



## IMPLEMENTATION OF TAX DISPUTE SETTLEMENT PROCEDURE THROUGH THE TAX COURT IN SEMARANG

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**Abstract:** Tax disputes often arise between the fiscus (examiner) and the taxpayer concerned, the authors take the main problem of the source that causes tax disputes and the procedure for resolving tax disputes through the tax court. The method used is a normative legal research method, namely legal research conducted by examining library materials or secondary data supported by primary data found in the field.

The Result shows that a Tax dispute is a dispute that arises in the field of taxation between a Taxpayer or Tax insurer and an authorized official as a result of the issuance of a decision that can be appealed or a lawsuit to the Tax Court based on tax laws and regulations, including a lawsuit on the implementation of collection based on the Tax Collection Law. with a warrant. There are 4 causes of tax disputes, namely: (1) Related to laws and regulations; (2) Regarding the application of laws and regulations; (3) Regarding systems, procedures and policies; (4) Regarding the quality of inspection/integrity of the Taxpayer. As for the settlement of tax disputes according to Law Number 14 of 2002 concerning the Tax Court through (1) quasi-judicial (quasi-judicial) or doleansi courts, namely the suspect/defendant of the appeal and lawsuit filed by the Taxpayer is the tax authorities (Director General tax), but also as a determiner who has the authority to decide on the settlement of the said tax dispute; (2) Pure trial in the Tax Court through an appeal or lawsuit from the Taxpayer which is settled by the session of the Tax Court panel.

**Kata kunci:** *Implementation, Tax Dispute, Court.*

### INTRODUCTION

The Tax Court established by Law Number 14 of 2002 is a judicial body that exercises judicial power for taxpayers or tax bearers seeking justice in tax disputes. Judicial technical development for the Tax Court, guidance, and supervision of

Tax Court judges and clerks is carried out by the Supreme Court.

The Tax Court is the State Court, and as a judicial body under the Supreme Court as referred to in Article 24 UUG RI-1945, is assigned and given the authority to organize a tax court as a special court within the state administrative court, as referred

to in Article 24 paragraph (3) of the Constitution RI-1945, and Article 3, Article 10 and Article 15 of Law Number 4 of 2004 concerning Judicial Power, as well as Article 2 and Article 9 (A) of Law Number 9 of 2004 concerning Amendments to Law Number 5 of 1986 concerning State Administrative Court.

The Tax Court in carrying out its duties is assisted by the Tax Court Secretariat stipulated by Decree of the President of the Republic of Indonesia Number 83 of 2003 dated 4 November 2003 concerning the Secretariat of the Tax Court and Decree of the Minister of Finance of the Republic of Indonesia Number 24/KMK.01/2004 dated 14 January 2004 concerning Organization and Tax Court Secretariat Work Procedure.

The Secretariat of the Tax Court is organizationally administratively under the Ministry of Finance, but technically operational as a clerkship is under the supervision of the Supreme Court. The Tax Court is domiciled in the State Capital in Jakarta and can conduct trials in other cities outside Jakarta.

Taxes are mandatory contributions to the state owed by persons or individuals or entities that are coercive based on the law by not receiving direct compensation and are used for the needs of the state for the greatest prosperity of the people.

In the implementation of fulfilling tax obligations, it is often possible that the implementation by the taxpayer has not or has not been fully in accordance with the provisions of the applicable laws and regulations.

Likewise, the implementation of the Self Assessment supervisory

function carried out by the tax authorities can lead to tax disputes between the tax authorities (investigators) and the taxpayer concerned.

### **MAIN PROBLEM**

Based on the background above, the main issues in this paper are what are the sources that cause tax disputes and the procedure for resolving tax disputes through the tax court.

### **METHOD OF RESEARCH**

This research approach uses normative juridical. The normative juridical research method is a library law research conducted by examining secondary data or mere library materials (Soekanto, 2013). The juridical approach uses existing statutory regulations in positive law as literature, while the normative approach will look at the existing norms in current law (Noeng, 1996) which are supported by primary data obtained from the City court environment. Semarang. The theory used is the guarantee theory and the theory of unlawful acts in positive law against debtors who have transferred their assets in bankruptcy cases.

This study describes and describes the data that is used normatively which is collected systematically with the data source used as secondary data. Data research is carried out by utilizing qualitative data which is descriptive research and tends to use analysis with data analysis. By describing the problem without using numerical, graphic, and table information. By using this qualitative data analysis method, it is hoped that the writer will

be able to target additional understanding and study of legislation and legal materials that have a correlation with the title of this writing.

