

Independence and Procedures of Tax Dispute Resolution Institutions in Indonesia and East Asian Countries

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Independence and Procedures of Tax Dispute Resolution Institutions in Indonesia and East Asian Countries

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Getting rid of taxes can occur because of differences of opinion between taxpayers and the government regarding the amount of tax to be paid. Legal remedies that can be carried out by taxpayers in tax disputes, among others, are submitted with the approval of the Director General of Taxes. In its development, related institutions approved this consideration/discourse to be carried out as an evaluation of the relevant institutions, because they considered their position less independent. Therefore, it is important to do this research to study and analyse how the independence of the institution gets this tax in resolving tax disputes in Indonesia. The method used is Legal Socio. The results of this study obtained research results which showed that the occupation tax was less independent, because of its higher position than the Directorate General of Taxes. Therefore, it is necessary to make changes to the institution that submitted this application.

Key words: *Tax disputes, approved institutions, independence.*

Introduction

One of the fundamental changes after the implementation of tax reform in Indonesia is the change in the tax collection system, from the Official Assessment System (OAS) to the Self-Assessment System (SAS). As a result of the change in the tax collection system, there was a shift regarding taxation activities. Based on the official assessment system, the emphasis on tax activities is on the government as a tax collector, while based on the self assessment system, the taxation activity's emphasis is on taxpayers. The SAS is a tax collection system that gives trust to taxpayers (tax bearers) to carry out their tax obligations by actively starting to register themselves, calculating their own taxes owed, depositing until reporting tax payable under the provisions of applicable laws. Government (fiscus) in the cell assessment system, only oversees the implementation of tax obligations carried out by taxpayers.



In carrying out these tax obligations, there is a possibility that there can be a tax dispute between the taxpayer and the tax authorities. This tax dispute can arise, among other reasons, as a result of differences of opinion between taxpayers and tax authorities regarding the amount of tax to be paid. If there is a tax dispute between the taxpayer/tax insurer and the tax authorities, as a result of the Tax Assessment Letter issued by the tax authorities which is considered detrimental to the taxpayer/tax insurer, the taxpayer/tax insurer is given legal protection by several legal measures that can be taken.

Legal protection against the people is one of the things that is very essential in the rule of law. Legal protection has the concept of preventive legal protection and repressive legal protection (Asmara, 2006). Regarding legal protection in the field of taxation, based on applicable tax law provisions, legal remedies can be taken by taxpayers if they feel they have been harmed by tax authorities; due to the Tax Assessment Letter issued, taxpayers can submit legal objections (internally). If the legal effort has not fulfilled a sense of justice, then the externally imposed taxpayer is still given the right to appeal (Wiwoho, 2008).

Regarding the objection institutions in the Directorate General of Taxes, in its development there is a discourse for evaluation, because it is not considered independent. Many of the objections submitted by taxpayers were rejected by the Directorate General of Taxes, so these must be resolved by the Tax Court. The Directorate General of Taxes seems to throw responsibility at the Tax Court. Ashari Ritonga (Former Chairperson of the Tax Court) welcomed the independence of the tax objection institution, as the existence of an independent objection institution was needed to screen tax cases that were eligible to enter the Tax Court (Ortax, 2009).

Several previous studies on objection institutions have been carried out. Devi Purnama Sari (2016) on the analysis of implementation of justice principles in the process of objection settlement at the directorate general of taxes revealed that the tax objection process by DGT has not fulfilled the principle of justice. Ferina and Nurfitasari, (2015) analysing the effectiveness of tax dispute settlement through the process of objection in Palembang ilir barat pratama tax office for 2012-2014 showed that tax dispute resolution through objection agencies is very effective, because it can resolve objection cases filed in January, in less than 12 months. Mahfud (2015) analysed aspects of state law and state administration of tax court institutions, while Rumadan (2012) examined the existence of Tax Courts in the Judicial System in Indonesia. Handika (2012) examines the dysfunction of the Indonesian Tax Court in realising justice. However, previous studies arguably did not reveal the independence of objection institutions, so that this study placed more emphasis on the independence of the objection institution, including how the institution should object in the future. In this context, this paper is based on research that uses socio-legal research methods (interdisciplinary



approaches combining aspects of the perspective of scientific disciplines, both legal and social sciences). Interviews were conducted with officials at the Directorate General of Tax who were authorised to handle tax objections.

Tax Dispute Settlement through Objection Institutions in Indonesia

Based on Article 25 of Law Number 28 of 2007 concerning General Provisions and Tax Procedures, filing objections can be made by taxpayers to the Director General of Taxes on: Underpayment Tax Assessment Letter (SKPKB); Additional Underpayment Tax Assessment Letter (SKPKBT); More Pay Tax Assessment Letter (SKPLB); Zero Tax Assessment Letter (SKPN); Withholding or collection by third parties (Asmorowati, 2011).

The way to file an objection is to submit it in writing in the Indonesian language by presenting the amount of tax owed, the amount of tax withheld or collected, or the amount of loss according to the taxpayer's calculation accompanied by reasons that are the basis of the calculation. The period is three months from the date the Tax Assessment Letter is sent or from the date of deduction by a third party. Besides that, there are other conditions too; the taxpayer must pay off the tax owed, at least in accordance with the amount agreed upon by the taxpayer in the final discussion of the results of the examination.

The objection letter entered in the Tax Service Office (TSO) will then be examined and decided upon by the Head of the TSO, without being attended by the taxpayer. The objection submitted by the taxpayer must be decided no later than 12 months from the date of the objection letter. If after that time period, there has been no decision on the objection filed by the taxpayer then the judicial objection has been granted.

