

A RIGHT WITHOUT A REMEDY: ENTITLEMENT AND ENFORCEMENT IN INDONESIA'S LOCAL TAX SURCHARGE

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Article History Received: 08-11-2025 Revised: 14-12-2025 Accepted: 07-01-2026 Keywords: local taxation; surcharge; legal certainty; ubi ius ibi remedium; intergovernmental relations	ABSTRACT Law No. 1 of 2022 created a surcharge (opsen) under which Indonesian regencies and cities levy 66 per cent of the motor vehicle tax and vehicle transfer duty arising in their territory, in force from 5 January 2025. This article examines the legal architecture of that entitlement and identifies a structural defect. Article 83(1) of the Law vests the surcharge in the receiving jurisdiction, but Article 108(1), (5) and (6) of Government Regulation No. 35 of 2023 vests assessment, collection and enforcement exclusively in the governor. The receiving jurisdiction holds a statutory revenue right with no legal means of realizing it: where a liability goes unpaid, 66 per cent of the resulting receivable belongs to a government that cannot issue an assessment, compel payment, or commence recovery. The article characterizes this as a right without a remedy, examines the three mechanisms the framework offers in place of one — the three-working-day remittance duty, the collection synergy provision and the quarterly reconciliation duty — and argues that each imposes an obligation of conduct rather than conferring a power of enforcement. It then treats the repeated use of administrative tax amnesty as a related problem of legal certainty, since amnesty extinguishes liabilities in which two governments hold an interest but which only one may forgive. The article proposes amendment conferring either a derivative right of recovery on the receiving jurisdiction or a correlative duty of diligence on the collecting province.
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1. INTRODUCTION

A revenue entitlement conferred by statute is of practical value only to the extent that its holder can realize it. Where a legal system confers a right and withholds the means of enforcing it, the right is nominal. The maxim *ubi ius ibi remedium* expresses the principle that a right and the means of its vindication belong together, and legal systems ordinarily satisfy it either by giving the holder a power to enforce or by imposing on some other party an enforceable duty to act on the holder's behalf.

Indonesia's local tax surcharge does neither with sufficient clarity, and this article sets out why that matters. Under Article 83(1)(a) and (b) of Law No. 1 of 2022, regencies and cities are entitled to a surcharge of 66 per cent of the motor vehicle tax and vehicle transfer duty assessed within their territory. The entitlement is substantial: in one province it amounted to more than IDR 4.5 trillion in its first year of operation. But the assessment that creates the liability, the collection that

discharges it, and the recovery action available when it is not discharged are all vested by Government Regulation No. 35 of 2023 in the provincial governor.

So long as taxpayers pay, the arrangement functions and the separation is invisible. The difficulty appears at the margin, which in vehicle taxation is not a small margin: where liabilities go unpaid, the resulting receivable belongs 66 per cent to a government that has no lawful means of pursuing it and 34 per cent to a government that has the means but a reduced interest in exercising them.

This article examines that structure as a question of legal design. Section 2 develops the conceptual framework and states the gap the article addresses. Section 3 sets out the method and materials. Section 4 establishes the architecture of the entitlement from the primary legal instruments. Section 5 identifies the separation of right from remedy and examines the three provisions that might be thought to cure it. Section 6 addresses administrative tax amnesty as a related problem of legal certainty. Section 7 considers two possible amendments and the different legal consequences each would produce.

2. LITERATURE REVIEW

2.1 The gap between entitlement and enforcement

Legal scholarship on intergovernmental fiscal relations concentrates on two questions: which tier may levy which tax, and how revenue should be shared. A third question receives less attention. Where a statute confers revenue on one government and the power to realize it on another, what does the first government hold? The question is not answered by the allocation of taxing power, because the power to levy has been exercised; nor by the law of transfers, because the entitlement is not a transfer. It falls between the categories.

Lim (2023), examining the legal architecture of cooperative intergovernmental fiscal relations, identifies the general difficulty: cooperative arrangements distribute benefits by rule and obligations by convention, so that a participant's position depends on conduct the framework does not compel. Poirier and Hartery (2022) reach a parallel conclusion for federal systems, showing that intergovernmental agreements effect substantive constitutional change while remaining outside the mechanisms of constitutional enforcement. In both accounts the defect is structural rather than incidental: the instrument creates an interest and omits the machinery by which the interest is vindicated.