## **RESEARCH RESULT AND DISCUSSION**

### **A. Tax Court Purpose**

Tax courts that are free, independent, impartial (imperial) in enforcing law and justice based on tax laws and regulations with the aim of:

1. Realizing the Tax Court as a judicial institution that is free, independent, dignified, trusted and respected, and accessible to justice seekers from all walks of life.
2. Organize tax trials in a professional and impartial manner with fair and effective decisions through a transparent, accountable, fast, simple and inexpensive process, and.
3. Provide protection for individual or individual rights and protect the rights of the community which are carried out by state power through the tax authorities.
4. Providing protection to justice seekers in tax disputes to obtain their rights as users of legal aid services at the Tax Court through supervision of attorneys.

The target to be achieved through the Tax Court at the Tax Court is the realization of law enforcement and justice in the implementation of tax obligations based on laws, regulations and the

public's sense of justice quickly, simply and inexpensively. The scope of the court includes disputes over central taxes, international trade taxes (Import, Excise, and Export Duty), and local taxes.

### **B. The Cause of Tax Dispute**

Tax disputes are 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 lawsuits to the tax court based on tax laws and regulations, including lawsuits over the implementation of billing under the tax collection law. with Forced Letter.

The emergence of a tax dispute between the taxpayer and the tax authorities (Directorate General of Tax officials) if the Taxpayer cannot approve a tax assessment based on the results of a tax audit, or actions in the context of billing for tax collectors, and other decisions made by officials of the Directorate General of Taxes.

The source of the dispute, among others, is due:

- 1) Related to laws and regulations:
  - a. There are new laws and regulations, which do not provide sufficient transition period for their implementation, or the follow-up implementing regulations are late in being made and declared retroactive, and the examiner applies retroactively according to

- the date stated that the said law comes into effect.
- b. The interpretation of the law, especially in relation to new objects (according to developments in the world of business and technology) which have not been clearly included in the law, the officers apply provisions based on an analogical interpretation which the taxpayer cannot agree with.
  - c. The existence of implementing regulations that are less in sync with higher laws, or regulation of taxable objects from tax rates with Government Regulations or Minister of Finance which are deemed by taxpayers to be inconsistent with Article 23A of the 1945 Constitution of the Republic of Indonesia and Law Number 12 of 2011, by taxpayers will use higher terms.
- 2) Regarding the application of statutory regulations:
- a. Differences of opinion in interpreting laws, including due to tax avoidance or tax planning efforts by taxpayers.
  - b. Differences of opinion in using the legal basis refer to implementing regulations that regulate more specifically or to higher rules but are only implied, not express or have a *lex-specialis* nature, such as tax treaties.
- c. Differences of opinion on the use of analogical interpretation, in the event that there are no provisions governing.
  - d. Differences of opinion over the validity of the evidence,
  - e. Differences of opinion in implementation procedures and in the transition period of the new law.
- 3) Regarding systems, procedures and policies.
- a. With the provision of a deadline for completing requests for objections and refunds within 12 months, in the event that the deadline is pressed, the application for objection or refund is rejected without considering the data submitted by the taxpayer.
  - b. Regarding the provisions of Article 26A paragraph (4) of Law Number 28 of 2007 concerning KUP, that data that is not submitted by the Taxpayer at the time of the audit, can no longer be used/considered in the examination of objections except because the WP has not been obtained from a third party, it is very vulnerable in determine the certainty that the data has not been obtained.
  - c. Regarding Article 36A paragraph (1), that for tax officials due to negligence

or intentionally stipulating taxes not in accordance with the law will be subject to sanctions, so if the application for objection is approved, it means admitting that the tax assessment being filed for objection is not in accordance with the truth, thus the possibility of being penalized. Likewise, the examination of the examiner's functional unit, which linked the number of objections/restitution requests that were granted to be an indication to be investigated in the examination, then triggered the relevant officer to reject the WP's objection.

- d. Considering that there are still many falsifications of Tax Payment and Input Tax submitted by Taxpayers, it is required to confirm, or check whether the input tax to be refunded has been paid or reported by the collector. This is often a dispute, because the data owned by the taxpayer is declared by the Tax Officer not to meet the requirements, so it cannot be considered.
- e. With the assignment of achieving the revenue target, refunds that will reduce the amount of revenue that has been reported, become the basis for considering the

rejection of the taxpayer's request for refund.

