

New Administrative Reform In Tax Dispute In An Emerging Economy

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Abstract: The existence of State Administrative Law in a State is very important, both for the administration of the State and the wider community. With the State Administrative Law, the State administration is expected to be able to know the limits and nature of power, the purpose and nature of the obligations, as well as how the forms of sanctions are when they violate the law. For the community, State Administrative Law is a set of norms that can be used to protect their interests and rights. The applied law is that administrative justice is seen from the base of disputes as one of the horizontal benchmarks and attribution of administrative justice authority.

Keywords : tax court, judiciary, administration, implementation of judicial power.

1 INTRODUCTION

The Tax Court was formed based on the provisions of Article 27 paragraph (6) of the Law on General Provisions and Tax Procedures, as a judicial body exercising judicial power. This is regulated in Articles 24 and 25 of the 1945 Constitution and Law 48 of 2009 concerning Judicial Power in consideration of the Tax Court Law. The provisions of Article 33 paragraph (1) state that the Tax Court is the first and last court of court in examining and deciding tax disputes. Article 77 paragraph (1) states that the Tax Court Decision is final and has permanent legal force. Both articles indicate that, as the first and final court of examination the tax dispute is only carried out by the Tax Court, therefore the Tax Court's decision cannot be submitted to the General Courts, State Administrative Courts, or other judicial bodies. The absence of other levels other than the Tax Court in the Tax Court system is a characteristic of the Tax Court in Indonesia based on Law Number 14 of 2002. The absence of a Tax Court level, also causes no other legal remedies for taxpayers in resolving tax disputes. The only thing taken was an extraordinary remedy in the form of a Review to the Supreme Court. The Review will only examine the case file and assess whether the law has been applied correctly or not, while the reasons for submitting a Review are also limited. The understanding of tax disputes is regulated in Article 1 number 5 of the Tax Court Law, stating that disputes arising in the field of taxation between the taxpayer and the tax guarantor and the competent authority as a result of the issuance of a decision that can be appealed or filed with the tax court based on taxation laws and regulations, include a lawsuit over the implementation of billing under the Tax Collection Law with a letter force. In this sense the dispute is (1) the taxpayer with the tax official, (2) withholding tax with the tax official; (3) taxpayers with tax cutters or tax collectors, or (4) tax bearers with tax officials. The decision referred to in the tax dispute above is a written determination in the field of taxation issued by the authorized official and in the context of carrying out billing based on the Tax Collection Law by Forced Letter.

The tax dispute can be caused by several factors including:

- a. Different perceptions in interpreting tax regulations.
- b. Lack of understanding of taxation regulations (socialization issues).
- c. Lack of time for examiners to calculate the amount of tax due to the complexity of supporting data submitted by taxpayers.
- d. Lack of supporting data at the time of examination.
- e. Lack of confidence of the Tax Auditor on the truth of supporting data submitted by the Taxpayer.

The object of tax disputes in the Tax Court consists of three types, namely; tax disputes arising as a result of the issuance of tax assessment letters, then tax disputes arising from billing actions and tax disputes arising from decisions relating to the implementation of taxation decisions, in addition to tax assessments and objection decisions. Thus the authority of the tax court covers the object of the tax dispute arising from the tax assessment, billing actions, and the implementation of tax decisions.

2 FUNCTION AND POSITION OF THE TAX COURT

A court is a judicial body that exercises judicial power for taxpayers or tax bearers seeking justice for tax disputes (Article 2 of Law Number 14 of 2002). The formulation seems intended to provide confirmation that the Tax Court stipulated in Law Number 14 of 2002 is indeed a judicial institution that can be used as a means for the people as Taxpayers or Tax Insurers to obtain justice in the taxation field. This is clarified again in the explanation of the same article which states that the Tax Court is a Judicial Body as referred to in Law Number 6 of 1983 concerning General Provisions and Tax Procedures as amended several times, the latest being Law Number 16 of 2000, and constitutes a judicial body as referred to in Law Number 14 of 1970 concerning the Basic Provisions of Judicial Power as amended several times, the last being with Law Number 35 of 1999, which was then valid (Pudyatmoko, 2009). On the other hand, Article 2, if examined also implies that the Tax Court is an instrument that can be used as a means for justice seekers to obtain justice, that is, to protect the interests of taxpayers. In the context of the dimension of relations between the parties to the dispute in the Tax Court, which involves the government as the Fiscus and the people as the Taxpayer or Taxpayer, the Tax Court performs the

