

## The Tax Dispute Settlement According To Justice And Court System In Indonesia

Rustian Mushawirya

Faculty of Law Universitas Jambi  
Mendalo Darat, Kec. Jambi Luar Kota, Kota Jambi, Jambi 36122  
E-mail: [mushawirya@unja.ac.id](mailto:mushawirya@unja.ac.id)

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### ABSTRACT

*This research is motivated by an inconsistency in the regulation of the existence of tax justice in the Indonesian justice system, where the tax court is an appeal court against a decision in the field of tax dispute. A taxpayer who objects to the amount of tax that must be paid, can file a claim to the Directorate General of Taxes as the decision maker of tax disputes in the first stage. Legal problems are born from inconsistencies that occur in the concept of legal authority on the basis of the position held by the tax court and the Directorate General of Taxes on the Indonesian state system. Tax Justice is within the scope of the judicial body, while the Directorate General of Taxes is within the scope of the Executive body. This difference gave birth to a tendency towards partiality of the Directorate General of Taxes in deciding tax disputes because the disputed object was a decision of the government itself. This study uses legal materials as a research instrument, by carrying out several approaches namely the conceptual, the legal, and the case approach. This study aims to find the suitable theoretical and juridical foundation to create a tax justice system that is independent and give the legal certainty and protection to the interests of the people. The results of the study show that the tax court which is within the scope of the state administrative court must have the authority to try since the first stage and the stage of the appeal, which will end in the Supreme Court. This is done to avoid conflicts of interest within the executive body itself which results in the absence of legal protection for the people.*

**Keywords:** Tax Justice, Court, Dispute, Legal Protection

### **ABSTRAK**

Penelitian ini dilatarbelakangi oleh adanya inkonsistensi pengaturan tentang keberadaan peradilan perpajakan dalam sistem peradilan Indonesia, dimana peradilan pajak merupakan pengadilan banding terhadap suatu putusan di bidang sengketa perpajakan. Seorang wajib pajak yang keberatan dengan jumlah pajak yang harus dibayar, dapat mengajukan klaim kepada Direktorat Jenderal Pajak sebagai pembuat keputusan sengketa pajak pada tahap pertama. Permasalahan hukum lahir dari inkonsistensi yang terjadi pada konsep kewenangan hukum atas dasar jabatan yang dijabat oleh pengadilan pajak dan Direktorat Jenderal Pajak dalam sistem ketatanegaraan Indonesia. Peradilan Perpajakan berada dalam lingkup badan peradilan, sedangkan Direktorat Jenderal Pajak berada dalam lingkup badan Eksekutif. Perbedaan tersebut melahirkan kecenderungan keberpihakan Direktorat Jenderal Pajak dalam memutus sengketa pajak karena objek yang dipersengketakan merupakan keputusan pemerintah itu sendiri. Penelitian ini menggunakan bahan hukum sebagai instrumen penelitian, dengan melakukan beberapa pendekatan yaitu secara konseptual, hukum, dan pendekatan kasus. Kajian ini bertujuan untuk menemukan landasan teoritis dan yuridis yang sesuai untuk mewujudkan sistem peradilan perpajakan yang mandiri serta memberikan kepastian hukum dan perlindungan bagi kepentingan rakyat. Hasil penelitian menunjukkan bahwa Pengadilan Pajak yang berada dalam lingkup PTUN harus memiliki kewenangan untuk mengadili sejak tahap pertama dan tahap kasasi yang akan berakhir di Mahkamah Agung. Hal ini dilakukan untuk menghindari terjadinya benturan kepentingan di dalam badan eksekutif itu sendiri yang berakibat tidak adanya perlindungan hukum bagi masyarakat.

**Kata Kunci:** *Keadilan Pajak, Peradilan, Sengketa, Perlindungan Hukum*

## A. INTRODUCTION

### *Background*

Indonesia is a legal state, namely the state guarantees all citizens equal status in law and government, and is obliged to uphold the law and government with no exceptions. This is in accordance with the provisions of Article 1 paragraph (3) of the 1945 Constitution of the Unitary State of the Republic of Indonesia which states that: "The State of Indonesia is a legal state".

