

The Impact of Tax Court Decisions on Aspects of Fulfilling Justice, Certainty and Expediency

Mindo Jecksen Siahaan, Rebekka Christina, Rindi Elina
mindo.mspajak@gmail.com, rebekka@pscconsulting.co.id, rindie.tax@gmail.com
Faculty of Law of Pamulang University

ABSTRACT

The court decision in cases certain have fulfil law idea principle; justice, certainty and utility. Research use qualitatives-dercriptive- normative aproach with data from tax court jurisprudence at 2007. Research conclude that if dispute among law idea, so justice is best option among others. In this reserach, didn't be founded utility law idea. So that, researcher suggests that utility law idea necessary become law consideration in tax law decision.

Keywords: Tax Court Decision, Law Idea, Justice, Certainty, Utility.

ABSTRAK

Putusan yang dikeluarkan oleh Pengadilan Pajak dalam kasus-kasus tertentu telah memenuhi asas-asas tujuan hukum yang mencakup keadilan, kepastian dan kemanfaatan. Penelitian ini menggunakan metode penelitian kualitatif deskriptif dan normatif dengan data yang dipakai adalah putusan Pengadilan Pajak yang bersifat yurisprudensi selama tahun 2007. Hasil penelitian menyatakan bahwa dalam hal terjadi pertentangan diantara tujuan hukum maka hakim lebih memilih keadilan dan tidak ditemukan adanya tujuan kemanfaatan. Oleh karena itu, perlunya tujuan kemanfaatan yang direpresentasikan melalui tujuan penerimaan negara menjadi tujuan hukum yang dijadikan pertimbangan hukum hakim Pengadilan Pajak dalam memutus perkara.

Kata kunci:

Putusan Pengadilan Pajak, Tujuan Hukum, Keadilan, Kepastian, Kemanfaatan.

A. Background

In the provisions on the amendment of the law on General Provisions and Tax Procedures (KUP) the new tax definition has been included in full. Previously, in Law Number 19 of 2000 concerning Tax Collection with Tax Letters and Law Number 14 of 2002 concerning Tax Courts, taxes were only defined from their scope, namely taxes collected by the central government and taxes collected by local governments. Article 1 number 1 of Law Number 28 of 2007 concerning the Third Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures states that: "A tax is a mandatory contribution to the state owed by a private person or

entity of a coercive nature under the Act, with no direct remuneration and is used for the purposes of the state for the greatest prosperity of the people".¹ The importance of the legal basis in the law as the basis for collecting taxes has actually been clearly stated in the constitution of the unitary state of the Republic of Indonesia. As it is known that Article 23A of the 1945 Constitution of the Third Amendment states that "Taxes and other levies of a coercive nature for the purposes of the state are regulated by law."

The concept of a rule of law was also put forward by Locke which gave birth to a conception of the state that emerged in the form of democracy which was followed simultaneously with the birth of a rule of law state. In fact, until now the idea of a democratic rule of law is still being debated, because it gives rise to associations of thoughts, as if they were a contemplation of reality, confirmation of a situation. However, regardless of the debate, Locke's idea of the concept of the state is in essence in accordance with the characteristics of a rule of law which must guarantee the freedom of citizens to exercise their rights and fulfill their obligations.

To carry out tax collection as mandated within the framework of a rule of law state after going through a political process, the government created a taxation system consisting of three main elements, namely tax policy, tax law and tax administration. ⁷ Even though the government has prepared a good taxation system, in practice in the field there are often conflicts of interest with taxpayers which can lead to tax disputes. This is because in general the interests of the tax authorities and taxpayers are different. According to Mansury, the difference in interests is reflected in the existence of three principles of tax collection. The revenue-adequacy principle reflects the interests of acceptance, the equity principle reflects the interests of society and the certainty principle reflects the interests of the government and society.

Besides that, the existence of conflicts between the tax authorities and taxpayers can be caused by other things. First, there are legal actions in the field of state administration that are coercive and are obligations that must be carried out. Second, the reluctance of those who are burdened with the obligation to carry it out, relates to the assumption that legal protection, truth and justice cannot be guaranteed, as a result of bureaucratic behavior. Third, the implementation

¹ UU No. 6 Tahun 1983 tentang Ketentuan Umum dan Tata Cara Perpajakan (KUP) telah mengalami tiga kali perubahan berturut-turut sebagai berikut: UU No. 9 Tahun 1994; UU No. 16 Tahun 2000;

of collection through the tax law will be difficult to be free from vested interest, differences in interpretation and problems of the validity of evidence which are sources of conflict.²

A conflict between the fiscus and the taxpayer will give rise to a tax dispute if one of the parties files a lawsuit. According to the Blacks Law Dictionary, the definition of a dispute is a conflict or controversy that gives rise to lawsuits. 10 Lawsuits in the tax sector are always unilateral from taxpayers because the object of lawsuits is the decision of the Directorate General of Taxes as a state administrative decision (*beschikking*).

