yet are uniformly subordinated to the opening clause: “*Direktur Jenderal Pajak... dapat*” (“the Director General of Taxes... may”).

This ontological framing is essential because it shifts the analytical focus from mere legislative wording to the substantive nature of the authority being regulated. A norm’s ontological object determines whether the power it confers is inherently discretionary or legally bound. Where the object of regulation concerns policy evaluation, humanitarian considerations, or equity-based leniency, discretion is structurally appropriate. Conversely, where the object concerns material correctness or procedural legality, the authority operates within a normative domain governed by objective legal standards rather than subjective policy choice. Treating fundamentally different ontological objects under a single discretionary formula obscures this distinction and blurs the boundary between clemency and legal remedy. In such circumstances, the use of a facultative technique (“may”) no longer functions merely as a drafting choice, but actively reshapes the nature of legal protection available to taxpayers. The problem in Article 36(1), therefore, does not lie in textual ambiguity alone, but in a deeper ontological mismatch between the nature of the regulated objects and the discretionary form of authority imposed upon them.

However, a close reading of Article 36(1) reveals a fundamental incongruence between the types of objects governed and the model of authority conferred. The provision places, within a single discretionary clause, instruments of administrative clemency (letter a) together with legality-based corrective instruments (letters b, c, and d). This conflation obscures the boundary between errors attributable to taxpayers and errors committed by the tax authority itself, thereby generating ontological dualism between clemency and legal remedy. Such design weakness risks inhibiting dispute-resolution efficiency by mixing fiscal policy considerations with the protection of procedural rights (Marmiyati et al., 2024).

**Table 1.** Typology of Authority in Article 36(1) of the UU KUP

Letter	Object of Authority	Fundamental Basis	Characteristic Nature
a	Administrative sanctions (interest, fines, increases)	Inadvertence / not the taxpayer’s fault	Administrative clemency
b	Tax Assessment Letter (SKP)	Material incorrectness of its content	Legality correction (remedy)
c	Tax Collection Letter (STP)	Incorrect content	Legality correction (remedy)
d	Audit results or SKP	Procedural defects in the audit (e.g., absence of the SPHP or the PAHP/closing conference)	Legality correction (remedy)

As illustrated in Table 1, the authorities regulated under Article 36(1) of the UU KUP are not ontologically homogeneous, despite being framed within a single discretionary clause. The typology reveals a structural division between norms oriented toward equity-based judgment and norms oriented toward objective legality, each demanding a distinct model of authority. Treating these ontologically divergent objects under an identical facultative formula collapses the boundary between clemency and remedy, creating a systemic design flaw rather than a mere issue of interpretation.

This structural assessment provides the analytical foundation for the subsequent examination of each letter's doctrinal characteristics.

**The nature of administrative clemency in letter (a).**

Article 36(1)(a) of the UU KUP governs the reduction or elimination of administrative sanctions interest, fines, and increases imposed under tax regulations when such sanctions arise from the taxpayer's inadvertence or are not attributable to the taxpayer's fault. Ontologically, this provision functions as an instrument of clemency (mercy). The relevant administrative decision is not "illegal" per se; rather, the sanction becomes substantively unfair in light of humanitarian considerations or the taxpayer's good-faith circumstances. In this context, the taxpayer has indeed committed a formal breach e.g., late filing of a Tax Return (SPT) yet seeks leniency due to external factors or unintentional negligence. The assessment of clemency is therefore subjective to an extent, depending on the tax authority's appraisal of the applicant's good faith.

Within administrative law, this mercy instrument represents free administrative discretion that allows the tax authority to refrain from fully enforcing sanction-collection in pursuit of a higher sense of administrative equity. Administrative equity here entails treating good-faith taxpayers differently from those who deliberately violate the rules. Because its essence is clemency, the action is facultative: the state may grant forgiveness, but is not automatically obliged to do so unless the objective criteria set in implementing regulations are satisfied.

**The nature of legal right-restoration in letters (b), (c), and (d).**

In sharp contrast to letter (a), Article 36(1)(b), (c), and (d) of the UU KUP concern the cancellation or reduction of tax assessment or collection instruments that are materially incorrect, as well as the annulment of audit results conducted without lawful procedure. The expression "not correct" in this context refers to material incongruence between the authority's determination and the objective legal reality such as misapplication of rates, computational errors, or inaccurate fact-finding by the tax authority.