In fact, in each constitution or constitution, the main role of the state is to realize the ideals of the nation itself, and the ideals of the Indonesian people listed in the 1945 Constitution, namely having a strong spirit to realize the welfare of all Indonesian citizens and forming a welfare state. According to Muchsan it was stated that:

*The main objective of developing countries is the realization of equitable community welfare. In state theory, such a state is called a welfare state type. Because the emphasis is equitable welfare in social life, the State is required to play an active role in creating prosperity.*

In achieving the ideals of the Indonesian nation mandated in the Preamble of the 1945 Constitution of the Unitary State of the Republic of Indonesia, there is a need for development in all aspects of life by involving all the potential of the nation both from human resources and natural resources in the region. The Unitary State of the Republic of Indonesia. The two potentials of this nation must be synergized in an integrated manner because both of these sources have very important meanings and need to be implemented through a systematic and directed development program in order to be able to prosper all levels of Indonesian society.

National development can be realized in accordance with what is expected, of course, goods need

adequate funding sources, so that the success of national development requires a large amount of funds. The sources of funding for national development are obtained from the tax sector, other development financing source sectors and natural wealth management sectors which include the mining sector, forestry. But this sector is a source that is not renewable (*non renewable*) and has a direct effect on future generations. Thus, the tax sector is seen as the safest source of financing development. It is also well aware that the tax sector seems to be encouraged to the maximum extent possible to participate in carrying out state financing, because from this source the continuity of development will continue to be maintained. This is in line with **Rochmat Soemitro's** opinion stating that: "*Tax is a people's contribution to the state treasury based on the Act (which can be forced without receiving reciprocal services) which can be directly demonstrated and used to pay for public expenditure*".<sup>2</sup>

Tax has a very large and decisive role in the future, especially with regard to the planning and use of financial resources to finance national development, so it is reasonable if the Government gives very serious attention to the taxation sector. In fact, it can be seen that based on existing data at the Republic of Indonesia Statistic Center ([www.bps.go.id](http://www.bps.go.id)) in the period from 2014 to 2018 the source of state revenues from the taxation sector averaged over 72% (seventy-two percent) compared to the source of non-tax state revenues which averaged only around 23% to 27% and from the grant only ranged from 0.31% to 0.44%.

Given that the taxation sector is a very big and decisive role in the implementation of national development in the Republic of Indonesia in the future, it is very natural for the Government to pay serious attention to the taxation sector, including the renewal of legislation. - legislation in the field of

taxation (tax reform) which regulates the General Provisions and Procedures for Taxation which was originally regulated according to Law Number 6 of 1983, as amended by Law Number 9 of 1994, then amended again by Law Number 16 of 2000, and finally amended by Law Number 28 of 2007.

The main purpose of the renewal of the provisions of legislation in the field of taxation is to realize the independence of the state in financing national development by directing all potentials and capabilities from within the country, especially increasing state revenues through the tax sector, by involving the participation of people in developing countries. this. With the renewal of the provisions of legislation in the field of taxation, it is expected to have a major influence on the taxation system in Indonesia compared to the previous taxation system.

According to *Rochmat Soemitro*, it was stated that the most fundamental changes in the provisions of the laws and regulations in the taxation sector were the most basic, including:

1. Simplifying the amount and type of tax;
2. Simplification of tax rates;
3. Simplification of taxation procedures, and;
4. Improvement of tax apparatus concerning:
  - a. Procedure
  - b. Discipline
  - c. Employee Mental

#### **Providing Legal Certainty Comes.**

Furthermore, *Rochmat Soemitro* also argued that: "Renewal in the field of taxation also involves improving the taxation system, tax apparatus (quality, attitude, mentality of employees, and tax officials and supporting facilities) and preparing taxpayers.<sup>2</sup> Specifically in the collection, a *self-assessment* system is used, meaning that the taxpayer is given

the trust to fill in the Debt Notice, calculating the amount of tax payable and depositing it to the state treasury. The tax officer is obliged to provide guidance, supervision, and control of taxpayers in carrying out their tax activities. Through this system tax administration is expected to be carried out neatly, in a controlled, simple and easy way to be understood by members of the taxpayer community (General explanation paragraph (3) letter c General Provisions on Taxation).

With a *self-assessment* system, the authority to determine the amount of tax owed is entirely on the taxpayer. This gives severe consequences for taxpayers if they do not fulfill their obligations, namely the sanctions given are more severe than before. However, not all taxes have implemented this *self-assessment* system, including Land and Building Taxes. For this reason, the Directorate General of Taxes through the tax service office, every year must determine the amount of tax owed by issuing a tax return.

