

The Principle of Justice in the Settlement of Tax Disputes Based in Tax Law in Indonesia

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ABSTRACT

The tax that is collected by a state to its people should be fair because one of the state's goals is to create a just and prosperous society. Based on this, it is necessary to make a regulation that could provide justice to all parties by obtaining tax dispute resolution through existing legal or existing procedures. The principle of taxation adopted by Indonesia is self-assessment, which is a tax collection system that gives the authority, trust and responsibility to taxpayer to calculate, pay and report the amount of tax that should be paid themselves. When there is a tax dispute being filed to the Tax Court that is a process in the tax law that is expected to provide justice, both for the taxpayer and to the Government as a tax collector. The main issues to be discussed in this research are the fulfillment of the principle of justice in the settlement of tax dispute through self-assessment and legal protection for taxpayers in the settlement of tax disputes.

INTRODUCTION

Indonesia as a constitutional state is characterized by a modern welfare state that wishes to realize justice for all Indonesian people. In a modern welfare state, the task of the government in carrying out the public interest is very broad and sometimes violates the rights of taxpayers in collecting taxes. This can be avoided if the government lives and obeys the applicable tax law.¹

The government has the authority to collect taxes to finance development. The funds raised are used to finance activities that are directly or indirectly related to the interests and needs of the community. For this reason also, the government stipulates certain taxes for anyone, including business people, who are deemed fit to be designated as taxpayers.²

Taxes are also important because of their executorial nature. Its nature has permanent legal force makes it easy for the government to identify, inventory, and collect taxes without a shadow of a doubt. In addition, the government can also more easily measure and calculate potential revenue from taxes.³

Collection of taxes on the people must be based on law. Tax arrangements must be based on laws that can be seen in the 1945 Constitution Article 23A which states that:⁴

"That taxes and other levies that are coercive for state needs are regulated by law."

The definition of tax itself is an agreement that arises because of a law that requires someone who fulfills the requirements (*taatbestand*) specified in the law to pay a certain amount of money to the state which can be forced without receiving direct compensation can be appointed which is used to finance expenses. -state spending.⁵Based on this definition, it can be seen that the process of collecting taxes will always involve two parties, namely the state and the people as taxpayers. It is the state that has the absolute right to collect taxes while the people have the obligation to pay taxes.

The taxes collected by the state on its people must be fair because one of the goals of the state is to create a just and prosperous society. Based on this, it is necessary to make regulations that can provide justice to all parties by obtaining tax dispute resolution through existing legal channels or existing procedures.⁶

THEORITICAL REVIEW

The principle of tax collection adopted by Indonesia is self-assessment, namely a tax collection system that gives authority, trust and responsibility to taxpayers to calculate, pay and report the amount of tax to be paid by themselves. This principle gives full confidence to taxpayers to exercise their tax rights and obligations.⁷

Tax is an agreement that arises based on law. Taxes stipulated in the form of laws have a coercive nature because they contain legal sanctions in the form of administrative sanctions and criminal sanctions. In the event that a tax dispute is submitted to the Tax Court, this is a process in tax law which is expected to provide justice, both for the taxpayer and for the government as a tax collector.

Tax disputes under the Tax Court Act are defined as follows:⁸
"Disputes that arise in the field of taxation between taxpayers or tax bearers and authorized officials as a result of the issuance of decisions that can be appealed or filed against the tax court based on tax laws and regulations, including lawsuits over the implementation of billing based on the law on tax collection by letter Forced."

The position of the tax court in the judicial system in Indonesia is based on Law Number 14 of 2002 concerning the Tax Court. The tax court was formed based on Article 24 and Article 25 of the 1945 Constitution, the third amendment in conjunction with Law Number 14 of 1970 as amended by Law Number 48 of 2009 concerning Basic Provisions of Judicial Power in conjunction with Law Number 14 of 1985 as amended with Law Number 3 of 2009 concerning the Supreme Court.⁹

In general, disputes in the field of taxation begin with tax assessments stipulated in Chapter III (Articles 12-15 and Articles 17A-17E) of Law Number 6 of 1983 concerning General Provisions and Tax Procedures as last amended by Law Number 16 of 2009 (hereinafter referred to as UU KUP).¹⁰ Taxpayers who do not agree with the tax assessment can basically submit an application for objection as provided for in Articles 25 and 26 of the KUP Law or an application for the abolition or reduction of sanctions or the cancellation of an incorrect determination as provided for in Article 36 of the KUP Law.¹¹