This article applies that frame to a specific instrument. It argues that Indonesia's vehicle tax surcharge is an instance of the general problem in an unusually clean form, because the separation is complete: the receiving jurisdiction holds the entire entitlement and none of the powers, and the collecting jurisdiction holds all the powers and a minority of the entitlement.

2.2 Ubi ius ibi remedium as an analytical test

The maxim that a right implies a remedy is not a rule of Indonesian positive law, and this article does not treat it as one. It is used analytically, as a test for whether a conferred interest is legally operative. A legal system satisfies the test in one of two ways: by giving the holder a power to enforce, or by placing another party under an enforceable duty to act in the holder's interest. Where neither is present, the interest is nominal however clearly it is expressed.

The distinction between an obligation of conduct and a power of enforcement is central to the argument. Cheong (2024), examining the principle of legality in statutory interpretation, shows that a provision expressed as an objective rather than as a prescribed action does not generate an obligation courts can enforce. Khabook (2024) makes the related point that legality and legitimacy diverge where a measure states a purpose without specifying the conduct required to serve it. Applied here, these supply the criterion by which Section 5 assesses the three provisions that might cure the defect.

2.3 Delegation and the location of the operative norm

A second doctrinal issue arises from where the surcharge rules actually sit. The statute establishes the entitlement and the rate; the mechanics of collection, remittance and recovery appear in delegated legislation, and further detail is delegated again to instruments of the regional head. The operative norm governing a tax obligation therefore lies two levels below the statute.

The recent literature on delegated legislation is directly relevant. Chng (2023) re-examines judicial review of delegated legislation and argues that the intensity of review should track the significance of what has been delegated rather than the form of the instrument. Lock, de Londras and Hidalgo (2023), analysing pandemic-era delegation, identify the limits of the constitutional bargain that permits substantive rules to be made outside primary legislation, particularly where those rules affect legal position rather than merely administration. Zhang, Yang and Li (2023) show experimentally that delegation is sustained by perceived legislative capacity and bureaucratic reputation rather than by formal authority alone.

The point for the present analysis is not that the delegation is unlawful. It is that the provision determining whether a government can realize its statutory revenue — who may pursue arrears — sits in a government regulation, and the provision that would govern the manner of doing so is delegated further to an instrument made by the very party whose diligence is in question. That is a structural feature worth stating precisely, and Section 5 does so.

2.4 Legal certainty and repeated administrative relief

The article's second problem concerns certainty rather than remedy. Legal certainty in its narrow sense requires that an obligation be knowable in advance and stable once incurred. Repeated administrative relief tests both. Where relief is granted once it is a measure of forbearance; where it is granted at predictable intervals it alters the obligation, because the addressee comes to treat the stated liability as provisional.

The surcharge sharpens this into a question of competence as well as certainty. Relief extinguishes a liability in which two governments hold an interest, and is granted by one of them. Poirier and Hartery (2022) and Lim (2023) both note that cooperative fiscal arrangements characteristically leave such asymmetries implicit. The empirical literature indicates the stakes: Bagchi (2025) shows that collection design shapes compliance behaviour directly, and Sen and Wallace (2022) that revenue productivity under a shared instrument depends on effort the beneficiary may not control. A framework that separates the power to forgive from the interest forgiven should address the separation expressly.

3. METHOD

The analysis is doctrinal, supplemented by attention to the administrative practice through which the norms operate. The primary materials are Law No. 1 of 2022 on Financial Relations between the Central Government and Regional Governments; Government Regulation No. 35 of 2023 on General Provisions on Regional Taxes and Regional User Charges; Law No. 23 of 2014 on Regional Government, for the distinction between autonomous and administrative regions on which the surcharge's scope depends; and Provincial Regulation of Central Java No. 12 of 2023 on Regional Taxes and User Charges, as the implementing instrument in the province used for illustration.

Each provision is cited from the official text as published in the State Gazette and reproduced in the national legal documentation system. One caution should be recorded. The official portable-document versions of Law No. 1 of 2022 and Government Regulation No. 35 of 2023 are scanned images with an optical character recognition layer rather than native digital text, and numerals in that layer are unreliable. Every percentage relied on here was verified against the words in parentheses that accompany each figure in the authentic text, which the recognition layer renders correctly.