- 4) Regarding the quality of auditing/taxpayer integrity.
  - a. The quality of the inspection is very low, either because the examiners are unprofessional (lack of following audit techniques or developments in existing laws and regulations), or because of the low level of employee integrity.
  - b. Lack of attention to the system and procedures/inspection procedures that have been outlined.

In the provisions of Article 36 paragraph (10 letter d), it is stated that the audit results will be canceled if the audit results are not notified to the taxpayer and/or the final discussion of the audit results is not carried out with the taxpayer. set based on wrong decisions to win bigger.

### **C. The Tax Court Process**

#### **a. Cause of Dispute**

The occurrence of tax or customs and excise disputes begins with differences in perceptions or differences of opinion Between the taxpayer and the Director General of Taxes (Directorate General of tax officials) on the determination of the tax payable for Central Taxes, or Between the Taxpayer and the Regional Head/Head of Regional Revenue Service (Regional Revenue Service apparatus) local (Provincial/Regency/City) for the

determination of the tax payable for regional taxes, or Between a taxpayer (individual or legal entity) and the Director General of Customs and Excise (Directorate General of Customs and Excise officials) for the determination of import duties, export duties, excise and administrative sanctions, as well as Income Tax Article 22-Import, Import Value Added Tax, and Sales Tax on Imported Luxury Goods.

The settlement of tax disputes is divided into 2 (two) stages: Through a quasi-judicial court (quasi-trial) or *doleansi* court, namely those who become suspects/defendants on appeals and lawsuits filed by taxpayers are the tax authorities (Director General of Taxes), but also as a determinant who has the authority to decide on the settlement of tax disputes in question consisting of; The first-level *doliance* trial, carried out through a final discussion (closing conference) in the examination process of SPT WP, the decision is in the form of issuance of SKP. Second-level *doliance* trials, carried out through the settlement of requests for objections to taxpayers which are followed up with objection decisions from the Director General of Taxes.

Court of third degree, conducted through an appeal to the Tax Court.

Pure justice in the Tax Court through an appeal or lawsuit from the Taxpayer which is resolved by the Tax Court assembly session.

Appeals and lawsuits.

Appeal, Appeal is a legal remedy that can be made by a taxpayer or tax bearer against a decision on an objection application that can be appealed by a taxpayer, based on the

applicable tax laws and regulations. (Articles 25 and 27 of the KUP Law). Submission of an appeal is regulated in articles 35 to 39 of Law Number 14 of 2002.

Lawsuit, A lawsuit is a legal action that can be taken by a Taxpayer or a Tax Bearer against the implementation of Tax collection or against a decision that can be filed for a Lawsuit based on the applicable tax laws and regulations. (Article 23 (2) UU KUP). The filing of a lawsuit is regulated in articles 40 to 43 of Law Number 14 of 2002.

Requirements for submitting an appeal letter are as follows (Article 35):

- a. Must be submitted in Indonesian, within 3 (three) months from the date of receipt of the decision being compared, unless otherwise regulated in the tax laws and regulations,
- b. Against 1 (one) decision submitted 1 (one) letter of appeal.
- c. An appeal is filed accompanied by clear reasons, and the date of receipt of the decision being compared is stated;
- d. In the letter of appeal attached a copy of the decision being compared,
- e. An appeal can only be filed if the amount of the said tax payable has been paid at 50% by attaching a Tax Deposit Letter (SSP) or Book Transfer.
- f. The appeal must be signed by the Taxpayer or the authorized Taxpayer's Proxy.

The requirements for filing a lawsuit are as follows (Article 40):