The successful implementation of the self-assessment system is highly dependent on the level of compliance (voluntary and forced compliance) of

taxpayers and the effectiveness of the oversight mechanism carried out by the tax authorities. Based on the KUP Law, the main oversight mechanism carried out by the Directorate General of Taxes (DGT) is Research and inspection.¹²

Oversight activities carried out by the DGT often trigger tax disputes between taxpayers and tax authorities. Some of the main characteristics of tax disputes are as follows: first, disputes that arise within the scope of tax administration; secondly, the parties to the dispute are taxpayers or tax bearers with the DGT as the institution/official authorized to manage tax administration; third, there are state administrative decisions that can be appealed or lawsuits as the subject of the dispute, fourth, the dispute resolution forum chosen to resolve disputes (choice of forum) is the Tax Court; and fifth, legal references used to resolve disputes (choice of law) are laws and regulations in the field of taxation.¹³

The existence of a tax court is regulated specifically in Law Number 14 of 2002 concerning the Tax Court, which has the authority to examine and decide cases concerning tax disputes. The tax dispute referred to includes but is not limited to an appeal against a taxpayer's objection to a regional head's decision. An appeal is filed within 3 (three) months after the objection decision is received.¹⁴ The decision of the Tax Court is final and has permanent legal force. However, this decision can still be submitted to the Supreme Court in the form of a review.

In addition to an appeal, the taxpayer can file a lawsuit against the implementation of the collection to the Tax Court. In the event that the taxpayer has objections to the implementation of tax collection by the regional government, the taxpayer can file a lawsuit with the Tax Court. The period for filing a lawsuit for implementation at the regional tax court is 14 (fourteen) days from the date of collection.¹⁵

So, when a tax dispute occurs between the tax authorities and the taxpayer, several tax dispute resolution mechanisms can be systematically resolved through several mechanisms, namely:¹⁶

- a. Completion at the internal Directorate General of Taxes, namely to the Tax Service Office where the taxpayer is registered, through:
 - 1) Correction of tax assessments;
 - 2) Reduction or elimination of administrative sanctions;
 - 3) Reduction or cancellation of tax assessments;

- 4) Object.
 - b. Settlement in the Tax Court, through Lawsuit and Appeal.
 - c. Settlement in the Supreme Court, through Judicial Review (PK).

METHODOLOGY

To answer the research problems, normative research methods are used. This means that this research examined the laws and regulations in taxes about the principle of justice in the settlement of tax disputes. Furthermore, the collection of legal material in this research was also supported by a literature study by analyzing some of the relevant literature. In order to get the solutions and conclusions, the legal material obtained is then classified and analyzed qualitatively descriptive, so that the fulfilment of the principle through a self-assessment system and the legal protection for taxpayers are known.

RESULTS AND DISCUSSION

Fulfillment of the Principle of Justice for Taxpayers Through a Self-assessment System Based on Tax Law in Indonesia in Dispute Resolution

Taxes do not only imply the transfer of public funds to the government to provide public goods and carry out public services desired by the community, but taxes are also intended as a reflection of socio-cultural values and realizing priority requests for public services in the context of achieving social and economic welfare. ¹⁷

According to Adam Smith, taxation must comply with good principles called the four canons of taxation, including:¹⁸

- a) The principle of equity means that the tax burden must be in accordance with the relative ability of each taxpayer. Differences in income levels should be used as a basis for distributing the tax burden so that it is not a tax burden in terms of money, but a real burden in terms of lost satisfaction;
- b) The principle of certainty (certainty), taxes should be firm, clear, and guarantee certainty for every taxpayer so that it is easily understood by taxpayers and will also facilitate the administration of the government itself;
- c) The principle of conformity (convenience), taxes should not put too much pressure on taxpayers so that taxpayers will be happy to pay taxes to the government; And
- d) The principle of efficiency (efficiency), taxes should cause minimal losses in the sense that the cost of collection should

not be greater than the amount of tax revenue and taxes should be able to eliminate distortions to the behavior of taxpayers.

Furthermore, the principle of justice as put forward by Adam Smith can basically be seen from four aspects, namely fairness; horizontal justice and vertical justice; tax burden (tax incidence); and fairness on the basis of the benefits received by the taxpayer.¹⁹

The life of the nation and state cannot be separated from the existence of the constitution of the country in question by taking into account the role and function of the constitution as the basis and reference for state administrators to achieve the goals aspired to.²⁰The existence of a tax court is very important in the Indonesian legal system and the global economy, especially when it is associated with its important role in implementing national development. The tax court provides legal certainty, creates a sense of justice, and supports the implementation of simple, fast and inexpensive legal services.²¹

