



LEGAL ANALYSIS OF VAT ON FORECLOSED COLLATERAL: TAX COURT DECISIONS VERSUS FINANCE MINISTER REGULATION 41/2023

Adhy Kusuma Putra ¹⁾; Sujono ²⁾

¹⁾ adhy.putra@pajak.go.id, Universitas Dirgantara Marsekal Suryadarma

²⁾ sujono@unsurya.co.id, Universitas Dirgantara Marsekal Suryadarma

Abstract

This study examines the legal implications of Tax Court decisions issued between 2018 and 2025 in disputes over Value Added Tax (VAT) on foreclosed collateral (Agunan yang Diambil Alih, AYDA) and assesses how those decisions are reflected in Minister of Finance Regulation (PMK) No. 41 of 2023. The study uses normative legal research with statutory, conceptual, and case approaches and draws on secondary legal materials, including 44 Tax Court decisions. Before PMK 41/2023, the absence of a specific technical rule led to recurring disputes over whether the disposal of AYDA was subject to VAT. The Tax Court generally set aside the tax authority's assessments, particularly where the disposal was treated as part of VAT-exempt financial services and no creditable input VAT arose when the collateral was acquired. PMK 41/2023 settles the classification issue at the regulatory level by expressly treating the transfer of AYDA as subject to VAT while applying a Specific Tax Base that produced an effective rate of 1.1 percent under the regime examined. The rule improves legal certainty regarding the taxable status of AYDA, but potential disputes may shift to administration and valuation, especially the determination of the collateral sale price in distressed auctions. More detailed implementing guidance is therefore needed to reduce future disputes.

Keywords: Ability to pay; Foreclosed collateral; Legal certainty; Tax dispute; Value Added Tax

INTRODUCTION

Value Added Tax (VAT) is an indirect tax imposed on supplies of taxable goods and taxable services within Indonesia's Customs Area (Gunadi, 2013). Tax revenue, including VAT, is a major source of government funding. In the financial sector, tax disputes have frequently arisen from foreclosed collateral, known in Indonesian banking law as Agunan yang Diambil Alih (AYDA). AYDA is collateral taken over by a bank or financing institution after a debtor defaults (Tambunan, 2020). Because banks and financing institutions are exposed to nonperforming loans as part of their lending activities, taking over collateral is one mechanism used to resolve a default. The collateral must then be liquidated or resold within the period prescribed by the financial-services regulator, which the source manuscript identifies as no later than one year (Peraturan Otoritas Jasa Keuangan Nomor 40/POJK.03/2019 Tentang Penilaian Kualitas Aset Bank Umum, 2019; Untung, 2000). Since May 1, 2023, Minister of Finance Regulation (PMK) No. 41 of 2023 has expressly provided that a transfer of AYDA is subject to VAT using a Specific Tax Base (DPP Nilai Tertentu) (Peraturan Menteri Keuangan Nomor 41 Tahun 2023 Tentang Pajak Pertambahan Nilai Atas Penyerahan Agunan Yang Diambil Alih Oleh Kreditur Kepada Pembeli Agunan, 2023). The regulation was intended to provide a clearer legal basis for the tax treatment of these transactions.

Before PMK 41/2023, the VAT treatment of AYDA sales repeatedly produced disputes between the Directorate General of Taxes (DGT) and taxpayers, particularly banks and financing institutions. The DGT took the position that AYDA was a taxable good and relied on Article 4 paragraph (1)(a) of the VAT Law, which imposes VAT on the supply of taxable goods within the Customs Area by a business. The DGT also referred to Article 1A paragraph (1)(a), under which a transfer of rights over taxable goods under an agreement constitutes a supply of taxable goods. Because banks are legally treated as VAT-registered businesses and the disposal of AYDA was viewed as part of their economic activity, the tax authority classified the sale as a fully taxable supply. Taxpayers argued the opposite. This disagreement produced recurring



disputes and divergent interpretations (Sutedi, 2011). A previous study of disputes from 2018 to 2022 reported that taxpayers prevailed in 90 of 96 cases, or 93.75 percent (Sidabutar, 2024), indicating a substantial and persistent difference between the tax authority's interpretation and the reasoning accepted by the Tax Court.