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function of legal protection for the people in the field of Taxation. This is based on the fact that in a tax dispute, what happens is the object of the dispute is a decision or action from the Officials in the ranks of the Directorate General of Taxes, the Directorate General of Customs and Excise as well as other authorized Officials at issue by the people as Taxpayers or Tax Insurers. Existing Tax Court is domiciled in the capital of the State (Article 3 of Law Number 14 of 2002). Thus, the Tax Court is always in Jakarta if the country's capital is not moved. In the provisions of Article 4 of Law Number 14 Year 2002 it is said that the Tax Court hearing is held in his domicile and if deemed necessary can be conducted elsewhere. The place of the hearing referred to above was determined by the chairman, Elucidation of Article 4 of Law Number 14 of 2002 said that essentially the place of the Tax Court hearing was held at his domicile. However, with consideration to expedite and accelerate the handling of tax disputes, the place of the hearing can be held elsewhere. This is in accordance with the principle of settlement of cases which is carried out with a simple, fast, and low cost. According to the explanation of Article 15 paragraph (1) of Law Number 4 of 2004 as amended to Article 27 paragraph (1) of Law Number 48 of 2009, the definition of Special Court in this provision includes, among others, juvenile court, commercial court, court Human Rights, Corruption Criminal Court, Industrial Relations Court within the general court, and the Tax Court within the State Administrative Court. While Article 9A of Law Number 2004 concerning Amendment to Law Number 5 of 1986 concerning State Administrative Court, states: "Within the State Administrative Court, specialties can be arranged as regulated by law". In the explanation of the article it is said that what is meant by "specialization" is differentiation or specialization within the State Administrative Court environment, for example the Tax Court. Also Article 27 paragraph (2) of Act Number 28 of 2007 concerning the Third Amendment to Act Number 6 of 1983 concerning General Provisions and Tax Procedures determines that "The Tax Court Decision is a special court decision within the state administrative court environment". Thus it is very clear that the three laws include the Tax Court within the State Administrative Court.

3 COACHING IN TAX COURTS

In the Tax Court environment, coaching is done separately. Regarding the development of Law Number 14 of 2002 regulating it in Part Four, namely in Article 5. The technical guidance of justice for the Tax Court is carried out by the Supreme Court, while the organizational, administrative, and financial development for the Tax Court is carried out by the Ministry of Finance. Thus, this coaching still follows a similar pattern as in the Courts in the four Courts in Indonesia before, namely when Law Number 14 of 1970 was still valid despite much criticism. The coaching conducted by the Supreme Court mainly concerns the technical handling of cases conducted by the Tax Court, while the coaching that carries the organization, administration, and finance is carried out by the Ministry of Finance. One thing that distinguishes it from other Courts is that coaching of other courts, especially regarding the organization, administration, and finance is carried out by the Ministry of Justice while the Tax Court is conducted by the Ministry of Finance. Thus the problems of organization, staffing, administration, finance are in the ranks of the Ministry of Finance. Guidance as intended, according to

the explanation of the law may not reduce the freedom of judges to examine and decide tax disputes. Such an ambiguous guidance system should be noted because even though according to the parties do not reduce the independence of judges in carrying out the judicial function, but according to Yahya Harahap the opinion contains errors and untruth with the reasons (Harahap, 1997).

- a. Placing the judiciary under the executive, in this case the ministry even though only organizational, administrative and financial subordinates are placed under it, such a system is either directly or indirectly a symbol of juridical recognition that the judicial body is under the ministry concerned. Furthermore, the symbol gives warning to the judges about the autonomous limits of their freedom, that in carrying out the functions and authority of the judiciary they are under the control of the ministry. Even though theoretically the ministries that are fostered and supervised by the ministry are only administrative, personal, and financial, the symbolic influence contained therein has broad political and psychological effects on the autonomous independence of judges' freedom, and has an impact on the value of the "loyalty" of the judges themselves, in the form of hesitation, whether it must be loyal to the functions and authority of the judicial authority or must be loyal to the policies of the relevant ministries.
- b. The current dualism system creates difficulties and obstacles to the efforts of contributing comprehensive and integrative concepts and supervision and coaching programs. Syofrin Syofan and Asyhar Hidayat (2004) considered the dualism of such guidance to be inconsistent with the existing justice system, so that the Tax Court could not be categorized as subject to the prevailing justice system.