Judging from the formal juridical aspect, according to Sudikno Mertokusumo, it was stated that:

Indeed, the birth of the Tax Court Law, namely Law Number 14 of 2002 concerning the Tax Court is unconstitutional in the sense that it does not have a foundation in the Constitution, even contrary to the 1945 Constitution and therefore is legally flawed, even though the consideration is stated Article 24 of the 1945 Constitution, because in article 24 paragraph (2) of the 1945 Constitution stated: Judicial power is carried out by a Supreme Court and a judicial body under it in the General Courts environment, the Religious Courts environment, the Military Courts environment, the environment State Administrative Court and by a Constitutional Court. This means that

according to Article 24 paragraph (2) of the 1945 Constitution there are four judicial environments, with the existence of this tax court (which has no basis in the Constitution), then there are five judicial environments. So our justice system is more divided.

Based on the opinion of Sudikno Mertokusumo above, it can be seen that the inconsistencies of the legislators, who intentionally or unintentionally have a conflict between the Laws and the other Laws. The tax court as stated in Law Number 14 of 2002 in reality the technical guidance of the judiciary is carried out by the Supreme Court, while organizational, administrative and financial guidance is carried out by the Ministry of Finance (Article 5). Thus, of course this is contrary to Law Number 48 of 2009 concerning judicial powers which stipulates that judicial bodies as referred to in Article 21 paragraph (1) organizationally, administratively and financially are under the authority of the Supreme Court. This is not just a *legem contra*, but also unconstitutional and has also damaged the Indonesian legal system.

## Problems

The problems raised in this study are as follows:

1. How to settle a tax dispute according to Law No. 14 of 2002 concerning the Tax Court?
2. What is the position of the Tax Court in the justice system in Indonesia?

## B. DISCUSSION

### Settlement of Tax Disputes according to Law Number 14 of 2002 concerning the Tax Court

Law Number 14 of 2002 concerning the Tax Court, provides broad opportunities for taxpayers who are not satisfied with the objection

decisions issued by the Director General of Taxes to submit an appeal to the Tax Court (Article 31 paragraph (2) of Law Number 14 of 2002 ) This opportunity is open as long as the taxpayer has taken the mechanism stipulated in the Tax Court Law.

The Tax Court Act both in torso and memory, the explanation does not explicitly regulate the general principles of filing an appeal, even though one of the conditions for filing an appeal is that the plaintiff must provide clear reasons for the basis of the claim, in the sense that the claim is filed appeal that is not accompanied by reasons will be rejected, because tax law is part and part of state administrative law, so it can be used general grounds about the reasons for filing the claim and *lex generalist* provisions contained in the State Administrative Law, which is based in the 53rd paragraph (2) of the State Administrative Court Law, the point is to regulate the reasons that can be used to file an appeal.

Observing these opinions, the author disagrees because of the fact that the reasons used in filing tax appeals are not merely what is regulated in Article 53 paragraph (2) of the State Administrative Court Law, but also concerning the amount of tax disputed.

The regulation of the mechanism of tax dispute resolution through the Tax Court is regulated using procedural law explicitly contained in Article 34 up to Article 88 of Law Number 14 of 2002. These provisions are further elaborated in the Decree of the Chairman of the Tax Court No: KEP-002 / PP / 2002 concerning the Tax Court Rules of Procedure, which can be described as follows:

### Submission of Appeals and Lawsuits

1. Formal requirements for appeals

include:

- a. Appeals submitted by letter in Indonesian;
- b. Appeals submitted by taxpayers, their heirs, an administrator, or their attorney;
- c. For one decision an appeal letter is submitted;
- d. Letter of appeal attached to a decision compared;
- e. Appeal accompanied by clear reasons, and accompanied by the date of receipt of the Decision compared to if it has not passed a period of 3 months;
- f. In the event that an appeal is filed against the amount of the tax owed, the appeal can only be filed if the amount of the tax payable is paid at 50% (fifty percent);
- g. Appeals are submitted within 3 (three) months from the receipt of a decision compared, unless otherwise stipulated in the tax legislation;
- h. The period of three months is not binding if the said period cannot be fulfilled because of the situation outside the authority of the appellant.
- i. Provisions on the formal terms of appeal filed in point 6 above, indicate burdensome conditions and unfair treatment of taxpayers. Injustice can be seen from the substance of determining the amount of tax payable basically determined by the taxpayer when submitting the SPT, this is in line with the system *self assessment* adopted in the General Provisions of Taxation (Article 12 paragraph (2) General Provisions on Taxation). So

before the discovery of new evidence regarding the amount of tax debt by the Director General of taxes or based on an inkracht court decision, then there is no justification for the Director General of Tax to make a unilateral determination so that the amount of tax payable becomes greater, when compared to taxpayers fill out and submit an Annual Notice. This unilateral determination is then charged to the taxpayer when filing an appeal by having to pay 50% in advance of his tax debt. Provisions for these requirements are deemed unfair and deviate from the prevailing judicial provisions in general.