The issue also has a direct economic effect on the parties to an AYDA sale. A bank must decide whether to increase the collateral sale price to recover the VAT from the buyer or absorb part of the tax itself. The first option can reduce buyer interest in an already limited auction market, while the second can deepen the bank's loss on a nonperforming loan. The allocation of this burden is relevant to the manuscript's analysis of equity and ability to pay because an AYDA sale is not an ordinary profit-seeking transaction. It is primarily a recovery mechanism for an impaired loan. The tax burden can therefore affect both bank risk management and the position of buyers in foreclosure sales.

Banks also faced administrative uncertainty. Civil-law ownership of collateral may not fully pass until an auction, title transfer, or another formal process has been completed. This creates practical questions about the time VAT becomes payable and the party that formally acts as seller. Before a dedicated rule existed, banks could differ in determining the tax base, issuing tax invoices, and reporting the transaction in financial statements and periodic VAT returns. PMK 41/2023 introduced a Specific Tax Base and an effective VAT burden of 1.1 percent under the regime discussed in this manuscript, but the rule still requires changes to internal systems and procedures so that collection, payment, and reporting are performed consistently.

The disputes decided before PMK 41/2023 were generally built around three legal arguments. Taxpayers argued that the sale of AYDA remained inseparable from lending and therefore formed part of financial services that were excluded from VAT (Sidabutar, 2024). They also argued that collateral taken over solely as security for a debt was not the type of commercial transfer of taxable goods contemplated by Article 1A paragraph (2)(b) of the VAT Law. A further argument concerned Article 16D: where no input VAT had been paid and creditable when the creditor acquired the collateral, taxpayers maintained that the statutory conditions for imposing VAT under that provision were not satisfied (Sidabutar, 2024). Despite repeated Tax Court decisions setting aside the DGT's adjustments, material disputes continued and the number of decisions increased from year to year in the period examined by the prior study (Sidabutar, 2024).

Earlier research successfully mapped the causes and recurring patterns of AYDA VAT disputes. Less attention has been given to whether the reasoning in those decisions was incorporated into PMK 41/2023 and whether the regulation actually reduces future dispute risk. The new rule resolves one issue by expressly stating that the transfer of AYDA is subject to VAT and by applying a Specific Tax Base without input VAT credit. It may, however, create a different set of disputes concerning the collateral sale price, timing of VAT, tax-invoice administration, and sanctions for reporting errors. Legal certainty therefore depends on more than classifying AYDA as a taxable object; it also depends on consistent implementation by both the tax authority and taxpayers.

Against this background, the study addresses two questions. The first is how the dominant pattern of Tax Court decisions from 2018 to 2022, which largely set aside VAT adjustments on AYDA, is reflected in the substance and restructuring of the rules under PMK 41/2023. The second is the extent to which PMK 41/2023 provides legal certainty, supports the equity considerations adopted in this study, and reduces the risk of future tax disputes. The study accordingly compares the legal basis of PMK 41/2023 with the taxpayer arguments accepted by the Tax Court and evaluates whether the regulation resolves the previous interpretive conflict or shifts it toward technical implementation.