- a. Claims against the implementation of tax collection must be filed in the

- Indonesian language, within 14 days from the date of receipt of the decision on the implementation of the collection, unless otherwise stipulated in the tax laws and regulations.
- b. Lawsuits against other decisions, other than decisions on billing implementation, are within a period of 30 days from the date of receipt of the decision being contested.
  - c. Against 1 (one) decision on the implementation of billing submitted 1 (one) lawsuit.
  - d. The lawsuit is filed accompanied by clear reasons and the date of receipt of the billing implementation decision is stated.
  - e. The lawsuit must be signed by the Taxpayer or the authorized Taxpayer's Proxy.
- 1) Preparation for Trial (Articles 44,45,46)
    - (1) The Tax Court requests a Letter of Appeal or Response Letter, Letter of Appeal or Lawsuit to the Appellant/Defendant within 14 days from the date of receipt of the Letter of Appeal or Lawsuit.
    - (2) The Appellant must submit a Letter of Appeal Description within 3 months from the date the request for an Appeal Description Letter was sent, and
    - (3) The Defendant must submit a Response Letter within 30 days from the date the Response Letter was sent.
    - (4) The Tax Court sends a Letter of Appeal from the Appellant or Response Letter from the Defendant to the Appellant or Plaintiff within 14 days from the date of receipt.
  - (5) The Appellant or Plaintiff submits a Rebuttal on the Letter of Appeal or Response Letter to the Tax Court within 30 days from the date the Letter of Appeal or Response Letter is received.
  - (6) A copy of the Rebuttal Letter from the Appellant or Plaintiff is sent to the Appellant or Defendant within 14 days from the date of receipt of the Rebuttal Letter.
  - (7) If each party uses the maximum time available according to statutory provisions, then the appeal filed by the appellant can only be heard after 5 (five) months from the date the application is received at the Tax Court.
- ## 2) Assembly Session
- (1) In each hearing to examine and decide on tax disputes, the head of the court appoints a panel consisting of 3 (three) judges or a single judge. The appointment of the panel or single judge is determined in the determination of the chairman of the tax court.
  - (2) The Panel or Single Judge convenes on the appointed day and notifies the day of the hearing to the disputing parties. For the purposes of examination, the Chief Judge opened the hearing and declared it open to the public. The parties to the dispute can each be accompanied or represented by one or more attorneys with a Special Power of Attorney.
- Requirements to become a legal representative (Article 34 paragraph (2)), among others:
- (1) Indonesian citizen

- (2) Having extensive knowledge in the field of taxation
- (3) Other requirements stipulated by the Minister of Finance, such as: S1 Accounting, D3 Taxation or an expert according to the Government (by Decree of the Minister of Finance / Director General of Taxes) or having a Tax Brevet.

At the start of the trial:

- (1) The presiding judge summons the appellant or defendant and may summon the appellant or plaintiff to provide oral statements at trial. In the event that the appellant or plaintiff informs that he will attend the trial as referred to above, the presiding judge informs the date and day of the hearing to the appeal applicant or plaintiff.
- (2) For the purposes of examination, the Chief Judge opens the trial by declaring it open to the public. Before the examination of the main dispute begins, the Tribunal conducts an examination regarding the completeness and/or clarity of the appeal or lawsuit.
- (3) After knowing clearly the appeal request or the plaintiff, and the attorney. The Chief Judge, Member Judge, or Registrar must resign from a trial if they are related to or bound by a family relationship by blood or marriage to the third degree, or a husband and wife relationship even though they have been divorced with one of the Judges or Registrar on the same Panel or with the appellant, plaintiff and or attorney.

- a. The decision of the Tax Court is taken based on the results of the evidentiary assessment and based on the relevant tax laws and regulations and other relevant laws and regulations as well as based on the conviction of the Judge:
- (4) Evidence that forms the basis for the Panel's considerations in making a decision (Article 69):
  - (1) Letter or writing
  - (2) Testimony of witnesses
  - (3) Expert testimony
  - (4) Acknowledgment from the parties
  - (5) Judge Knowledge
- b. The Tax Court's decision as referred to above is guided by the Minutes of Session
- c. Decisions on tax disputes are deliberated by the Chief Judge with Member Judges or determined by a Single Judge. Based on the decision of the Panel, judges who do not agree can issue a dissenting opinion.
- d. The Tax Court is the first and last level Court in examining and deciding Tax Disputes. The decision of the Tax Court is final and has permanent legal force (Article 77 paragraph (1)).
- e. Types of Council Decisions (Article 80):
  - (1) It cannot be accepted if the formal requirements/procedures are not met, the decision cannot be accepted, meaning that the letter of application for appeal does not meet the requirements as a request for appeal, therefore it is treated/considered that there is no appeal. The unfulfilled formal requirements, among others :