A second caution concerns status. The national legal documentation system operated by the Supreme Audit Board records Provincial Regulation No. 12 of 2023 as revoked by Provincial Regulation No. 7 of 2025 on the medium-term development plan. A development-planning instrument does not, as a matter of substance, revoke a taxation instrument, and the issuing authority's own documentation system records the regulation as in force. The discrepancy is treated here as a metadata error and the regulation as operative.

4. RESULTS AND DISCUSSION

4.1 *Creation and rate*

Article 1(61) of Law No. 1 of 2022 defines the surcharge as an additional levy on a tax according to a specified percentage. Articles 1(62) and 1(63) define the vehicle surcharges as those imposed by regencies and cities on the principal amount of motor vehicle tax and vehicle transfer duty respectively.

Article 4(2)(h) and (i) assign both to the regency and city level. Article 4(3) provides that in a region at provincial level not divided into autonomous regencies and cities, the taxes referred to are levied by that region itself — the provision that removes the surcharge from operation in the Special Capital Region.

Article 81 provides that a surcharge is imposed on tax payable in respect of motor vehicle tax, vehicle transfer duty, and the tax on non-metallic minerals and rocks. Article 82 identifies the surcharge taxpayer as the taxpayer of the underlying tax. Article 83(1) fixes the rates at 66 per cent for the two vehicle surcharges and 25 per cent for the minerals surcharge, calculated on the amount of tax payable; Article 83(2) requires the rate to be enacted by regional regulation.

Article 191(1) provides that the provisions concerning these taxes and their surcharges take effect three years from the date of promulgation. The Law was promulgated on 5 January 2022, so the surcharge took effect on 5 January 2025 — a date confirmed by Articles 107 and 108 of the Central Java provincial regulation, which state it expressly.

4.2 Collection and remittance

Article 84(1) of the Law provides that the surcharge is collected simultaneously with the tax on which it is imposed, and Article 84(2) delegates the manner of collection to government regulation. The Law itself contains no provision on remittance to the receiving treasury; that appears only in the delegated legislation, and the distinction matters for the argument developed below.

Government Regulation No. 35 of 2023 regulates the surcharge in Articles 107 to 114. Article 107(3) sets the principal amount of the vehicle surcharges at 66 per cent of the base, and Article 107(5) restates that collection occurs simultaneously with collection of the underlying tax. Article 108(1) provides that the vehicle surcharges are assessed by the governor and stated in the regional tax assessment notice. Article 108(4) provides that payment of the surcharge into the regency or city treasury occurs simultaneously with payment of the underlying tax into the provincial treasury. Article 108(5) and (6) vest recovery action in the governor. Article 108(7) requires the proceeds of recovery to be remitted to the regency or city treasury within three working days.

Article 112 provides for synergy in collection between the province and its regencies and cities. Article 113 delegates further regulation of collection to instruments of the regional head — a governor regulation for the vehicle surcharges. Article 114 requires quarterly reconciliation of revenue data for the underlying taxes and their surcharges.

The structure that emerges is set out in Table 1. Every power capable of converting the entitlement into money is held by the province. Every power held by the receiving jurisdiction is either formal, in that it enacts the rate the statute has already fixed, or informational.

Table 1. Allocation of powers over the vehicle surcharge

Function	Legal basis	Province	Regency/city
Entitlement to revenue	Art. 83(1) Law 1/2022	No	Yes

Function	Legal basis	Province	Regency/city
Enactment of rate	Art. 83(2) Law 1/2022	No	Yes (rate fixed)
Assessment	Art. 108(1) GR 35/2023	Yes	No
Collection	Art. 107(5), 108(4) GR 35/2023	Yes	No
Recovery of arrears	Art. 108(5)–(6) GR 35/2023	Yes	No
Remittance of proceeds	Art. 108(7) GR 35/2023	Duty	Beneficiary
Reconciliation of data	Art. 114 GR 35/2023	Party	Party

Sources: Law No. 1 of 2022 on Financial Relations between the Central Government and Regional Governments; Government Regulation No. 35 of 2023 on General Provisions on Regional Taxes and Regional User Charges.