LITERATURE REVIEW

VAT Treatment of Foreclosed Collateral Before PMK 41/2023

Before the issuance of PMK 41/2023, no comprehensive technical rule specifically governed VAT on the disposal of AYDA. The legal debate therefore drew on general provisions of the VAT Law and on the legal character of collateral in banking transactions. The tax authority emphasized Article 4 paragraph (1)(a) and Article 1A paragraph (1)(a), treating the sale as a transfer of taxable goods by a VAT-registered business (Surat Edaran Direktur Jenderal Pajak Nomor SE-121/PJ/2010 Tentang Penegasan Perlakuan Pajak Pertambahan Nilai Atas Penyerahan Agunan Yang Diambil Alih (AYDA) Oleh Bank, 2010; Undang-Undang Nomor 8 Tahun 1983 Tentang Pajak Pertambahan Nilai Barang Dan Jasa Dan Pajak Penjualan Atas Barang Mewah Sebagaimana Telah Beberapa Kali Diubah Terakhir Dengan Undang-Undang Nomor 42 Tahun 2009, 1983). This strict interpretation aligns with the tax authority's general tendency to broadly impose VAT on various business transactions to optimize state revenue (Wandani & Wijaya, 2023). Taxpayers relied on the relationship between AYDA and lending, the rule on assets held as debt security, and the conditions in Article 16D for supplies of assets that were not originally acquired for resale (Sidabutar, 2024; Undang-Undang Nomor 8 Tahun 1983 Tentang Pajak Pertambahan Nilai Barang Dan Jasa Dan Pajak Penjualan Atas Barang Mewah Sebagaimana Telah Beberapa Kali Diubah Terakhir Dengan Undang-Undang Nomor 42 Tahun 2009, 1983). The resulting dispute was not simply about the physical asset. It concerned whether the asset's disposal should be viewed as an independent taxable supply or as part of the resolution of a financial-service transaction.

Legal Certainty, Equity, and Legal Effectiveness

The manuscript uses legal certainty, equity, ability to pay, and legal effectiveness as analytical perspectives. Legal certainty is used as an analytical framework to assess whether taxpayers and the tax authority could reasonably predict the VAT consequences of AYDA transactions. Equity and ability to pay are used to examine the burden of applying the normal VAT mechanism to a transaction undertaken to recover losses from a defaulted loan rather than to earn an ordinary trading margin. Legal effectiveness is used to assess whether the regulatory framework achieves its intended legal and administrative objectives in practice, is used to assess whether PMK 41/2023 provides a workable rule in practice, rather than merely a formal rule on the taxable status of AYDA.

Previous Studies and Research Position

Previous research on Tax Court decisions from 2018 to 2022 identified recurring taxpayer arguments and found a high rate of taxpayer success in AYDA VAT disputes (Sidabutar, 2024). That work established the dispute pattern, but it did not fully examine the relationship between the Tax Court's reasoning and the later regulatory design of PMK 41/2023. The present study focuses on that relationship. It asks whether the regulation incorporates the substance of the earlier judicial reasoning and whether the new tax base and administrative rules are likely to prevent the same disputes or generate new ones in a different form.

METHODS

This study uses normative legal research with a descriptive-analytical character. It applies statutory, conceptual, and case approaches. The analysis focuses on secondary legal materials, including 44 Tax Court decisions concerning AYDA, doctrinal tax literature, and a vertical review of relevant tax and banking regulations. The Tax Court decisions are examined to identify the recurring legal issues and the ratio decidendi used to accept or reject VAT adjustments. Those findings are then compared with PMK 41/2023 to identify regulatory continuity, changes in the legal treatment of AYDA, and areas in which future disputes may



still arise. The evaluation is directed to legal certainty, the equity and ability-to-pay considerations used in the manuscript, and the practical effectiveness of the new rule.

RESULTS AND DISCUSSION

Pre-PMK 41/2023 Disputes and Tax Court Jurisprudence

Overview of the Disputes

Before PMK 41/2023, the VAT treatment of AYDA operated without a comprehensive transaction-specific technical rule and repeatedly developed into substantive tax disputes. The decisions from 2018 to 2022 were dominated by taxpayer victories. The prior study cited in the manuscript recorded a taxpayer success rate of 93.75 percent (Sidabutar, 2024). The disputed issues generally concerned whether AYDA fell within the exclusion for assets held as debt security, whether the sale remained connected to financial services that were not subject to VAT, and whether the requirements of Article 16D of the VAT Law were satisfied (Sidabutar, 2024). The pattern showed a gap between the tax authority's administrative position, including SE-121/PJ/2010, and the legal characteristics of collateral enforcement in banking practice (Surat Edaran Direktur Jenderal Pajak Nomor SE-121/PJ/2010 Tentang Penegasan Perlakuan Pajak Pertambahan Nilai Atas Penyerahan Agunan Yang Diambil Alih (AYDA) Oleh Bank, 2010).