4 TAX COURTS AS ADMINISTRATIVE COURTS

The conception of justice in the field of taxation is closely related to the law which is the application and basis for tax collection. In addition, tax collection must be adjusted to many real factors that exist in the community, such as economic conditions, the balance of rights and obligations, the procedure for collection, and the availability of dispute resolution mechanisms in the event of disputes between taxpayers and the government as the party authorized collect tax. Justice here is very meaningful through legislation that is determined in order to avoid the occurrence of arbitrary authority in determining the quality and quantity of taxes collected. Constitutional tax collection on the principle of justice can be determined in Article 23A of the 1945 Constitution which states: that taxes and other levies that are coercive for the purposes of the state are regulated by law. The purpose and purpose of the formulation of tax collection in the constitution as a written legal basis is that it can be interpreted that tax collection without going through legislation cannot be binding and valid for the public. Although such a collection was carried out by the authorities which incidentally received authority from the people. This principle clearly if examined is the starting point of the importance of justice in tax collection. In other words, tax collection is only possible if the law has been established first. To achieve the aims and objectives of Article 23A of the 1945 Constitution above, through various written regulations, the government determines the forms of taxation for taxpayers. The basis for imposing taxes through

this law only applies if it is approved by the DPR through the legislative mechanism. Various laws and regulations in the field of tax collection can be presented here, including, namely Law Number 36 Year 2008 concerning Income Taxes, Law Number 8 Year 1983 jo. Law Number 42 Year 2009 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods, Law Number 12 Year 1985 jo. Act Number 21 of 1997 concerning the Obligation to Obtain Land and Building Rights, Act Number 13 of 1985 concerning Stamp Duty, and so on. The principle of justice is one of the important issues in the field of taxation. Justice is defined as a continuity and balance between taxpayers on one hand and tax obligations on the other hand. The perspective of mastery as a tax collector applies vice versa, that the obligations of the authorities are the rights of taxpayers, while the rights of the authorities become the obligations of taxpayers. In simple terms it can be stated that the principle of justice must be upheld by both taxpayers and authorities, so that the creation of tax synchronization is legally and sociologically. The principle of justice in the field of taxation through legislation actually emphasizes the existence of legal certainty. Created written regulations in the field of taxation to be more criticized whether the existing regulations are in accordance with a sense of justice for taxpayers, especially the wider community in general. The regulation in the field of taxation aims to create justice, in order to achieve such a purpose a statutory regulation is made in the form of a specific format. There is an effort to formalize the rules of tax law both related to the substance and the institutions associated with it. Therefore, justice is closely related to formalization. In this connection, Robert M. Unger's (1976) opinion is quoted as saying that the more justice sacrificed for the logic of regulation, the wider the distance between government law and ordinary sentiment about truth. As a result, the law loses clarity, as well as its legitimacy in the eyes of ordinary people; Lay people know the law as chess magic tools used by respectable groups or as a set of lightning that falls randomly on both bad people and good people. To be able to apply the principle of justice in the form of formalism through the ratification and enforcement of legislation in the field of taxation, the legislative body has a control function for each draft regulation proposed by the government (the ruler) as a tax collector. For this purpose, it is necessary to strive for regulations that are made that must bring the law closer to the life of the law that lives in society. Laws in the field of taxation must be populist. Justice as the main goal of the most discussed tax law, this is because tax collection is very vulnerable to fraud committed by both taxpayers and authorities as tax collections. Tax is a transfer of wealth from the people to the government where there is no balance that can be directly appointed. Such transfer of wealth, in everyday words, can only be in the form of deprivation (by force), or giving gifts voluntarily and sincerely (without force). So that the transfer of wealth from the people to the government is not said to be a seizure or gift giving voluntarily, it is stipulated that the tax, before it is enacted, must obtain prior approval from the people. The House of Representatives, which is a representation of all the people of Indonesia is given the right and authority to approve or disapprove the Taxation Draft Law, in the condition that the DPR has given its approval, this means that the tax collection has been approved by the people and the DPR's agreement with the President poured into the form of law (Soemitro & Sugiharti, 2004). This condition implies that there are no tax