The existence of a tax court is also important because the institution is in a middle position between the taxpayer and the tax collector when both are involved in a tax dispute. With the authority granted by the law to him, the tax court has the authority to be a problem solver. The tax court can act as an independent arbiter, so that both parties to the dispute can entrust their dispute resolution to him. Thus, the hope for the presence of justice in the midst of disputes can be fulfilled.²²

The tax dispute settlement procedure, if it is related to the principle of justice, begins with paying attention to legal efforts to settle tax disputes between taxpayers and the tax authorities. The substance of the tax dispute settlement rules when viewed from the aspect of equity includes Article 36 paragraph (1) of the KUP Law regarding the authority of the Directorate General of Taxes to reduce or eliminate administrative sanctions imposed on taxpayers, as well as Article 36 paragraph (2) letter b regulates the authority of the Directorate General of Taxes to reduce or cancel incorrect tax assessments, should be included in the objection section.²³

Taking into account the interrelationship of the principles of justice in a tax dispute, it appears that justice does not intend to change or reduce justice, but is limited to providing corrections and/or complementing certain individual justice as well as certain conditions and cases. Through the application of the principle of justice in practice, "summa iustitia summa

iniuria" or the highest legal certainty is that the highest injustice will not occur, because with the existence of justice, the application of the value of justice in tax collection, the relationship between tax collectors and individuals or parties who are subject to tax in proper proportions.²⁴

In the context of state revenue through taxes, of course the self-assessment system must be supervised so that taxpayers calculate and/or report the taxes owed correctly and in accordance with the applicable laws and regulations. For this reason, there is an instrument in the form of a file that is used to calculate and determine the tax. The instrument referred to is the Annual Tax Return (SPT), which is a letter used by taxpayers to report the calculation and/or payment of taxes, tax objects and/or non-tax objects and/or assets and liabilities, according to the provisions of the tax laws and regulations.²⁵

Talking about justice in a law enforcement process, it must be seen from both sides. In tax law enforcement, it must be seen the proportionality of law enforcement activities both from the state's right to taxes from the public (taxpayers) and also the rights of the community which should not be treated arbitrarily by the state in collecting taxes. If there is no standard and measurable mechanism for resolving conflicts or disputes, this means that there is no justice and legal certainty.

A tax collection is said to be fair horizontally, if the tax burden is the same for all taxpayers who get the same income with the same number of dependents without differentiating the type of income or source of income or commonly called equal treatment for the equals. Meanwhile, tax collection is said to be vertically fair if people with additional different economic abilities are subject to different income taxes equal to the difference or commonly referred to as unequal treatment for the unequals.²⁶

Behaving fairly means putting something in its place and giving what is due, which is based on the principle that all people are equal before the law. Thus, the most basic demand of justice is to provide equal treatment and opportunity (equity and fairness) to everyone. This means, justice is giving what is right for everyone without discriminating.²⁷

Tax is a transfer in the field of assets originating from the people to the government based on statutory provisions. Tax is a source of funds for financing the implementation of government activities in achieving the aims and objectives aspired to in the Preamble of the 1945 Constitution, a just and

prosperous society equally. Imposition of good tax if it meets the following conditions:²⁸

- a. Justice/equality;
- b. Economically efficient;
- c. High degree of certainty and not arbitrary;
- d. Taxes can be administered by the government easily and at low cost; And
- e. Taxpayer administration and compliance can be monitored and implemented easily.

The five principles above must be in accordance with the economic and social goals of taxation. The tax system is considered to fulfill justice if the tax treats all taxpayers who have the same economic conditions in the same circumstances. This aspect of equality/justice is based on horizontal justice. Equality is measured based on the ability of taxpayers to pay taxes. Therefore, taxpayers with equal ability to pay must pay the same tax burden.²⁹

The concept of equality and justice in the field of taxation is the lifeblood of a good taxation system. Political leaders reward ideals in nearly every area of tax law-making and regulation. Citizens, moreover, are highly sensitive to arguments about fairness in almost every tax policy debate. However, all of these populist controversies, tax justice is poorly understood and often its application is not in line with a good taxation system. The concept of tax justice consists of at least three different dimensions, namely horizontal, vertical and individual justice.³⁰

Various technical efforts to implement the three components of justice in the field of taxation are difficult to implement simultaneously. For this reason, many experts suggest that when justice in the field of taxation cannot be implemented, then through a complete fiscal policy, corrections to the weaknesses of the tax system should be carried out, especially through state and regional spending policies.