### 3) Decision Making



1. Requirements regulated in Article 35 and Article 36 of the Tax Court Law
  2. The petition filed for appeal is not the authority of the Panel, such as an appeal against a decision, an application for a reduction, based on Article 36 of the KUP Law.
  3. Which should be filed a lawsuit, filed an appeal or otherwise.
  4. The decision of the PK MA which is still recommended for objections and appeals.
  5. Grant part or all, according to the data obtained by the Assembly.
  6. Increase the tax that must be paid, if based on calculations according to the data obtained by the Assembly finds that the amount of tax payable is greater than that stipulated in the decision being appealed.
  7. Rejecting an appeal, if there is not enough data or the truth of the material being appealed by the appellant has not been proven.
  8. Correct typos and/or calculation errors.
  9. Cancel a decision whose issuance is not in accordance with the applicable regulations.
  10. The decision of the Tax Court can be implemented directly without requiring an authorized official, unless the laws and regulations provide otherwise (Article 86).
  11. If the decision of the Tax Court grants part or all of the appeal, then the overpayment of taxes as a result of the decision is returned plus an interest fee of 2% (two percent) a month for a maximum of 24 (twenty four) months, according to the provisions of the laws and regulations applicable taxation (Article 86).
  12. The execution of the Tax Court's decision is carried out by the Directorate General of Taxes and not carried out by the Tax Court.
  13. The Tax Court does not have the authority to execute the Tax Court's decision.
  14. Taxpayer lawsuits do not delay or hinder the implementation of tax collection or tax obligations.  
For that, you can take:
    - a. The plaintiff may submit a request for the follow-up to the implementation of tax collection as referred to in paragraph (1) to be postponed while the tax dispute examination is in progress until a decision is made by the Tax Court.
    - b. The application referred to in paragraph (2) can be filed simultaneously in a lawsuit and can be terminated in advance from the subject matter of the dispute.
    - c. The request for postponement as referred to in paragraph (2) can be granted only if there is a very urgent situation which results in the interests of the plaintiff being seriously harmed if the collection of the tax being sued is carried out.
- 1) Request for Judicial Review
    - a. The Tax Court is the court of first and last instance in examining tax disputes (Article 33 paragraph (1)). In the event that the taxpayer is dissatisfied with the Tax Court's Decision, he can take extraordinary legal action by submitting an Application for Review (PK) to the Supreme Court, through

the Tax Court (Article 77 paragraph (3)).

- b. The Review Examination as regulated in Article 89 of Law Number 14 of 2002 is as follows:
  - a. Application for Review (PK) can only be made 1 (one) time to the Supreme Court (MA) through the Tax Court.
  - b. The application for review does not suspend or stop the implementation of the Tax Court decision.
  - c. The request for review can be revoked before it is decided and in the event that it has been revoked, the request for review cannot be submitted again.
  - d. Requests for review to the Supreme Court of the Tax Court Decision in accordance with Article 91 can be made within a period of no later than 3 months after the decision is sent by the Tax Court or new data is found in terms of:
    - a. Decisions based on lies (false evidence) or deception,
    - b. There is new written evidence (novum),
    - c. Granted things that are not or exceed what is demanded, There are reasons, or there is a decision that is clearly not in accordance with the provisions of the applicable laws and regulations.

The procedural law that applies to judicial review hearings is the procedural law for review hearings as referred to in Law Number 14/1985 concerning the Supreme

Court last amended by Law Number 5 of 2004, except for those specifically regulated in Law Number 14 2002 concerning the Tax Court.

## 2) Implementation of Tax Court Decision Execution

Implementation of the Tax Court Decision Execution becomes the authority of the appellant or the defendant. The Tax Court does not have the authority to supervise and carry out the execution of the Tax Court Decision. Courts often receive complaints that the Court's decision favors the taxpayer in the form of overpayment of taxes, or an appeal against a decision on an objection that is rejected, then an appeal is filed, but the billing continues, so that the granting of the taxpayer's appeal has resulted in the state being obliged to provide interest 2 % every month, it turns out that the Directorate General of Customs and Excise does not comply, and the Tax Court cannot do anything about it.

Therefore, for the court's authority, it is best if article 87 of Law No. 14 of 2002 which regulates the government's obligation to pay 2% each month for the granting of a taxpayer's appeal should be removed from the Tax Court Law, because it has been regulated in the KUP Law. Number 28 of 2007.

## CONCLUSION

Based on the discussion that has been described above, this writing can be concluded as follows:

1. There are 4 types of causes

- of tax disputes, namely: (1) Related to laws and regulations; (2) Regarding the application of statutory regulations; (3) Regarding systems, procedures and policies; (4) Regarding the quality of auditing/taxpayer integrity.
2. As for the settlement of tax disputes according to Law Number 4 of 2002 concerning the Tax Court through (1) a quasi-judicial court or doleance court, that is, those who become suspects/defendants for appeals and lawsuits filed by taxpayers are the tax authorities ( Director General of Taxes), but also as a determinant who has the authority to decide on the said tax dispute settlement; (2) Pure trial in the Tax Court through an appeal or lawsuit from the Taxpayer which is resolved by the Tax Court assembly session.

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