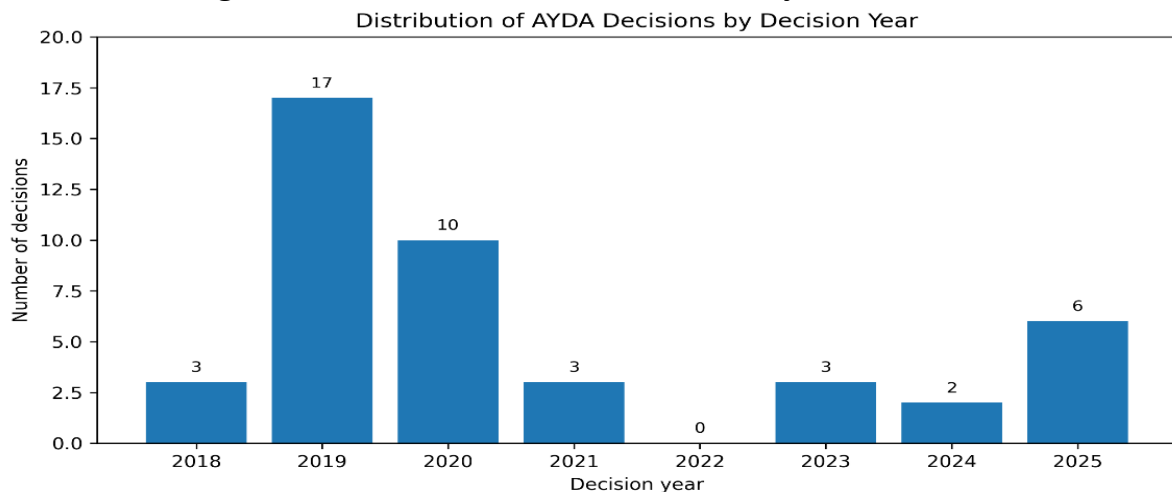
Table 1. Distribution of AYDA Decisions by Year and Sector

Year	Banking	Multifinance	Pawnshop	Total	Share
2018	0	3	0	3	6.80%
2019	10	7	0	17	38.60%
2020	7	2	1	10	22.70%
2021	2	1	0	3	6.80%
2022	0	0	0	0	0%
2023	2	1	0	3	6.80%
2024	2	0	0	2	4.50%
2025	2	4	0	6	13.60%
Total	25	18	1	44	100.00%

Source: Author's compilation based on the Tax Court decisions examined in this study.

Table 1 shows that the disputes were concentrated in the banking and multifinance sectors. Banking institutions accounted for 25 of the 44 decisions, while multifinance companies accounted for 18. Only one decision involved a pawnshop institution. The decisions were also unevenly distributed by year, with the largest number issued in 2019 and 2020.

Figure 1. Distribution of AYDA Decisions by Decision Year





Source: Author's compilation based on the Tax Court decisions examined in this study.

Figure 1 further illustrates the temporal concentration of the decisions. Of the 44 decisions examined, 17 were issued in 2019 and 10 in 2020. Together, these two years account for 27 decisions, or 61.4 percent of the dataset. This concentration suggests that litigation concerning the VAT treatment of AYDA was not limited to isolated cases during the period examined.

Table 2. Outcomes of AYDA VAT Decisions

Outcome	Decisions	Percentage
Taxpayer full win	40	90.90%
Taxpayer partial win	3	6.80%
Taxpayer loss	1	2.30%
Total	44	100.00%
Any taxpayer-favorable outcome	43	97.70%

Source: Author's analysis of the decisions examined in this study.

As shown in Table 2, taxpayers obtained a complete favorable outcome in 40 of the 44 decisions and a partial favorable outcome in three additional decisions. Only one decision resulted in a taxpayer loss. On this classification, 43 of 44 decisions, or 97.7 percent, produced an outcome that was wholly or partly favorable to the taxpayer. The consistency of this pattern provides the empirical basis for examining the recurring legal reasoning adopted by the Tax Court.