Therefore, in order to fulfill the principle of justice, the tax law adopts a pattern of tax collection that is held generally and evenly. That is, all individuals have the same rights and obligations in tax law.³¹ Improvement of tax legislation is only one of the factors that influence the success of tax collection. Other factors that influence the success of tax collection are:³²

- a. Government; as executor. The thing that needs attention is the policy or policies that will be outlined by the organization and its officials.
- b. Taxpayer; by way of socializing how much the tax calculation for the life of the state. This is a step to encourage the creation of tax discipline. In addition, awareness and honesty of taxpayers is also needed in forming a climate of tax discipline.
- c. *Law enforcement*(law enforcement); the existence of sanctions or sanctions for violations of tax laws and regulations, such as institutions, forced letters, confiscations, auctions, and hostages.
- d. Supervision; this is an important element in creating the sustainability of tax policy, both in terms of administering taxes by the tax apparatus and taxpayers.
- e. Court; including legal remedies given to taxpayers to seek justice through dispute resolution in the tax court.

In the dispute resolution process, the aspect of justice for taxpayers has been tried to be fulfilled in the audit process, namely the activities of searching, collecting, processing data and or other information to test compliance with tax obligations. In addition to the aspect of justice, the audit is carried out in order to provide legal certainty and guidance to taxpayers. The aspect of justice is the ultimate goal in resolving tax disputes for taxpayers through a self-assessment system.

Legal Protection for Taxpayers in Tax Dispute Resolution

Along with the development of the concept of a modern rule of law state, the need for legal protection is increasingly important. In a modern rule of law state, the duties and functions carried out by state administration are becoming increasingly broad, the state's involvement in almost every aspect of life is becoming ever greater. Against these administrative acts within the framework of a rule of law, the protection of citizens is a very urgent matter.³³

With the increasing number of taxpayers and tax bearers, as well as an understanding of their rights and obligations in implementing tax laws and regulations, it can also trigger an increasing potential for tax disputes to arise which require a fair settlement with a fast, simple and low cost process. a means to resolve tax disputes, namely through the Tax Court, where the filing of rights claims through the Tax Court is a form of legal action as a form of implementing legal protection for taxpayers and tax bearers.³⁴

Legal protection for the people can be divided into two types, namely among others:³⁵

- 1) Preventive legal protection, namely legal protection where people are given the opportunity to submit their objections or opinions before a decision is declared. The preventive form aims to prevent disputes from occurring.
- 2) Repressive legal protection that aims to resolve disputes.

One form of guaranteed legal protection for the people over the attitude of acts of state administration is legal protection aimed at resolving disputes (repressive legal protection), which can take the form of, among other things, the provision of dispute settlement facilities which include institutions or agencies authorized to resolve disputes; giving opportunity to justice seekers to seek justice up to the highest level of court; giving guarantees to justice seekers to be able to settle their cases in a fair, fast, accurate, and low cost manner; the guarantee of a dispute resolution that is as objective as possible which is free from the interference of other parties and so on. This is in accordance with the principles stated in Law number 14 of 1970 jo. Law Number 48 of 2009 concerning Judicial Power.³⁶

In Indonesia, for tax disputes conducted through a two-pronged Tax Court. First, it is carried out through the Objection Board and then proceeds to the Tax Court which culminates with the Supreme Court. Second, it is carried out only through the Tax Court and then to the Supreme Court. The Tax Court is in one judicial unit according to the 1945 Constitution which is obliged to provide legal protection for taxpayers in the settlement of tax disputes.

Actually, the legal protection of taxpayers in the settlement of tax disputes is only aimed at violating the rights and obligations of taxpayers. In this regard, protection for citizens is given if the attitude of the state administration causes harm to them.³⁷ Then, the principle of protection for the people (in Indonesia) is the principle of recognition and protection of human dignity which is based on Pancasila and legal principles based on Pancasila.³⁸

Settlement of disputes through administrative efforts considering that the dispute resolution is a party that is still part of the government environment which incidentally is a party to the litigation, the objectivity of the decision is often doubted, whereas a dispute resolution is always required to produce an objective decision so as to be able to provide legal protection for the parties to the dispute.³⁹

In the context of providing legal protection to the community for actions that are detrimental to state administration, it is necessary to have supervision. Oversight of state administration can be in the form of oversight that is organizationally or structurally outside the government (in the executive sense) while internal oversight is oversight carried out by an agency that is organizationally or structurally still part of the government's own environment. One form of internal control is administrative efforts.⁴⁰

The close relationship between the government as a tax collector and the people as tax subjects creates a legal relationship between the government and the people. This legal relationship causes tax law to be included in the scope of public law. National development is a form of Pancasila practice implemented by the Government. Therefore, funds are needed to carry out development which is increasing from year to year. Government financing originating from community participation, in the form of taxes, will not be successful if it is not supported by legal instruments in the field of taxation that guarantee certainty, order, enforcement and legal protection with the core of justice and truth.⁴¹