4.3 *The problem stated*

A regency or city holds, by force of Article 83(1), a right to 66 per cent of the vehicle tax payable within its territory. When that tax is paid, Article 108(4) delivers the money automatically and the right is satisfied without the holder doing anything. When it is not paid, the holder has a receivable. Against whom, and by what process, may it be realized?

Not against the taxpayer. The regency or city cannot issue an assessment, because Article 108(1) confers that power on the governor alone. It cannot commence recovery, because Article 108(5) and (6) confer that power on the governor alone. It has no register of vehicles, no assessment function, and no enforcement apparatus, because the framework does not contemplate that it would need any.

Nor, on the face of the instruments, against the province. Article 108(7) obliges the province to remit the proceeds of recovery within three working days, but the obligation is triggered by recovery having occurred. It says nothing about whether recovery must be attempted. A province that pursues no arrears breaches no remittance duty, because there are no proceeds to remit.

The result is a right correlative to no enforceable duty. This is the classical situation the maxim *ubi ius ibi remedium* is directed against, and the practical consequence is not hypothetical: in a jurisdiction where a substantial stock of vehicle tax liabilities is unpaid, the majority interest in every one of those liabilities is held by a government that can do nothing about it.

4.4 *Three provisions that do not cure it*

Three provisions might be thought to supply the missing remedy. On examination none does.

The first is the remittance duty in Article 108(7). It is a genuine and specific obligation, enforceable in principle, and its three-working-day limit is precise enough to be justiciable. But it operates only on money already recovered. It secures the receiving jurisdiction against misappropriation or delay of collected funds; it gives no protection against collection not being attempted. Its subject matter is the transfer of proceeds, not the generation of them.

The second is the collection synergy provision in Article 112. This directs the province and its regencies and cities to act in concert in collection. The difficulty is that the provision states an

objective without specifying conduct: it does not say what either party must do, within what period, or with what consequence for failure. A norm that imposes no ascertainable obligation cannot ground a claim. Article 113 delegates further regulation to a governor regulation, which places the content of any operative duty in the hands of the very party whose diligence is in question.

The third is the reconciliation duty in Article 114, which requires quarterly reconciliation of revenue data between the province and receiving jurisdictions. This is the most substantial of the three and it does confer something real: a right to information, exercisable at defined intervals, about a matter the receiving jurisdiction would otherwise be unable to observe. A regency or city that reconciles diligently will learn the size of its unrealized entitlement. What it may then do with that knowledge is the question the framework leaves unanswered. A duty to disclose is not a duty to collect, and knowledge of a loss is not a remedy for it.

The three provisions together establish that the drafters were alive to the coordination problem the design creates. What they enacted addresses the transfer of money and the sharing of information. Neither addresses the generation of the money, which is the point at which the receiving jurisdiction's interest is most exposed and its powers are entirely absent.

4.5 The reconciliation duty as an information instrument

The quarterly reconciliation required by Article 114 deserves separate treatment, because it is the one provision that gives the receiving jurisdiction something it could not otherwise obtain. Whether an information right can substitute for an enforcement right is an empirical question about which the public administration literature has a good deal to say, and the answer is qualified.

Performance and financial information does change behaviour, but selectively. Cepiku, Mastrodascio and Wang (2024) and Nitzl, Sicilia and Steccolini (2024) find that managerial use of such information is shaped by organizational and individual factors rather than following automatically from its availability. Choi and Woo (2021) show that the type of use varies with institutional pressure, and Mikkelsen, Petersen and Bjørnholt (2021) find experimentally that managers respond asymmetrically to favourable and unfavourable information. Lindermüller, Sohn and Hirsch (2021) show that external reporting pressure alters how information enters spending decisions. The common finding is that information affects conduct where something follows from it.

Mizrahi and Minchuk (2021) formalize the general case, modelling gaming under regulatory monitoring and showing that the scope for it is set by the structure of the measure rather than by the vigilance of the monitor. Applied to a reconciliation duty, the implication is that what the parties do with the reconciliation is determined by what follows from it, and here nothing does.

That condition is not satisfied here. Lebec and Dudau (2023) argue that measurement systems built for external accountability omit what the measured party treats as central, and Lamothe (2024) shows that administrative data can misrepresent delivery unless disaggregated. Barbieri, Micacchi, Vidè and Valotti (2021) state the general principle that an accountability instrument performs only where its measures connect to consequences. A reconciliation that establishes the size of an

unrealized entitlement, without conferring any power to act on the finding or imposing any duty on the party that could, produces knowledge without leverage. Kim (2024) supplies the cautionary counterpart: where consequences do attach to a performance signal without a corresponding capacity to improve it, the response can be distortion rather than improvement.

