

ANALYSIS OF THE NEED FOR LEGAL PROTECTION FOR THE TAX CONSULTANT PROFESSION

Jul Seventia Tarigan, Lilis Sukianto, Lisayanti Lie

jul7ta@gmail.com; lilissukianto@yahoo.co.id; lisayanti.lie@gmail.com

Student of Law Faculty of Pamulang University, South Tangerang City, Indonesia

ABSTRACT

The role of tax consultants in the era of the self-assessment system is needed by taxpayers to fulfil tax obligations according to tax provisions and to obtain taxpayer rights. Tax consultants also play an important role for the Government in order to improve tax compliance which is useful for increasing state revenues. However, compared to other professions, such as lawyers, public accountants, engineers and architects, there is no law that specifically regulates the rights and obligations of tax consultants. Currently, there is only a Minister of Finance Regulation that governs a legal right of tax consultants to provide consulting services in the field of taxation in accordance with the limits of their level of expertise. In the laws governing other professions there are various rights that provide legal protection to these professions. In order to provide justice and legal protection for the tax consultant profession, which has a vital role in tax collection that is useful for national development, it is necessary to analyse the legal rights that are in suit and proper to the tax consultant profession and the need for arrangements for providing legal protection for tax consultants regulated in a specific law.

Keywords: *self-assessment, Tax Consultant, Legal Protection*

ABSTRAK

Peran konsultan pajak di era sistem self-assessment amat dibutuhkan wajib pajak untuk memenuhi kewajiban perpajakan sesuai dengan ketentuan perpajakan dan untuk mendapatkan hak wajib pajak. Konsultan pajak juga berperan penting bagi Pemerintah dalam rangka meningkatkan kepatuhan perpajakan yang berguna untuk meningkatkan penerimaan negara. Namun dibandingkan dengan profesi lain, seperti pengacara, akuntan publik, insinyur dan arsitek, belum tersedia undang-undang yang secara khusus mengatur hak dan kewajiban konsultan pajak. Saat ini baru terdapat Peraturan Menteri Keuangan yang mengatur hak konsultan pajak untuk memberikan jasa konsultasi di bidang perpajakan sesuai dengan batas keahliannya. Dalam undang-undang yang mengatur tentang profesi lain terdapat berbagai hak yang memberikan perlindungan hukum terhadap profesi tersebut. Dalam rangka memberikan keadilan dan perlindungan hukum bagi profesi konsultan pajak yang mempunyai peranan vital dalam pemungutan pajak yang berguna bagi pembangunan nasional, perlu ditelaah hak-hak hukum yang sesuai dan layak bagi profesi konsultan pajak dan masyarakat. perlunya pengaturan pemberian perlindungan hukum bagi konsultan pajak yang diatur dalam undang-undang tertentu.

Kata Kunci : *Self-assessment, Konsultan Pajak, Perlindungan Hukum*

A. PRELIMINARY

Article 23A of the Constitution of the Republic of Indonesia Year 1945 stipulates that "Taxes and other levies that are forcing the needs of the state to be regulated by law". Clearly The Constitution of the Republic of Indonesia mandates the provision of protection to every citizen state that taxes and other levies imposed on it shall be regulated by law. On the other hand, the Article 23A of the Constitution placing taxes and other levies as important matters for necessity the state to finance state administration, national development, and increasing social welfare for the entire Indonesian nation.

Indonesia has carried out tax reform in 1983 with the ratification of Law Number 6 of 1983 concerning General Provisions and Tax Procedures (KUP Law), Law Number 7 of 1983 concerning Income Tax (Income Tax Law), Law Number 8 of 1983 concerning Value Added Tax on Goods and Service and Sales Tax on Luxury Goods (VAT Law), including Law Number 12 of 1985 concerning Land Tax and Building (Land and Building Tax Law) and Law Number 13 of 1983 regarding Stamp Duty (Stamp Duty Law).

In the implementation of the three first-mentioned laws, fundamental changes have been made, viz changes from the official-assessment tax system to a tax system self-assessment. The background to the implementation of the self-assessment system is explained in the Explanation of the KUP Law that members of the Taxpayer community are entrusted with being able to carry out national mutual cooperation through a system of calculating, calculating and paying their own taxes owed (self-assessment), so that through this system implementation of tax administration It is hoped that it can be carried out in a neater, controlled, simple and easy way to be understood by members of the taxpayer community.¹

As a consequence of self-assessment, taxpayers must carry out their tax obligations by correctly interpreting and applying tax law and its implementing regulations, governing formal and material provisions. This large demand creates a huge burden borne by all taxpayers in the form of cost of compliance. At the other hand, taxpayers are also granted rights by the tax laws which established to create a balance. However, tax rights are available only if the taxpayers understand and can meet requirements regulated by the laws.