Since its establishment, the Tax Court established based on Law No. 14 of 2002 concerning the Tax Court has issued many rulings both in the form of decisions on appeals and lawsuits. An appeal or lawsuit decision is born because of a dispute between the appellant or plaintiff, namely the taxpayer on the one hand and the comparator or defendant, namely the fiscal party on the other side, which cannot be resolved at a lower level.

For disputes submitted either appeals or lawsuits, the Tax Court may issue a decision in the form of; refuse, grant in part or in full, increase taxes due, unacceptable, correct typographical or calculated errors and/or cancel. Certain Tax Court decisions can cause controversy both on the part of the taxpayer as an appellant or plaintiff and on the Directorate General of Taxes as a comparator or defendant.

Aggrieved parties always ask what is the basis for the judge's consideration in deciding the case and will subjectively judge that the decision does not meet the sense of justice. On the other hand, those who feel benefited by the outcome of the decision will have a subjective feeling that the decision has fulfilled the sense of justice. Therefore, an objective measure is needed to assess whether the Tax Court Decision is in accordance with public expectations, especially those related to taxation. One of the criteria for assessing a Tax Court decision is whether the Tax Court decision has fulfilled aspects of legal objectives. To be able to determine the purpose of the law, we must first look at the philosophy and principles of tax collection.

² Rukiah Komariah dan Ali Purwito, *Pengadilan Pajak, Proses Banding Sengketa Pajak, Pabeandan Cukai* (Jakarta: Badan Penerbit Fakultas Hukum UI, 2006), hlm. 36.

As a specialist law, the purpose of tax law also refers to general legal purposes. Based on some legal philosophy literature, there are three purposes of law, namely justice, certainty, and expediency.¹⁶ Adam Smith's principles of tax collection in The Four Maxims are in accordance with the general purpose of law so that these purposes can be applied to the purpose of tax law. Ideally, every decision of the Tax Court should fulfill the three purposes of tax law. But in practice, often a judgment cannot fulfill all three legal objectives to the fullest. Sometimes in a decision-making process by a judge, there is a conflict between the three purposes of the law itself. In the event of a conflict of legal objectives, the judge will decide.

To collect taxes as mandated in the framework of the rule of law after going through the political process, the government creates a tax system consisting of three main elements, namely tax policy, tax law and tax administration. Although the government has prepared the tax system well, in the implementation in the field there is often still a conflict of interest with taxpayers which can cause tax disputes. This is because in general the interests between the fiscus and the taxpayer are different. According to Mansury, the difference in interests is reflected in the three principles of tax collection. The revenue-adequacy principle reflects the interests of revenue, the equity principle reflects the interests of society and the certainty principle reflects the interests of government and society.

B. Scope Of Discussion

In this paper, we try to limit several decisions in the Tax Court such as appeals and lawsuits in cases. Meanwhile, the limitation in the field of taxation is only in the field of PPh (Income Tax) and VAT (Value Added Tax) because these two types of taxes are central government taxes which contribute the largest state revenue.

Sub Problems in the questions to be asked can be as follows:

1. What are the legal considerations of the tax court judges in deciding appeals and lawsuits so that the legal objectives of justice, certainty and benefit can be achieved?
2. Why must the decisions taken in the Tax Court session fulfill the legal objectives of justice, certainty and benefit?
3. In the event that there is a conflict between the three legal objectives, namely justice, certainty and benefit when deciding a case, how will the Tax Court judge choose the legal objective?

C. Research Methodology

In accordance with the characteristics and scope of the discussion in this thesis which examines the impact of the Tax Court's decision on aspects of fulfilling justice, certainty and expediency, the researcher will conduct research using descriptive qualitative methods. The research in this thesis is qualitative in nature because it examines limited cases (casuistic in nature) but in depth and total (holistic) so that it requires a more in-depth analysis than quantitative³ research. In this thesis has the following aims and objectives; (1) to fully describe the characteristics or features of a situation, namely an appeal decision or lawsuit taken by the Tax Court, and (2) to obtain data regarding the relationship between a symptom and other symptoms, namely between a Court decision Tax with the fulfillment of legal objectives, namely justice, certainty and expediency.⁴

This research is also normative because in this study it seeks to analyze legal principles in the form of compliance with the Tax Court's decision (rule of law) against the principles of the purpose of law, namely justice, certainty and expediency.⁵