Material incorrectness occupies a distinct normative category that is conceptually incompatible with discretionary authority. Errors concerning calculation, legal qualification, or material fact do not invite policy evaluation, but require verification against objective legal standards. Once such incorrectness is established, the authority's role is not to weigh competing interests or exercise judgment, but to restore conformity with the legal order. Framing material correction as a facultative choice therefore alters the juridical status of legality itself, transforming compliance with objective norms into an optional administrative response. From a structural perspective, this demonstrates that the issue at stake is not the intensity of discretion, but its very availability: discretion presupposes the existence of evaluative space, whereas material incorrectness eliminates that space entirely. Consequently, the correction of

material errors cannot coherently operate within a discretionary framework without undermining the binding force of legal norms.

Letter (d) focuses on serious procedural defects, including the absence of a *Surat Pemberitahuan Hasil Pemeriksaan* (SPHP) or the failure to conduct a closing conference (*Pembahasan Akhir Hasil Pemeriksaan*, PAHP).

Procedural defects of this nature implicate a different, yet equally decisive, dimension of legality: the right to be heard and the integrity of due administrative process. Instruments such as the SPHP and the closing conference function as procedural safeguards designed to prevent unilateral determination by the authority and to ensure that taxpayers can meaningfully respond before an assessment is finalized. When these safeguards are omitted, the resulting decision is not merely imperfect in form but defective in legitimacy, as it is produced through a process that excludes participation and contradicts basic principles of fair administration. From a normative standpoint, such defects extinguish any remaining evaluative discretion, because procedural legality constitutes a minimum condition for the valid exercise of public authority. Treating the correction of serious procedural violations as optional discretion therefore reframes compliance with due process as an act of administrative grace rather than a legal obligation, undermining the institutional credibility of the tax administration itself.

Ontologically, the instruments in letters (b), (c), and (d) constitute legal remedies that is, mechanisms for the restoration of legal rights. Once a tax assessment is proven materially incorrect or procedurally defective, the decision is defective *ab initio* and must be annulled *ex lege*. From the perspective of Indonesian administrative law, the tax authority bears a duty to correct (*gebonden bevoegdheid*) its own errors, rather than treating correction as a matter of policy preference. Rendering the restoration of legal rights facultative under the term “may” effectively legitimizes the maintenance of an unlawful decision simply because the authority opts not to exercise discretion. This not only harms taxpayers individually but also erode the institutional legitimacy of the tax administration in the public eye (Ridwan HR, 2011; Santoso et al., 2025).

The disconnect between the nature of the object (material correctness and procedural lawfulness) and the form of authority (discretionary power) is the root cause of legal uncertainty. In administrative law, discretion (*freies Ermessen*) is intended to fill normative gaps or allow context-sensitive decisions in situations not exhaustively regulated, in pursuit of public interest. Yet, in matters of numerical accuracy (material truth) and procedural regularity (formal legality), the legal parameters are already clear and binding (Amrie, 2018). Consequently, correction for breaches of these standards should be categorized as bound authority an imperative duty to rectify state error so as to uphold the dignity of the legal order.

### **Integration with Legal Theory**

#### **1. Philipus M. Hadjon’s Theory of Legal Protection: Preventive vs. Repressive**

Philipus M. Hadjon distinguishes between preventive and repressive legal protection, a framework that is directly relevant to the analysis of Article 36 of the UU KUP. Viewed through this lens, Article 36 operates predominantly as a repressive safeguard that attempts to remedy the failure of preventive protection mechanisms. In tax audit procedure, preventive protection is embodied in the *Surat Pemberitahuan Hasil Pemeriksaan* (SPHP) and the closing conference (*Pembahasan Akhir Hasil Pemeriksaan* (PAHP)), which allow taxpayers to respond before a tax assessment is

finalized; however, the recurrent omission of these safeguards is precisely what letter (d) of Article 36 seeks to address.

When preventive protection fails, repressive protection must ensure certain restoration of rights; yet the discretionary wording “may” render the protection imperfect, because the correction of proven violations is not guaranteed but left to administrative choice. As a result, what should be an absolute entitlement risks being reframed as governmental benevolence, thereby diluting the taxpayer’s status as a rights-bearing subject under a Rechtsstaat.