In the self-assessment system, the presence of professional tax consultants is necessary, to help taxpayers who need assistance in fulfilling their obligations and in obtaining their tax rights simultaneously.

¹ President of the Republic of Indonesia, *Law Number 6 of 1983 concerning General Provisions and Tax Procedures*, General Explanation number 3 letter c, Jakarta, 1983, p.25.

With increased compliance with the fulfilment of taxpayers' tax obligations supported by the tax consultant profession, the government indirectly benefits. According to Rahmad Basuki, the role of tax consultants influences the knowledge of taxpayers, perceptions of taxpayer justice, and taxpayer compliance.² The role of the tax consultant profession for taxpayers and the government is explained by Nugraheni, Sunaningsih, Khabibah that a tax consultant is a profession as a mediator between taxpayers and the government which can be divided into two: on the taxpayer side, consultants play a role in accommodating taxpayers in carrying out their tax obligations where Tax consultants influence the obedient behaviour of taxpayers from their ethics in providing services and providing a role model for tax compliance to taxpayers; and on the government side, consultants have a role in helping maximize state revenues from taxes.³

Until now, the tax consultant profession has not been regulated by a specific law that governs his legal rights and liabilities/obligations, especially a right to get legal protection. Meanwhile, other professions already have been governed by specific law stipulating legal rights and liabilities/obligations, especially a right to get legal protection. The laws regarding the profession are Law Number 18 of 2003 concerning Advocates, Law Number 29 of 2004 concerning Medical Practice, Law Number 30 of 2004 concerning the Position of Public Notary, Law Number 36 of 2014 concerning Health Workers, Law Number 11 of 2014 concerning Engineering, Law Number 5 of 2009 concerning Public Accountant, Law Number 38 of 2014 concerning Nursing and Law Number 6 of 2017 concerning Architects.

A professional tax consultant when carries out their duties as a representative or proxy of taxpayers faces real and imminent legal risks. The tax law stipulates that there are acts of taxpayer violations which can be criminally prosecuted. In the event a taxpayer is criminally prosecuted by law enforcers that his actions considered as unlawful act and the taxpayer is represented by a tax consultant, then the tax consultant may face a serious legal risk. The law enforcer possibly considers the tax consultant conspiring with taxpayer or independently planning or committing crimes for the taxpayer.

B. FORMULATION OF THE PROBLEM

1. How are the rights and obligations, including legal protection, for the tax consultant profession regulated in laws and regulations?

²Basuki, Rahmad. "Pengaruh Peran Konsultan Pajak Terhadap Penerapan Selft Assesment System Terhadap Kepatuhan Wajib Pajak (Studi Kasus Pada Wajib Pajak Badan Pada KPP Pratama Ilir Timur Palembang)." *Balance: Jurnal Akuntansi Dan Bisnis* 3.1 (2018):368-377.

³ Nugraheni, Agustina Prativi, Suci Nasehati Sunaningsih, and Nibras Anny Khabibah. "Peran Konsultan Pajak Terhadap Kepatuhan Wajib Pajak." *Jurnal Akuntansi Terapan Indonesia* 4.1 (2021):51.

2. What is the legal protection for the tax consultant profession that could be regulated in laws and regulations?

C. RESEARCH METHODOLOGY

This paper applies normative legal research with a qualitative approach. Legal materials to be analysed are relevant legal materials contained in statutory regulations and other information. The source of legal material are from library materials contained in the library, documents, laws and regulations and relevant scientific works that may include: primary legal material obtained directly which relevance and competence; secondary legal materials of various regulations, library materials and literature; materials from seminars, articles and previous research; and tertiary legal materials legal of dictionaries and Indonesian Law Dictionary.

The stages of analysis apply in this paper are:

1. Preparatory stage: collecting library materials arranged systematically and grouped according to each topic then proceed with the preparation of proposals, including the right to legal protection and relevant theories;
2. Implementation stage: doing library research by classifying primary, secondary and tertiary legal materials. Applying and assessing the theory of legal protection and other important and relevant theories to assess how the rights and obligations that exist in the current laws and regulations; and
3. Completion stage: finalizing the findings and discussion.

D. RESEARCH FINDINGS AND DISCUSSIONS

1. Legal Arrangements for Tax Consultants in Current Laws

Legal matters related to tax consultant profession is currently governed in the following laws:

- a. Law Number 28 of 2008 concerning the third amendment of Law Number 6 of 1983 concerning General Provisions and Tax Procedures (KUP Law),
- b. Government Regulation Number 50 of 2022 concerning Procedures for the Implementation of Rights and Fulfillment of Tax Obligations (GR-50/2022), and
- c. Minister of Finance Regulation Number 111/PMK.03/2014 concerning Tax Consultant (PMK-111/2014).