Tax law protection absolutely exists in a rule of law country as the implementation of tax law enforcement, bearing in mind that tax law enforcement must not ignore the legal protection of taxpayers, because it is an integral part of the Indonesian legal state. Legal protection that can be taken in terms of settling and terminating disputes between the people and the government in carrying out their duties in the field of public law are as follows:⁴²

- 1) Settlement of disputes through internal administrative channels, namely the hierarchical superiors of the officials concerned, this route is commonly known as "administrative beroep" or the procedure for filing objections.
- 2) Settlement of disputes carried out by quasi-judicial bodies, which are actually structurally part of the government.
- 3) Settlement by a judicial body which can be in the form of:
 - a. Special courts, namely tax issues; And
 - b. General court.

If it is related to the legal protection of taxpayers in resolving tax disputes, the opinion above is the right one to apply because tax law provides legal protection to taxpayers, both outside and through the tax court, all of which are the rights of taxpayers as contained in the substance of the tax law.

The provision of legal protection is never separated from the rule of law. Legal protection in the field of taxation is needed to protect the interests of taxpayers and tax bearers when they are dealing with the tax authorities who have special authority (the tax authorities can make decisions unilaterally).⁴³

Taxpayers' considerations must obtain legal protection in the settlement of tax disputes, both outside and through the Tax Court due to the following matters:⁴⁴

- 1) Taxpayers as legal subjects, legally part of their assets are handed over to the state to finance the implementation of their duties.
- 2) In various cases, taxpayers depend on tax assessments and decisions issued by tax officials.
- 3) The legal relationship between the taxpayer and the tax official is not in the same position because the taxpayer as a taxpayer and the tax official as the party authorized to collect taxes.
- 4) Various disputes between taxpayers and tax officials related to tax assessments and decisions issued, so that instruments that are unilateral in intervening cause losses for taxpayers.

Tax law enforcement in tax disputes is essentially to provide legal protection, both to taxpayers and to tax officials as representatives of the state. Such legal protection should not be carried out unilaterally because it can lead to injustice.

Improvement of tax laws in Indonesia is also needed to provide legal protection for taxpayers. This plays an important role in forming a society that is not only obedient to the obligation to pay taxes for the administration of government but also contributes greatly in creating public awareness of the importance of taxes. Therefore, the community as the tax bearer must be given legal protection in order to get comfort and security so that it will indirectly be able to encourage an increase in taxes.⁴⁵

Ideally, the tax court that administers the tax court is positioned in the justice system in Indonesia in accordance with the provisions of Article 13 of Law Number 14 of 2002, and also the tax court should be able to provide legal protection for justice seekers, namely taxpayers, so that legal supremacy can be achieved (*rechtmatigheid*) in the justice system (unity court system) in Indonesia.⁴⁶

In practice, it often happens that taxpayers do not agree on the amount of tax that is used as the basis for imposing taxes as stated in the tax assessment

document. This difference in calculation between the tax authorities and the taxpayer is one of the reasons for the emergence of a tax dispute. In the event of a tax dispute, within the framework of a legal state, the taxpayer has the right to be given legal protection, one form of which is legal protection aimed at resolving a dispute.⁴⁷

The things that distinguish tax dispute resolution from dispute resolution in general are as follows:

- 1) Procedure, in the settlement of disputes invoke there is a provision stating that the filing of objections, appeals and lawsuits does not delay the obligation to pay taxes and carry out tax collection.
- 2) Tax dispute resolution mechanism, namely settlement through administrative efforts and dispute resolution through pure justice.

CONCLUSION AND RECOMMENDATIONS

In the dispute resolution process, the aspect of justice for taxpayers has been tried to be fulfilled in the audit process, namely the activities of searching, collecting, processing data and or other information to test compliance with tax obligations. In addition to the aspect of justice, the audit is carried out in order to provide legal certainty and guidance to taxpayers. The aspect of justice is the ultimate goal in resolving tax disputes for taxpayers through a self-assessment system. Tax law enforcement in tax disputes is essentially to provide legal protection, both to taxpayers and to tax officials as representatives of the state. Such legal protection should not be carried out unilaterally because it can lead to injustice.

The presence of the Tax Court is expected to provide more justice and legal certainty which was not obtained from the previous tax dispute settlement institutions. Provisions regarding the grounds for filing a lawsuit should be clarified again so as to provide more legal protection for taxpayers.

ADVANCED RESEARCH

This Research Still Has Limitations So It Still Needs To Do Further Research On The Topic.

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