collections / tax assessments (tax officers) that are not based on applicable tax regulations. However, practical experience states that there are still many people (taxpayers) being treated unfairly because of the perpetrators of the tax authorities who abuse their authority to determine / collect taxes in excess of what has been stipulated in the law. As a result, various disputes have arisen between taxpayers and tax officers (tax authorities) regarding the implementation of these tax rights and obligations. Even the effects of all that gave birth to people's distrust of justice in tax collection. Specifically with regard to justice in the area of applying formal taxation law, it is interesting what Roscoe Pound has put forward (Pound, 1996) that in adjudicating a case according to law there are three steps that must be taken, namely finding a law, interpreting the rules and applying it to a case. Justice in the field of taxation is a substantial issue considering that basically tax collection is possible by the authorities because according to the theory of the people's agreement that the birth of the state is as a result of an agreement of people / humans to create an institution called the State.

5 CONCLUSIONS

The existence of State Administrative Law in a State is very important, both for the administration of the State and the wider community. With the State Administrative Law, the State administration is expected to be able to know the limits and nature of power, the purpose and nature of the obligations, as well as how the forms of sanctions are when they violate the law. Whereas in other parts, namely for the community, State Administrative Law is a set of norms that can be used to protect their interests and rights. As is known in law, there are two legal divisions, namely Private Law and Public Law. The classification into private and public law is inseparable from the content and nature of the relationships that are regulated and sourced from the interests to be protected. Sometimes those interests are individual but some are general. The legal relationship requires clear and strict restrictions that encompass the rights and obligations of and from whom the person is related. The applied law is that administrative justice is seen from the base of disputes as one of the horizontal benchmarks and attribution of administrative justice authority. The root of the dispute is a written decree or (beschikking). The written stipulation must contain the actions of the state administration acting in its function, but the act is against the law. Written provisions can be challenged before an administrative court. For this reason, the law applied is state administrative law. Tax administration justice is a legal effort carried out by the taxpayer in the context of seeking justice for the Tax Assessment Letter issued by the Director General of Taxes or the Regional Head. Tax Admisintarsi Courts can be divided into two types of justice, namely pure administrative justice and impure administrative justice. Impure Administrative Court is an administrative court involving only two parties, namely the taxpayer and the tax authorities without involving an independent third party. Fiskus as the disputing party is at the same time the party that takes the decision in the tax dispute in question. Examples of impure administrative justice can be seen in the submission of objections regulated in Article 25 and Article 26 of Law Number 6 of 1983 as amended most recently by Law Number 28 of 2007 concerning General Provisions and Tax Procedures.

6 REFERENCES

- [1] Sri. Y. Pudyatmoko, Pengadilan dan Penyelesaian Sengketa Di Bidang Pajak, (Jakarta: PT Gramedia Pustaka Umum, 2009).
- [2] Harahap. M. Yahya. Beberapa Tinjauan Mengenai Sistem Peradilan dan Penyelesaian Sengketa. Bandung: Citra Aditya Bhakti. 1997.
- [3] Syofrin Syofyan dan Asyhar Hidayat, Hukum Pajak dan Permasalahannya, (Bandung: Refika Aditama, 2004).
- [4] Robert M. Unger, "Law and Modern Society : Toward a Critism of Social Theory", The Free Press, 1976, translated by Dariyanto dan Derta Sri Widowatie.
- [5] Rochmat Soemitro, Dewi Kania Sugiharti, "Asas dan Perpajakan I", (Bandung : Refika Aditama, 2004), hlm. 8.
- [6] Roscove Pound, "Penghantar Filsafat Hukum", (translated by Mohammad Rajab, Jakarta, Bhratara, 1996),