This does not make the reconciliation duty worthless. It is the necessary informational foundation for any enforceable duty of diligence, and Section 7 argues that it should be built upon rather than replaced. The point is narrower: as the framework stands, the duty produces a record of the problem rather than a means of addressing it.

4.6 Why this is a defect of design rather than of implementation

It might be objected that provinces have every incentive to collect, since they retain 34 per cent of the principal, and that the receiving jurisdiction is therefore protected by the collector's own interest. The objection has force but is incomplete in two respects.

First, the incentive is reduced by exactly the proportion transferred. A collection effort that was marginally worthwhile when the province retained the whole amount may not be worthwhile when it retains a third. The framework reduced the collector's return without adjusting anything else, and the effect operates most strongly on the hardest cases, where the cost of recovery is highest relative to the sum recovered — which is to say, on precisely the arrears most likely to remain uncollected.

Second, alignment of interest is not a substitute for a legal duty. That the province will usually wish to collect does not answer what the regency or city may do in the case where it does not. A legal framework is tested by its treatment of the case where interests diverge, and this one leaves that case unprovided for.

A related difficulty arises from administrative practice rather than from the text. Indonesian provinces periodically operate amnesty programmes remitting penalties, and sometimes principal, on overdue vehicle tax, with the object of bringing dormant taxpayers back onto the register.

Two features of the surcharge framework make the practice legally awkward. The first is competence. An amnesty extinguishes or reduces a liability in which the receiving jurisdiction holds a 66 per cent interest, and it is granted by the province. The instruments examined here contain no provision requiring the consent, or even the consultation, of the jurisdictions whose entitlement is thereby diminished. A power to forgive another government's revenue, exercisable unilaterally, is a significant allocation of authority to have been left implicit.

The second is legal certainty in the narrower sense. Certainty requires that a legal obligation be knowable in advance and stable once incurred. An amnesty granted once is a measure of relief. An amnesty granted repeatedly at predictable intervals alters the obligation itself, because the rational taxpayer comes to treat the stated liability as an opening position rather than a fixed sum. The obligation created by the regional regulation and the obligation faced by the taxpayer cease to coincide, and the divergence is produced by the state's own conduct.

This article does not assess whether particular amnesty programmes were justified; that assessment depends on facts about compliance behaviour that doctrinal analysis cannot supply. The point is narrower and structural. The introduction of the surcharge changed who bears the cost of an amnesty without changing who may grant one, and a framework that separates the power to forgive from the interest forgiven should say so expressly rather than by omission.

The defect admits of two solutions, which differ in legal character and in the burden each places on the parties.

The first is a derivative right of recovery. The receiving jurisdiction would be empowered, after a defined period of provincial inaction and on notice, to commence recovery of its own share. This gives the right holder a remedy in the ordinary sense and requires no cooperation from the province. Its difficulty is administrative: the receiving jurisdiction has no register, no assessment capacity, and no enforcement staff, and creating them in several hundred jurisdictions would duplicate the very apparatus the surcharge design exists to avoid. The remedy would be formally available and, for most jurisdictions, practically unusable.

The second is a correlative duty of diligence. The province would be placed under an express obligation to pursue arrears in which receiving jurisdictions hold an interest, to a specified standard, with the quarterly reconciliation under Article 114 serving as the reporting mechanism against which performance is measured. This preserves the unified collection that makes the design efficient and converts the receiving jurisdiction's position from a bare entitlement into a right correlative to an enforceable duty. Its difficulty is one of specification: a duty of diligence must be drafted with enough precision to be justiciable and enough flexibility to accommodate cases where recovery is genuinely uneconomic.

The second is preferable, and the reason is that it repairs the defect at the point where it arises. The problem is not that the receiving jurisdiction lacks powers; it is that no one is obliged to act in its interest. Conferring powers it cannot exercise addresses the form of the problem. Imposing a duty on the party that can act addresses its substance. The reconciliation duty already establishes the informational infrastructure such a duty would require, which suggests the amendment is a completion of the existing design rather than a departure from it.