The legal provisions in the existing laws and regulations can be classified into:

- a. Provision of legal right:

A tax consultant has right to provide consulting services in the field of taxation in accordance with the limits of their level of expertise. (Article 22 of PMK-111/2014)

b. Provision of legal obligations:

- 1) to provide information or evidence in case the taxpayers who are under tax audits, tax arrears collection, or investigations of criminal acts has relationship with the tax consultant. (Article 35 of KUP Law)
- 2) professional obligations according to PMK-111/2014:
 - a) to provide consulting services in accordance with tax laws and regulations;
 - b) to comply with the code of ethics and standards set by the tax consultants association;
 - c) to participate in continuing professional development activities;
 - d) to submit an annual report; and
 - e) to provide in writing any changes to the name and address of consultant's house and office.

c. Provision containing legal risk/exposure:

Those convicted for committing criminal acts in the field of taxation may include representative of taxpayer, attorney of taxpayer or tax consultant, but also those who order them to commit them, who participate in committing them, who recommends, or who helps commit criminal acts in the field of taxation. (Article 43 of KUP Law)

d. Provision of authority for the Minister of Finance:

- 1) The Minister of Finance (MOF) has authority to regulate, to develop and to supervise tax consultants and other parties acting as taxpayer's proxies for the exercise of rights and obligations of taxpayers (Article 53 of GR-50/2022); and
- 2) MOF regulates the requirements, practice license, certification, organizing committee of certification, association of Tax Consultant, rights and obligations of tax consultant (PMK-111/2014).

According to Zaeni Asyhadie and Arief Rahman, rights are authorities granted by law to legal subjects. He continued, liability is a burden given by law to a person or legal entity.⁴ Meanwhile, according to Sudikno Mertokusumo, the right gives enjoyment and freedom to

⁴ Zaeni Asyhadie and Arief Rahman, *Pengantar Ilmu Hukum*, PT Rajagrafindo Perkasa, Depok, Second Edition, Sixth Printing, 2019, p.79-87.

individuals in carrying it out, while obligations are restrictions and burdens, so that what stands out is the active aspect of the legal relationship, namely rights.⁵

From this analysis, we found that the current laws provide provision of legal rights and obligations, provision which contain legal risk/exposure for tax consultant and provision of authority for the Minister of Finance to govern tax consultants. It should be emphasized that the existing legal provisions only provide for one legal right for a tax consultant to provide consulting services in the field of taxation in accordance with the limits of their level of expertise.

2. Legal Rights of Other Professions

In order to better understand what legal rights can be provided to the tax consultant profession, we conducted an analysis to identify the legal rights that are regulated in legal provisions for other professions, as follows:

a. Advocate

Law Number 18 of 2003 concerning Advocates provides legal rights as follows:

- 1) Before the Advocate is subjected to the action of warning (verbal or written), temporary dismissal from his profession or permanent dismissal from the profession, the Advocate concerned is given the opportunity to defend himself. (Article 7 para.3)
- 2) Advocates are free to issue opinions or statements in defending cases for which they are responsible in court hearings by sticking to the professional code of ethics and laws and regulations. (Article 14)
- 3) Advocates are free in carrying out their professional duties to defend cases for which they are responsible by sticking to the professional code of ethics and laws and regulations. (Article 15)
- 4) Advocates cannot be prosecuted both civilly and criminally for carrying out their professional duties in good faith for the benefit of the client's defend in court proceedings. (Article 16)
- 5) In carrying out their profession, Advocates have the right to obtain information, data and other documents, both from Government agencies and other parties related to these interests which are necessary for the defend of the interests of their clients in accordance with laws and regulations. (Article 17)

⁵ Sudikno Mertokusumo, *Mengenal Hukum Suatu Pengantar*, CV, Maha Karya Pustaka, Yogyakarta, Second Printing, 2020, p.59.

- 6) Advocates have the right to the confidentiality of their relationship with clients, including protection of their files and documents against confiscation or inspection and protection against wiretapping of Advocates' electronic communications. (Article 19 para.2)
 - 7) Advocates are entitled to receive Honorarium for Legal Services that have been provided to their clients. (Article 21 para.1)
- b. Public Notary
- Law Number 30 of 2004 concerning the Position of Public Notary provides legal rights to:
- 1) take leave; (Article 25)
 - 2) to receive honorarium for legal services rendered in accordance with their authority; (Article 36)
 - 3) to defend themselves in an examination (at the regional supervisory council session and at the Central Supervisory Council). (Article 74 and 78)
- c. Public Accountant
- Law Number 5 of 2009 concerning Public Accountant provides legal rights as follows:
- 1) The Public Accountants have the right to obtain compensation for services, to obtain legal protection as long as it has provided services in accordance with professional standard and to obtain information, data and other documents related to the provision of services in accordance with the provisions of laws and regulations. (Article 24)
 - 2) The Public Accountant is exempt from lawsuits related to the provision of services as referred to in Article 3 para.1 and 3 if the acts have passed 5 (five) years from the date of the report on the results of the provision of services.
- d. Medical Practice
- Article 50 of Law Number 29 of 2004 concerning Medical Practice stipulates that doctors or dentists in carrying out medical practices have the right:
- 1) to obtain legal protection as long as carrying out duties in accordance with professional standards and standard operating procedures;
 - 2) to provide medical services according to professional standards and standard operating procedures;
 - 3) to obtain complete and honest information from patients or their families; and
 - 4) to receive compensation for services.
- e. Health Workers