D. Finding & Discussion

Tax is a form of state income that contributes the largest percentage compared to other income sectors such as oil and gas and non-oil and gas. The success of a country in collecting taxes from its citizens will certainly be beneficial for the economic stability of the country concerned. Every country needs taxes. The existence of state goals and government functions necessitates that the state collect taxes from its citizens. The relationship between the state and citizens gives rise to the logical consequence of the obligation to pay taxes for citizens to the state. Taxes are crucial

³ Ridwan Khairandy, *Ikhtikad Baik dalam Kebebasan Berkontrak* (Jakarta: Program Pascasarjana FHUI, 2003), hlm. 39. Hal yang sama dikemukakan oleh Soetandyo Wignjosebroto dalam makalah "Beberapa Persoalan Paradigmatik dalam Teori dan Konsekuensinya atas Pilihan Metode yang akan Dipakai: Metode Kuantitatif versus Metode Kualitatif dalam Penelitian Hukum Non Doktrinal", Sumber : Kumpulan Kuliah Metode Penelitian Hukum Prof. Dr. Valerine JL Kriekhoff, SH, MA.

⁴ Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta:Penerbit Universitas Indonesia, 1986), hlm.96.

Soerjono Soekanto dan Sri Mamudji, Penelitian Hukum Normatif, Suatu Tinjauan Singkat (Jakarta:Raja Grafindo Persada, 2006), hlm. 14. Penelitian hukum normatif mencakup 5 (lima) bidang yaitu: Penelitian terhadap asas-asas hukum, Penelitian terhadap sistematika hukum, Penelitian terhadap taraf sinkronisasi vertikal dan horisontal. Perbandingan hukum, Sejarah hukum.

for the continued existence of development for the present and the future. For this reason, there is a need for understanding from members of the public, especially taxpayers, regarding the basic concepts of taxation. By understanding this, it is hoped that awareness will arise among the public to voluntarily fulfill their obligation to pay taxes to the state.⁶

The problem of low tax compliance is a classic problem faced by almost all countries that implement a taxation system, so it has implications for a low tax revenue ratio. Various studies have been conducted and the conclusion is that compliance issues can be seen in terms of public finance, law enforcement, organizational structure, employment, ethics (code of conduct), or a combination of all these aspects. In the context of law enforcement relating to the field of taxation, it is not free from problems, especially as the increasing number of taxpayers and their understanding of their rights and obligations in implementing tax laws and regulations, it is inevitable that tax disputes will arise. Therefore, a Tax Court is needed that is in accordance with the system of judicial power in Indonesia and is able to create justice and legal certainty in resolving tax disputes. To fulfill this hope, Law of the Republic of Indonesia No. 14 of 2002 concerning the Tax Court.⁴ The existence of the Tax Court, which was officially legalized with the enactment of Law Number 14 of 2002, apparently still causes controversy, especially regarding the position of the Tax Court in the national justice system..⁷

Before the reform era and the 1945 Constitution had not yet been amended, judicial power in Indonesia was under two roofs. The Supreme Court as the Highest State Court has its own organization, administration and finances, while the general justice environment, religious court environment, military court environment, as well as the state administrative court environment organizationally, administratively and financially are under the authority of the respective departments concerned .²⁰ After the reform era rolled around, in order to realize a judicial power that was independent and independent and independent of other powers by strictly separating the judicial function from the executive function, Law Number 14 of 1970 concerning Basic Provisions of Judicial Power was amended by Law. Number 35 of 1999 concerning Amendments to Law Number 14 of 1970 concerning Basic Provisions of Judicial Power which mandates that the organization, administration and financial regulation of Judicial Bodies located in each

⁶ Basri, H., & Muhibbin, M. (2022). Kedudukan Pengadilan Pajak Dalam Sistem Peradilan Di Indonesia. *Jurnal Hukum Dan Kenotariatan*, 6(03), 1442-1458.

⁷ Ibid.

Department are as stipulated in Article 11 paragraph (1) Law Number 14 of 1970 concerning Basic Provisions of Judicial Power needs to be adapted to the demands of developments in the situation.

Based on this, judicial power in Indonesia is only under the Supreme Court itself, as stipulated in Article 11 of Law Number 35 of 1999 concerning Amendments to Law Number 14 of 1970 which reads:

- a. Judicial bodies as intended in Article 10 paragraph (1) are organizationally, administratively and financially under the authority of the Supreme Court.
- b. Provisions regarding organization, administration and finance as intended in paragraph (1) for each judicial environment are further regulated by law in accordance with the specifics of each judicial environment."