A subsidiary amendment follows from Section 6. Where an amnesty would extinguish liabilities in which receiving jurisdictions hold an interest, their consent — or at least a formal consultation with reasons — should be required. The present position, in which the interest may be extinguished by a party that does not bear the loss, is difficult to reconcile with the allocation of the entitlement that Article 83(1) effects.

4.7 Why a duty of diligence is the tractable amendment

The choice between the two amendments turns on what the parties can actually do, and the public administration literature is unambiguous on this point. Kim and Kang (2024) and Tran and Dollery (2022) find administrative intensity closely associated with local fiscal performance; Pill (2024) argues that local capacity is a property of apparatus rather than of resources; and Collazos-Ortiz and

Schakel (2023) show that administrative efficiency conditions whether municipalities convert entitlement into revenue. Conferring recovery powers on several hundred jurisdictions that possess no register, no assessment function and no enforcement staff would create a remedy that the great majority could not exercise.

A duty of diligence placed on the collecting province avoids that difficulty but raises its own. Lee (2026) and Liu and Deng (2024) document selective implementation by subnational officials where obligations are stated without specified conduct, and Jacobsen (2023) shows how political-administrative relations shape which obligations are honoured. Rajala and Jalonon (2025) argue that accountability instruments designed on simple principal-agent lines under-perform where the relationship is genuinely complex. A duty drafted in general terms would therefore replicate the defect it is meant to cure. What is required is a duty specified in conduct and period — which arrears must be pursued, within what time, with what recorded outcome — with the quarterly reconciliation already required by Article 114 serving as the reporting instrument.

The administrative feasibility of such a duty is supported by evidence that information infrastructure improves capacity where it is used. Zhu, Xiao and Wu (2022) show that data systems raised bureaucratic capacity in a large Chinese programme, and Lee (2022) finds that collaborative platforms produce measurable outcomes where the platform assigns tasks rather than merely convening parties. The reconciliation duty is the existing platform; what it lacks is an assigned task.

4.8 The wider setting

The defect identified here is specific to one instrument, but the conditions producing it are not. Bird (2011) observes that subnational taxation in developing countries characteristically separates the tier that benefits from the tier that administers, and Lewis (2023), assessing the 2022 law shortly after enactment, anticipated that its consequences for intergovernmental relations had not been fully worked through. Smoke (2015) argues more generally that decentralization reforms are evaluated against their stated design rather than against the institutional arrangements they actually create.

Two literatures indicate what is at stake if the gap is left unaddressed. Slemrod (2019), reviewing tax compliance and enforcement, establishes that enforcement effort is a principal determinant of collection and that its supply responds to who bears its cost and captures its return — the precise variables the surcharge reallocates. Prichard (2015) shows that the relationship between taxation and accountability depends on taxpayers perceiving a link between what they pay and the government that spends it; where a jurisdiction receives revenue without collecting it, that link is broken at the point where it would ordinarily form. Yabré, Loaba and Semedo (2025) supply the quantitative counterpart, finding that revenue mobilization declines beyond an optimum number of parties whose consent collection requires. A framework that adds several hundred such parties and specifies no duty among them is operating on the far side of that optimum by design.

5. CONCLUSION

The surcharge introduced by Law No. 1 of 2022 confers on Indonesian regencies and cities a substantial statutory revenue entitlement and withholds from them every power by which such an entitlement is ordinarily realized. Where the underlying tax is paid the design works, and works well: collection is unified, administration is not duplicated, and the money arrives without the recipient acting. Where the tax is not paid, the recipient holds the larger share of a receivable it cannot assess, cannot collect, and cannot recover, against a collector whose own interest in recovery the same reform reduced by two-thirds.

The three provisions the framework offers — remittance within three working days, synergy in collection, and quarterly reconciliation — address the transfer of collected money and the sharing of information. None addresses the recovery of money not collected. The gap is not an implementation failure to be corrected by better administrative practice; it is a feature of the instruments, and correcting it requires amending them.

Of the two available amendments, imposing an express and specified duty of diligence on the collecting province is preferable to conferring a derivative recovery power on jurisdictions that lack the means to exercise it. The quarterly reconciliation duty already supplies the information against which such a duty could be assessed, which indicates that the framework was drafted with the coordination problem in view and stopped one provision short of resolving it.

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