#### **Position of the Tax Court in the Judicial System in Indonesia**

The Tax Court was formed based on Articles 24 and 25 of the Constitution of the Unitary State of the Republic of Indonesia in conjunction with Law Number 14 of 1970 as lastly amended by Law Number 48 of 2009 concerning Basic Provisions of Judicial Power in conjunction with Law No.5 2004 concerning the Supreme Court.

Looking at the basis of the formation of each Tax Justice Agency, it is increasingly clear that the position of the Tax Court in terms of the implementation of the justice system before and after the enactment of Law Number 14 of 2002 concerning the Tax Court is different. The difference before the Act of the Tax Court, the Tax Judicial Board conducted by the Tax Consideration Council and the Tax Dispute Settlement Agency in the judicial system has not peaked with the Supreme Court as the highest State Court. However, after the enactment of

the Tax Court Law, the tax justice system in resolving the dispute was open to submit a Judicial Review to the Supreme Court but could not file an appeal. As a consequence, the position of the Tax Court has not been commensurate with other courts, namely General Justice, Religious Courts, Military Courts and State Administrative Courts. Although the willingness of the position of the equivalent Tax Court to be regulated in Article 2 of Act No. 14 of 2002 states: "The Tax Court is a judicial body that carries out judicial authority for taxpayers or tax insurers who seek justice against Tax Disputes".

Construction Article 2 The Tax Court Law has provided a strong understanding, that the Tax Court has fully demonstrated as a judicial institution which is a form of implementation of judicial power. Therefore the position of the Tax Court in the judicial power structure cannot be separated from the Law on the Basic Provisions of Judicial Power. Thus the normative position of the Tax Court both in the judicial power structure and in the judicial unit system is part of one of the existing judicial environments. this is in accordance with the provisions of Article 24 of the 1945 Constitution.

Judging from the characteristics and substance of disputes resolved by the Tax Court contains elements of public law. So by basing on the wishes of the above laws and characteristics and substance of tax disputes, the position of the Tax Court will be more appropriate to be included as a special part of the State Administrative Court environment.

Institutionally The composition of the Tax Court consists of leaders, member judges, secretaries and clerks. The head of the Tax Court consists of a chairman and two deputy chairmen. The Chairperson and Deputy Chairperson are appointed by the President of the judges proposed by the Minister of Finance after obtaining approval from

the Chief Justice of the Supreme Court. Similarly, the judges were appointed by the President from the list of names proposed by the minister, after obtaining approval from the Supreme Court. The number of members including leaders is set at maximum 35 people.<sup>2</sup>The judge of the Tax Court is a Ministry employee. Finance, however, they have been released from the Ministry. This gives the meaning that they are no longer carrying out their dual duties in addition to being members of the Tax Court judges as well as carrying out government functions. So their position is not a state administrative body that carries out the function of government, as the opinion of Sjachran Basah mentions that there are tri government functions:

1. Establish legislation in the material sense on one side and on the other party to make (*beschikking*), What is meant by Law in the material sense here are provisions that are not in the form of laws and their degrees are below them. However, the provisions have general binding power and abstract nature.
2. Carrying out government in the life of the state in order to achieve its objectives.
3. Carry out judicial functions.

### C. CONCLUSION

1. Settlement of tax disputes according to Law Number 14 of 2002 concerning the Tax Court

The mechanism of tax dispute resolution is in principle not in accordance with the prevailing justice system in general, it is evident that the Tax Court Law in providing legal protection for tax dispute resolution is inequality when compared to the prevailing judicial system in general, including appeals at the new Tax Court can be done if the taxpayer has fulfilled

the requirements by paying 50% of the amount of the tax owed, not knowing the consultative meeting to determine the appeal or rejection of the appeal, and not recognizing the legal appeal to the Supreme Court.

## 2. Position of tax court in the justice system in Indonesia

The Tax Court is a judicial body that carries out judicial authority so that independence is absolutely necessary. It aims to uphold the agency's independence in carrying out its functions. If viewed from the process of coaching the organization, finance and administration of the Tax Court carried out by the Ministry of Finance and the recruitment of Tax Court judges carried out by the Minister of Finance, this can provide tax officials the opportunity to intervene in the tax dispute process, even though the Tax Court fostering process organizationally, administratively and financially carried out by the Ministry of Finance contradicts Article 11 paragraph (1) and (2) of Law Number 35 of 1999, essentially requiring and emphasizing that organizational, financial and administrative guidance in the judiciary be carried out by the Supreme Court. These provisions are intended to avoid the intervention of the executive to the judicial institutions including the Tax Court.

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