Ratio Decidendi of the Tax Court

The first recurring line of reasoning concerned the relationship between AYDA and financial services. The Tax Court accepted the view that the disposal of AYDA followed directly from the settlement of a defaulted loan and could not be separated from the bank's lending activity. Under the legal regime applicable to the disputes, the court treated that activity as part of financial services that were excluded from VAT (Sidabutar, 2024). This reasoning rejected the tax authority's attempt to isolate the sale of collateral from the lending transaction that produced it.

A second issue concerned ownership and the meaning of a taxable supply under Article 1A paragraph (2)(b) of the VAT Law (Sidabutar, 2024; Undang-Undang Nomor 8 Tahun 1983 Tentang Pajak Pertambahan Nilai Barang Dan Jasa Dan Pajak Penjualan Atas Barang Mewah Sebagaimana Telah Beberapa Kali Diubah Terakhir Dengan Undang-Undang Nomor 42 Tahun 2009, 1983). Taxpayers argued that taking over the collateral was undertaken to secure and recover a debt, not to acquire goods for ordinary commercial resale. The Tax Court accepted the distinction between possession or control of an asset for debt recovery and a conventional commercial transfer of ownership. This reasoning weakened the basis for treating the entire transaction as an ordinary taxable sale.

The third issue concerned Article 16D. The tax authority relied on this provision to tax the disposal of assets that were not originally acquired for resale. Creditors responded that no input VAT had been paid and creditable when AYDA was obtained from a defaulting debtor. The Tax Court treated the absence of creditable input VAT as material to the application of Article 16D and, in the cases examined, used that reasoning to set aside the VAT adjustment (Sidabutar, 2024; Undang-Undang Nomor 8 Tahun 1983 Tentang Pajak Pertambahan Nilai Barang Dan Jasa Dan Pajak Penjualan Atas Barang Mewah Sebagaimana Telah Beberapa Kali Diubah Terakhir Dengan Undang-Undang Nomor 42 Tahun 2009, 1983).

**Table 3. Principal Legal Reasoning in AYDA VAT Jurisprudence**

Principal Legal Issue	Legal Basis	Judicial Reasoning	Implication for VAT Treatment
Relationship between AYDA disposal and financial services	VAT provisions applicable to financial services	AYDA disposal followed from the settlement of a defaulted loan and was treated as inseparable from lending activity	Weakened the characterization of AYDA disposal as an independent taxable transaction
Nature of the transfer of collateral	Article 1A of the VAT Law	Collateral was taken over for debt recovery rather than acquired for ordinary commercial resale	Weakened the characterization of the transaction as an ordinary transfer of taxable goods
Absence of creditable input VAT	Article 16D of the VAT Law	No creditable input VAT arose when the creditor obtained AYDA from the defaulting debtor	Undermined the basis for imposing VAT under the ordinary Article 16D mechanism

Source: Author's analysis of the Tax Court decisions examined in this study.

Table 3 demonstrates that the Tax Court's reasoning was not based on a single doctrinal ground. Rather, the taxpayer-favorable decisions emerged from the interaction of three considerations: the connection between AYDA and financial services, the legal character of collateral taken over for debt recovery, and the absence of creditable input VAT. These recurring considerations provide the appropriate basis for assessing whether PMK 41/2023 represents a departure from, or a regulatory accommodation of, the earlier jurisprudence.

Implications for Legal Certainty and Equity

From the perspective of legal certainty used in this study, repeated taxpayer victories did not by themselves produce predictable administration. Tax officers continued to make similar adjustments in later tax years, while banks had to contest them again (Sidabutar, 2024). Because Tax Court decisions generally bind the parties to the individual dispute, the decisions did not automatically change the positive rule applied to other taxpayers. The result was a recurring cycle of assessment and litigation despite a recognizable judicial pattern.