Since the 1945 Constitution was amended as mandated by Article 24 paragraphs (1) and (2) of the 1945 Amendment Constitution, this has been reaffirmed in Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power (as a replacement for Law Number 35 of 1999 concerning Amendments to the previous Law Number 14 of 1970), as stipulated in Article 18 which reads:

"Judicial power is exercised by a Supreme Court and subordinate judicial bodies in the general court, religious court, military court, state administrative court and by a Constitutional Court."⁸

The function of the procedural law of the Tax Court is to direct how disputes will be carried out in the Tax Court so that violations of tax law do not occur. This means that judges who examine and decide tax disputes with the disputing parties must adapt to the rules of tax court procedural law. This is necessary to humanize taxpayers and judges who have an obligation to obey the law, specifically tax law. This obligation must not be put aside in enforcing tax law at the Tax Court, so that the last bastion for justice-seeking taxpayers to obtain justice remains strong. Tax court procedural law is very much needed to regulate the behavior of the parties to a dispute and the judges who examine and decide tax disputes in the tax court. The Tax Court according to the provisions of Article 2 of the Tax Court Law is a judicial body that exercises judicial power for Taxpayers or Tax Insurers who seek justice in Tax Disputes. Djazoeli Sadhani, Syahriful Anwar

⁸ Tomson, S. (2022). Reposisi pengadilan pajak menurut sistem kekuasaan kehakiman di Indonesia. *Honeste Vivere*, 32(2), 108-122.

and K Subroto, in their book entitled: Seeking Justice in the Tax Court, 25 state that the function of the Tax Court includes 3 (three) things, namely:

1. Resolving Appeals on Tax disputes;
2. Resolving lawsuits regarding the implementation of tax collection or decisions that can be sued based on applicable tax laws and regulations; And
3. Carry out supervision of legal representatives. This is different from the Tax Dispute Resolution Agency (BPSP), a body that was formed before the Tax Court through Law Number 17 of 1997 concerning BPSP. The provisions of Article 28 of Law Number 17 of 1997 concerning BPSP, states that the task of BPSP is to examine and decide on Tax Disputes.

Meanwhile, BPSP's authority based on the provisions of Articles 28, 29 and 30 of Law Number 17 of 1997 concerning BPSP is:

1. Examining and deciding Tax Disputes;
2. Supervise legal representatives who provide legal assistance to disputing parties in Tax Dispute Resolution Body sessions;
3. For the purposes of resolving tax disputes, the Tax Dispute Resolution Agency may summon or request data or information relating to tax disputes from third parties in accordance with applicable law..⁹

E. Conclusions.

Legal considerations in Tax Court decisions in appeals and lawsuits do not always explicitly state the purpose of law which includes justice, certainty and benefit. there is not a single case in the Tax Court decision that considers the purpose of expediency in the sense of the goal of state revenue as one of the legal objectives in all of its decisions. This is because it is in accordance with the duties of a judge as law enforcement and justice according to the Judicial Powers Act and the Tax Court Law. In the elucidation of the Tax Court Law, it is stated that the purpose of establishing a Tax Court is to provide legal certainty and justice for taxpayers.

In the decisions of the Tax Court there are always legal considerations that explain the reasons why the judge makes certain decisions in each decision. However, in decisions regarding

⁹ Sa'adah, N. (2019). Mekanisme Penyelesaian Sengketa Pajak dalam Sistem Peradilan di Indonesia. *Administrative Law and Governance Journal*, 2(1), 19-33.

certain disputes, it was found that the arguments put forward in support of legal objectives did not follow legal principles and were not clear.

In general, the considerations contained in the Tax Court's decision are still purely fiscal technical in nature. Most of the considerations in the Tax Court decision follow the flow of thought and arguments of the disputing parties, either the appellant or the appellant. In consideration, only a small number of decisions are based on debates and studies that are juridical and philosophical in nature by the judges themselves. In every decision of the Tax Court, the judge should build his own legal arguments and constructions in a juridical-philosophical manner.

Based on previous discussions and conclusions that have been drawn, the author provides recommendations intended for the Tax Court and the Directorate General of Taxes as follows:

1. For the decision of the Tax Court to comply with legal rules so that it can be accounted for legally and fairly, considerations of fairness, certainty and expediency need to be explicitly expressed in every decision of the Tax Court.
2. In some decisions it was found that arguments using legal principles and legal rules were inadequate. Most legal considerations are more technical fiscal in nature and follow the arguments of the parties to the dispute both the appellant and the appellant. Supposedly, legal considerations in Tax Court decisions emphasize juridical-philosophical considerations of a judge.
3. That most juridical disputes arise because tax regulations conflict with each other and the rules of law are not clear. Therefore, the Directorate General of Taxes in making tax regulations must meet legal principles, for example obeying the hierarchy of legal norms.
4. Most tax disputes won by taxpayer's stem from policy errors and mis implementation of the Directorate General of Taxes. From policy, the Directorate General of Taxes is time to change the paradigm from a paradigm that views taxes only from an economic approach to a paradigm that is balanced between economics and law. Because in principle and philosophy, taxes must be based on law.

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