## **2. Discretion and the General Principles of Good Governance (AUPB)**

While administrative discretion (*freies Ermessen*) is indispensable in a modern welfare state, its exercise is circumscribed by the General Principles of Good Governance (AUPB) and the principle of specialty. The principle of legal certainty requires that once objective conditions for instance, demonstrable material error in a tax assessment are established, a determinate legal consequence must follow, namely annulment or correction. Retaining a defective decision merely because the official chooses not to use discretionary power may reflect lack of due care and can even amount to detournement de pouvoir (*misuse of power*), because the authority is used for a purpose other than that mandated by law i.e., upholding material truth and legal certainty. In this structure, mercy (clemency over sanctions) is appropriately discretionary, but remedy (correction of material or procedural illegality) should be categorized as bound authority (*gebonden bevoegdheid*) and thus imperative (Ridwan HR, 2014).

Ridwan HR underscores the principle of specialty: powers must be exercised in accordance with the purpose for which they are granted. Rendering remedy facultative is, therefore, a form of detournement de pouvoir (Latif, 2014).

## **3. The Principle of Legality and the Rechtsstaat**

Within the doctrine of the Rechtsstaat (constitutional state), the supremacy of law binds both citizens and the state apparatus. A corollary is the state’s duty to correct its own unlawful acts *ex officio*, irrespective of any application by affected parties. Consequently, corrections for material errors and procedural violations are a matter of legal obligation, not administrative grace. The persistence of the word “may” in Article 36’s legality-correction clauses is difficult to reconcile with the Rechtsstaat’s demand for legal certainty. A policy reformulation is required so that the restoration of rights is guaranteed when objective illegality is established.

### **The Paradox of the Term “May” and the Degradation of Legal Certainty**

The use of the word “may” in Article 36(1) of the UU KUP confers a facultative (non-mandatory) public authority upon the Director General of Taxes. Semantically, a facultative power allows the official to exercise or to refrain from exercising the power without, in itself, violating the law, provided the boundaries of discretion are respected. The implication for taxpayer protection is significant: even when there is strong evidence that a tax assessment is materially incorrect, the taxpayer’s application can still be rejected without transparent legal reasoning merely because the authority chooses not to employ its “may” power.

This condition conflicts with the doctrine of the presumption of validity in administrative law, under which a governmental decision is deemed valid until annulled. Once an

administrative decision is shown to contain an evident material error, however, the principle of legality requires that the decision be annulled (Hulu & Pujiyono, 2018). Recasting the annulment of the State's own defective act as a matter of optional discretion amounts to neglect of the citizen's procedural fundamental rights (Asshiddiqie, 2021). In practical terms, the parameters for relief shift from objective legality to subjective preference, thereby eroding predictability, which is essential both for taxpayers' planning and for the effective supervisory function of the tax authority.

The impact of this "may" paradox is illustrated by Constitutional Court Decision No. 168/PUU-XXII/2024, where taxpayers challenged the constitutionality of Article 36 on the grounds that the indeterminate scope of discretion leads to unequal treatment before the law and violates Article 28D (1) of the 1945 Constitution concerning guarantees of fair legal certainty (DDTCNews, 2024; Mahkamah Konstitusi Republik Indonesia, 2024). The persistence of such constitutional challenges indicates a structural failure in the current design of Article 36. Addressing this failure requires not a mere editorial amendment but a deep philosophical restructuring that restores the primacy of objective legality over administrative convenience.

### **Reconstruction of the Typology of Authority in Article 36(1) of the UU KUP**

As a solution to the dualism of norms and the legal uncertainty it generates, this study proposes a comprehensive redesign of the substantive content of Article 36(1) of the UU KUP. The redesign is not merely editorial; rather, it is a philosophical restructuring that separates the domain of administrative clemency from the domain of legality-based correction.

First, constrained discretion for clemency (letter a). Discretion remains available for the reduction or elimination of administrative sanctions, but it should be exercised under objective, transparent parameters clarified in implementing regulations. These parameters must be drafted tightly to prevent misuse for instance, by operationalizing the criteria of "inadvertence" and "not due to the taxpayer's fault." This facultative character is appropriate because clemency is, in essence, a policy instrument rather than a legal entitlement. Discretion must be exercised in good faith, for the public interest, and consistently with the value of legal certainty.

Second, imperative authority for legality correction (letters b, c, and d). For material incorrectness in tax assessments and for serious procedural defects (including the absence of the SPHP or the PAHP/closing conference), the word "may" should be replaced with "shall/must" once objective conditions are satisfied. This change is not cosmetic; it affirms that correction of the authority's own errors is a legal obligation, not an act of grace. Under an imperative framework, once material error or a serious procedural violation is established, the authority has no choice but to correct. This approach also streamlines dispute resolution, enabling taxpayers to obtain justice without protracted, multi-layered processes.