The manuscript also questions the fairness of imposing the full 11 percent VAT burden under the pre-PMK approach. Theoretically, VAT is an objective tax on consumption where the tax burden is intended to be shifted forward to the buyer. However, the application of equity and ability-to-pay principles is theoretically justified in the context of AYDA due to the economic reality of tax incidence in distressed asset markets. Unlike ordinary commercial transactions where sellers can pass the VAT onto consumers, the auction market for foreclosed collateral is highly restricted and buyer-demand is extremely price-sensitive. If a bank strictly adds a full VAT rate to the auction price, it risks further reducing buyer interest. Consequently, the economic burden of the tax frequently shifts backward, forcing the bank to absorb the VAT from the auction proceeds to expedite the resolution of nonperforming loans. Applying the full normal VAT burden to a recovery transaction could worsen the creditor's loss and produce a tax burden that does not reflect the economic circumstances of the transaction, severely contradicting the ability-to-pay principle.

Practical Effects on Banks and the Tax Authority

The legal uncertainty translated directly into operational problems. A bank could raise the auction price to recover VAT from the buyer, but a higher price could reduce demand for distressed collateral. Alternatively, the bank could absorb the tax and increase its loss on the nonperforming loan. Administrative uncertainty also affected the time of supply, the



identification of the formal seller, the issuance of tax invoices, and periodic VAT reporting where legal title did not fully pass until an auction or title-transfer process was complete.

For the tax authority, repeated litigation also created an enforcement-cost problem. Assessments that were later set aside by the Tax Court did not produce sustainable collections. The combination of recurring examinations, objections or appeals, and unsuccessful collection made the pre-2023 approach inefficient as a means of securing revenue, reflecting the broader systemic challenges when taxpayers frequently utilize legal remedies to challenge tax assessments (Saputro & Setiawan, 2021).

Limits of the Earlier Jurisprudence

The main limitation of the earlier case law was institutional. Repeated Tax Court decisions could resolve the disputes before the court, but they did not automatically rewrite the governing regulation. Because the decisions operated *inter partes*, the same interpretive disagreement could reappear with a different taxpayer or in a later tax year, highlighting the structural limitation of relying solely on judicial decisions for broad administrative certainty (Nugroho & Pratiwi, 2022). This continuing gray area created the need for an express regulatory rule and formed the background to PMK 41/2023.

Comparison of Tax Court Decisions and PMK 41/2023

Regulatory Response to the Tax Court Decisions

PMK 41/2023 provides a regulatory response to the earlier litigation. It ends the classification debate at the regulatory level by expressly stating that a transfer of AYDA by a VAT-registered creditor to a collateral buyer is subject to VAT (Susanto, 2024). At the same time, the regulation reflects an important factual issue that appeared in the Tax Court decisions: the absence of creditable input VAT. PMK 41/2023 expressly provides that the creditor cannot credit input VAT on the acquisition of AYDA and on costs related to its transfer (Peraturan Menteri Keuangan Nomor 41 Tahun 2023 Tentang Pajak Pertambahan Nilai Atas Penyerahan Agunan Yang Diambil Alih Oleh Kreditur Kepada Pembeli Agunan, 2023). Instead of applying the ordinary output-input VAT mechanism to the full sale price, the regulation uses a Specific Tax Base, producing an effective burden of 1.1 percent under the 11 percent VAT rate discussed in this manuscript (Peraturan Menteri Keuangan Nomor 41 Tahun 2023 Tentang Pajak Pertambahan Nilai Atas Penyerahan Agunan Yang Diambil Alih Oleh Kreditur Kepada Pembeli Agunan, 2023). The design therefore differs from the full-rate assessments that were repeatedly challenged before the Tax Court.

Legal Certainty Under PMK 41/2023

PMK 41/2023 substantially improves legal certainty on one issue: whether the transfer of AYDA is a taxable transaction. That question is now answered expressly (Peraturan Menteri Keuangan Nomor 41 Tahun 2023 Tentang Pajak Pertambahan Nilai Atas Penyerahan Agunan Yang Diambil Alih Oleh Kreditur Kepada Pembeli Agunan, 2023). The regulation does not, however, remove every possible source of dispute. The likely area of disagreement shifts from classification to implementation, particularly the determination of the collateral sale price and the time VAT becomes payable. Distressed auctions can result in prices below the Tax Object Sales Value (NJOP) or an appraisal value. Differences between the auction result and other valuation benchmarks may lead tax auditors to question whether the stated sale price is reasonable.