Article 57 of Law Number 36 of 2014 concerning Health Workers stipulate legal rights for health workers as follows:

- 1) to obtain legal protection as long as carrying out tasks in accordance with Professional Standards, Professional Service Standards, and Standard Operating Procedures;
- 2) to obtain complete and correct information from Health Service Recipients or their families;
- 3) to receive compensation for services;
- 4) to obtain protection for occupational safety and health, treatment in accordance with human dignity, morals, decency, and religious values;
- 5) to get the opportunity to develop their profession;
- 6) to reject the wishes of Recipients of Health Services or other parties that conflict with Professional Standards, code of ethics, service standards, Standard Operating Procedures, or provisions of Laws and Regulations; and
- 7) to obtain other rights in accordance with the provisions of the Laws and Regulations.

f. Nursing

Article 36 of Law Number 38 of 2014 concerning Nursing stipulates that nurses in carrying out practices have the right to:

- 1) obtain legal protection as long as carrying out duties in accordance with service standards, professional standards, standard operating procedures, and provisions of Legislation;
- 2) obtain correct, clear and honest information from the client and/or his family.
- 3) receive service fees for the nursing services that have been provided;
- 4) reject the wishes of the client or other parties that are contrary to the code of ethics, service standards, professional standards, standard operating procedures, or provisions of laws and regulations; and
- 5) obtain work facilities according to standards.

g. Engineering

Article 24 of Law Number 11 of 2014 concerning Engineering stipulates that engineers are entitled to:

- 1) carry out engineering activities in accordance with engineering standards;
- 2) obtain legal protection guarantees while carrying out their duties in accordance with the code of ethics of engineers and engineering standards;

- 3) obtain complete and correct information, data and other documents from engineering users in accordance with the requirements and provisions of laws and regulations;
- 4) receive compensation for work in accordance with the work agreement; and
- 5) obtain coaching and maintenance of professional engineering competence.

h. Architects

Article 21 of Law Number 6 of 2017 concerning Architects stipulates the rights for architect as follows:

- 1) to obtain legal protection guarantees while carrying out architect practice in accordance with the architect's professional code of ethics and performance standards for architects in Indonesia;
- 2) to obtain complete and correct information, data and other documents from the architect service user in accordance with the requirements and provisions of laws and regulations;
- 3) to register intellectual property rights over his work;
- 4) to receive compensation for work in accordance with the work agreement; and
- 5) to get coaching and opportunities to improve the competence of the architect profession.

Provided below the summary of legal rights governed in legal provisions for other professions:

Type of rights	Advocate	Public Notary	Public accountant	Medical Practice	Health Workers	Nursing	Architect	Engineer
1. Opportunity to defend himself	√	√						
2. To express opinions freely	√							
3. To carry on his duties	√			√				√
4. Cannot be prosecuted	√							
5. To get legal protection			√	√	√	√	√	√
6. To get information for the interest of client	√		√	√	√	√	√	√
7. Confidentiality of relationship with client	√							
8. To earn professional fee	√	√	√	√	√	√	√	√
9. Opportunity to take a leave		√						
10. Opportunity to develop professionals' capacity					√		√	√
11. Refuse unlawful request of client					√	√		
12. Protection of health, safety and dignity					√			
13. To get proper work facility						√		
14. To register his intellectual property right							√	

E. CONCLUSIONS AND RECOMMENDATIONS

The role of tax consultant is vital to state revenues. This profession helps taxpayers and government as well to achieve a high tax compliance. A tax consultant is currently exposed to legal risk whether or not he followed the professional standards and conduct his code of ethics. The right of tax consultant is currently written on PMK-111/2014 which minorly giving a right to carry on his professional service. Meanwhile, some other professions have been regulated in specific laws stipulating some legal rights, especially right to get legal protection.

From this analysis, we recommend to study what kind of rights which necessarily needed by tax consultant professions, including proper and required obligations, so that they can contribute more effectively to improve the nation's high tax compliance. Studying the existing laws which govern other professions is very resourceful. Such necessary rights and obligations should be stipulated in a specific law.

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Legislations

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