This reconstruction aligns with the insight that, in a self-assessment system, taxpayer trust will only be sustained if the authority demonstrates an equal commitment to truth and fairness. When the administration bears a duty to correct its own mistakes, the State conveys that it, too, is subject to the law a fundamental principle of the Rechtsstaat.

### **Implications for adjudication before the Tax Court.**

The proposed reconstruction of Article 36 will have significant implications for the Tax Court's adjudicative competence. Under the current structure, when a decision under Article 36 is brought before the Tax Court, the review tends to be confined to the formal aspects of the

exercise of discretion, rather than the material correctness of the tax determination. In practice, judges often assess whether the Director General of Taxes has exercised discretion properly, but cannot order a correction even if a material error is proven.

Within the tax judiciary, two types of legal remedies are recognized with distinct orientations: appeals (*banding*), which are oriented toward substantive justice with a focus on material examination, and lawsuits (*gugatan*), which are oriented toward formal legal certainty with an emphasis on procedural legality (Amrie, 2018; Hulu & Pujiyono, 2018). The reconstruction of Article 36 by transforming legality-based correction into an imperative obligation will strengthen the Tax Court’s function in both dimensions. Imperative correction enables the court to fully examine material truth as well as procedural regularity, rather than remaining limited to the outer shell of discretion.

With the redesign that converts legality correction into a mandatory duty, full material justiciability becomes available. The Tax Court would be able to determine whether objective conditions for correction are satisfied and, if they are, to order the tax authority to effect the correction. This approach is consistent with the spirit of Article 24 of the 1945 Constitution, which guarantees an independent judiciary tasked with upholding law and justice, and aligns with the institutional strengthening of the Tax Court under the Supreme Court, which enhances independence (Khalimi, 2025).

Taken together, the foregoing analysis demonstrates that the reconstruction of Article 36 fundamentally repositions the Tax Court within Indonesia’s tax adjudication system. By distinguishing administrative clemency from legality-based correction and treating the latter as an imperative obligation, judicial review shifts from assessing the formal exercise of discretion toward enforcing objective legality grounded in material accuracy and procedural regularity. This shift strengthens the court’s role as a guarantor of legal rights rather than a mere supervisor of administrative choice, thereby enhancing legal certainty and taxpayer protection within the self-assessment framework. The structural differences between the current discretionary model and the proposed legality-oriented redesign, including their respective implications for judicial review, are summarized in Table 2.

**Table 2.** Comparison of the Current Structure of Article 36 vs. the Proposed Redesign

Aspect	Status Quo (Current Condition)	Proposed Redesign (Reform)
Structural Basis	A single article for all types of correction (omnibus)	Separation between Clemency act(mercy) and Correction (remedy)
Nature of Authority	All framed as facultative (“may”)	Clemency remains facultative; Correction becomes imperative (“shall/must”)
Primary Focus	Minimizing disputes through unilateral administrative handling	Ensuring legal certainty and protection of fundamental rights
Role of the Court	Largely confined to testing the formality of discretion	Full jurisdiction to examine material truth and procedural legality

Aspect	Status Quo (Current Condition)	Proposed Redesign (Reform)
Psychological Impact	Taxpayers perceive low bargaining position vis-à-vis the authority	Taxpayers possess a co-equal legal standing as rights-bearing subjects

## CONCLUSION

This study demonstrated that Article 36 of the UU KUP suffers from a structural flaw rooted in ontological conflation, as it places instruments of administrative clemency and mechanisms of legality-based correction within a single discretionary framework, thereby obscuring the fundamental distinction between the two and weakening both legal certainty and the boundary between policy choice and legal obligation. Through normative reconstruction, this paper argues that Article 36 should be recalibrated by limiting discretionary authority exclusively to administrative clemency, while reclassifying legality-based correction as an imperative duty binding upon the tax authority affirming that the correction of unlawful decisions is not a matter of administrative benevolence, but a necessary consequence of objective illegality. This restructuring also carries significant institutional implications: by transforming legality correction from a facultative option into a mandatory obligation, the role of the Tax Court is repositioned in line with its constitutional mandate to uphold law and justice, enabling judicial review to move beyond the formality of discretionary assessment toward substantive examination of material truth and procedural regularity. Ultimately, consolidating the separation between administrative clemency and legality-based correction affirms a broader commitment to the rule of law, ensuring that legal protection operates as a matter of right rather than grace thereby improving the fairness and predictability of tax administration while strengthening public trust in the legitimacy of Indonesia's tax legal system.

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