This shift is important because the Specific Tax Base depends on the collateral sale price. A clear rule on the tax object does not prevent disputes if taxpayers and tax auditors apply different standards to determine or test that price. Administrative mistakes in invoice issuance or reporting may also create disputes even where the substantive tax treatment is no longer contested.



Practical Effects on Banks and Collateral Buyers

The lower effective burden changes the commercial effect of VAT on an AYDA sale. Compared with a full 11 percent charge, an effective 1.1 percent burden is less likely to distort the auction price and may make it easier for a bank to pass the tax to the buyer (Peraturan Menteri Keuangan Nomor 41 Tahun 2023 Tentang Pajak Pertambahan Nilai Atas Penyerahan Agunan Yang Diambil Alih Oleh Kreditur Kepada Pembeli Agunan, 2023). The reduced burden can therefore limit the tax-related effect on the sale of distressed assets. The new rule nonetheless requires substantial operational adjustment by banks. Internal systems must support the correct tax base, tax-invoice issuance, and reporting. The manuscript specifically identifies the need to align core banking systems with e-Faktur transaction code 04 for transactions using a Specific Tax Base. The implementation of this Specific Tax Base mechanism not only simplifies VAT administration but also accommodates the unique characteristics of non-regular commercial transactions (Kusuma & Setiawan, 2024).

Equity and Ability to Pay

The manuscript treats the formula $\text{VAT payable} = 11\% \times (10\% \times \text{collateral sale price})$ as more consistent with the equity and ability-to-pay considerations used in the analysis. By acknowledging that the VAT burden in distressed asset sales is practically absorbed by the seller, this regulatory design provides a strong theoretical alignment between consumption tax mechanisms and economic equity. The reduced effective burden recognizes that the creditor is disposing of an asset to recover a defaulted loan rather than conducting an ordinary sale for a commercial margin. When a bank absorbs a tax burden while mitigating financial losses (nonperforming loans), it lacks the ability to pay typically derived from profit realization. Tax policies must inherently distinguish between productive profit-seeking entities and those undergoing distressed financial recovery to maintain distributive justice (Santoso & Maulida, 2025). On that basis, the Specific Tax Base moderates the tax burden while preserving the legal classification of the transaction as subject to VAT, ensuring that the tax system does not impose an asymmetrical burden on institutional recovery efforts. Accommodating the economic reality of the taxpayer is conceptually essential, as the perception of fairness and equitable tax treatment significantly influences overall taxpayer compliance (Raharjo & Hasnawati, 2023).

Remaining Normative and Administrative Issues

The effectiveness of PMK 41/2023 will depend on how consistently its technical elements are implemented. The regulation would benefit from more detailed DGT guidance on a fiscally acceptable method for determining the collateral sale price, particularly where an execution auction produces a price below common valuation benchmarks. A safe-harbor approach could reduce later disputes over price reasonableness. Banks and financing institutions also need integrated standard operating procedures among legal, recovery, and tax units so that the time of supply, invoice issuance, payment, and reporting are handled consistently. Further empirical research could then examine formal compliance after PMK 41/2023 and whether the new regime changes banks' recovery outcomes.

CONCLUSION

The pattern of Tax Court decisions from 2018 to 2022 materially influenced the restructuring of the VAT treatment of AYDA. The tax authority repeatedly lost disputes in which the court rejected the application of full VAT to collateral enforcement, including cases in which no creditable input VAT arose when the creditor obtained the collateral. PMK 41/2023 incorporates the practical significance of that issue by replacing the ordinary output-input mechanism for these transactions with a Specific Tax Base that produced an effective rate of 1.1 percent under the regime examined.



PMK 41/2023 also restores regulatory certainty regarding the status of AYDA as a VAT object. Its main remaining risk lies in administration rather than classification. Future disputes are more likely to concern the reasonableness of the collateral sale price, the time VAT becomes payable, and the timely issuance and reporting of tax invoices. The regulation therefore reduces the earlier interpretive conflict but does not eliminate the need for clear and consistent technical implementation.

Recommendations

The Ministry of Finance and the Directorate General of Taxes should issue implementing guidance that explains acceptable parameters for determining the collateral sale price in execution auctions. Clear valuation guidance is needed to reduce disputes where auction conditions produce a price below NJOP, appraisal values, or other market indicators.

Banks and financing institutions should strengthen coordination between credit-recovery, legal, accounting, and tax functions. Core banking systems should also be updated so that transactions under the Specific Tax Base can generate and report e-Faktur transaction code 04 accurately and on time.

Future research should assess the post-implementation effect of the Specific Tax Base on bank recovery rates and on the number and type of AYDA VAT disputes. Empirical evidence would help determine whether PMK 41/2023 has reduced total compliance and dispute costs in practice.

REFERENCES

- Gunadi. (2013). Panduan komprehensif Pajak Pertambahan Nilai (PPN). Bee Media Indonesia.
- Kusuma, B., & Setiawan, I. (2024). Tinjauan yuridis penetapan Dasar Pengenaan Pajak berupa Besaran Tertentu pada transaksi khusus. *Educoretax*, 4(2), 155–168.
- Nugroho, A., & Pratiwi, D. (2022). Kepastian hukum putusan Pengadilan Pajak dan implikasinya terhadap administrasi perpajakan. *Educoretax*, 2(4), 310–325.
- Peraturan Menteri Keuangan Nomor 41 Tahun 2023 Tentang Pajak Pertambahan Nilai Atas Penyerahan Agunan Yang Diambil Alih Oleh Kreditur Kepada Pembeli Agunan (2023).
- Peraturan Otoritas Jasa Keuangan Nomor 40/POJK.03/2019 Tentang Penilaian Kualitas Aset Bank Umum (2019).
- Raharjo, F. A., & Hasnawati, H. (2023). Persepsi wajib pajak orang pribadi terkait wacana pengenaan pajak penghasilan terhadap objek natura/kenikmatan. *Educoretax*, 3(3), 173–191.
- Santoso, Y., & Maulida, R. (2025). Asas ability to pay dan keadilan beban pajak pada penyelesaian kredit macet perbankan. *Educoretax*, 5(1), 45–60.
- Saputro, H., & Setiawan, B. (2021). Upaya hukum wajib pajak terhadap surat keputusan pengurangan atau penghapusan sanksi administrasi. *Educoretax*, 1(1), 59–81.
- Sidabutar, H. V. S. H. (2024). Analisis sengketa pajak atas perlakuan Pajak Pertambahan Nilai sehubungan dengan transaksi atas Agunan yang Diambil Alih (AYDA): Studi kasus Putusan Pengadilan Pajak tahun 2018–2022. Universitas Indonesia.
- Surat Edaran Direktur Jenderal Pajak Nomor SE-121/PJ/2010 Tentang Penegasan Perlakuan Pajak Pertambahan Nilai Atas Penyerahan Agunan Yang Diambil Alih (AYDA) Oleh Bank (2010).
- Susanto, H. (2024). Implikasi Peraturan Menteri Keuangan Nomor 41 Tahun 2023 terhadap kepatuhan wajib pajak bank konvensional dalam pelaporan PPN AYDA. Universitas Brawijaya.
- Sutedi, A. (2011). Hukum pajak. Sinar Grafika.
- Tambunan, D. (2020). Analisa hukum pengambilalihan aset debitur oleh bank melalui AYDA terhadap agunan berupa hak tanggungan yang dalam prosesnya debitur dinyatakan pailit.



Universitas Indonesia.

Undang-Undang Nomor 8 Tahun 1983 Tentang Pajak Pertambahan Nilai Barang Dan Jasa Dan Pajak Penjualan Atas Barang Mewah Sebagaimana Telah Beberapa Kali Diubah Terakhir Dengan Undang-Undang Nomor 42 Tahun 2009 (1983).

Untung, H. B. (2000). Kredit perbankan di Indonesia. Andi Offset.

Wandani, F., & Wijaya, S. (2023). Pengenaan pajak pertambahan nilai terhadap transaksi digital game online di Indonesia. *Educoretax*, 3(2), 89–102.