The types of decision on the tax objection application are: grant all, grant part, reject objections or increase the amount of tax to be paid.

If the taxpayer has been satisfied with the Director General of Tax's decision on the objection submitted, the resolution of the tax dispute has ended, but if the taxpayer is not satisfied with the objection, then he can file a further legal remedy, namely to file an appeal.

Taxpayers who lose in filing objections get sanctions, which must pay a fine of 50% of the amount of tax payable minus the amount of tax that has been paid. Likewise in tax appeals, if the taxpayer loses in a tax appeal in the sense of being rejected, then sanctions must pay a fine of 100% of the tax based on the Tax Court's decision after deducting payment of tax at the time of filing an objection. According to the author, this sanction is a form of injustice in the settlement of tax disputes, because taxpayers are threatened by filing objections or appeals with such fines as sanctions.



Independence of Objection Institutions in Indonesia and East Asian countries

Before discussing the independence of objection institutions in Indonesia, an analysis was conducted about the resolution of tax disputes in several countries as a comparative study, including in South Korea, Japan and the Netherlands.

Tax dispute resolution in South Korea, if a tax dispute occurs, will be carried out at the objection institution first (completed by the Director General of Taxes); if the objection is not completed, then it can be appealed. In South Korea, if the taxpayer does not agree to the final assessment issued by the Tax Office (District Tax Office) then the person can submit an objection attempt in the National Tax Service (NTS) or the National Tax Tribunal (NTT). These NTS and NTT are independent institutions under the Ministry of Finance and Economy (MOFE). If the taxpayer is not satisfied with the decision of the objection institution, then he can file a legal remedy in the Administrative Court or the District Court as the first court. If not satisfied with the Administrative Court or District Court decisions, the taxpayer can appeal to high court (Yun, 2003).

Tax settlement in Japan is also preceded by a tax dispute settlement at the objection agency. The tax dispute will be decided in advance by the National Tax Tribunal (NTT). NTT is an objection institution under the National Tax Agency (NTA), although under the NTA, the NTT decision is an independent decision on the NTA. If the taxpayer is not satisfied with the NTT decision, then he can appeal to the District Court. The appeal can be conducted, if the taxpayer is not satisfied with the decision of district court (Nakayama, 2007).

In the Netherlands, tax dispute resolution is carried out at the tax authority level first. If the taxpayer is not satisfied with the settlement of a tax dispute at the level of the tax authority in the Netherlands, the taxpayer can appeal to one of the five Tax Courts in the Netherlands. If the taxpayer is not satisfied with the decision of the tax court, he can file an appeal to the supreme court (Raad, 2004).

It can be seen that the settlement of tax disputes in South Korea, Japan and the Netherlands is settled firstly in the taxation authority (in the institution objected first). If it is not completed at the objection institution, it will be decided at the Court. Objection institutions in these countries are principally independent institutions.

In Indonesia, tax dispute resolution also has similarities with the aforementioned countries, namely starting with the settlement of a tax dispute in the objection institution first. However, the difference is that the objection institutions in Indonesia are under the Directorate General of Taxes. This is what causes doubts about the independence of the objection institutions in Indonesia.

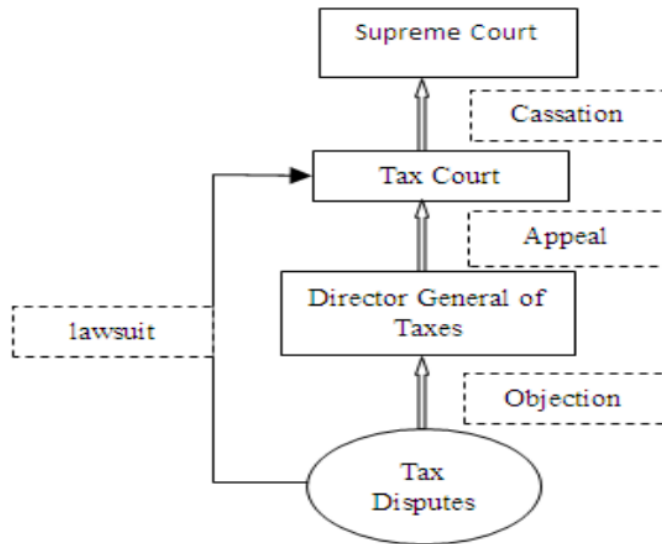
Procedures of Judicial Tax Disputes in Indonesia

Figure 1 shows that before the tax dispute is transferred to the Tax Court, it is first examined and decided by the Director General of Taxes. This Directorate General of Taxes checks and decides on objections submitted by taxpayers. Tax dispute resolution is carried out by objection institutions in Indonesia, which is part of the Directorate General of Taxes, and is what causes the tax objection institutions to be independent.

Based on the theory of the independence of judicial power, the independence of an institution can be seen from the organisational structure. Based on the organisational structure of the tax objection institution under the Ministry of Finance, especially under the Directorate General of Taxes, this causes an independent tax objection institution. Moreover, tax disputes occur between taxpayers and the Directorate General of Taxes, while those that resolve tax disputes by the Directorate General of Taxes. This is like a quasi-court, because the party who decides the case is one of the parties to the dispute. Independence is doubtful; there is a conflict of interest.

Tax dispute resolution procedures in Indonesia can be seen in the chart as follows:

Figure 1. Procedures of Judicial Tax Disputes in Indonesia



The Tax Directorate General is currently reviewing the division that handles tax objections. Handled by the regional office (Kanwil) up until now, a new unit will be formed at the central



level that specifically handles the problem. This plan will make the tax director general more professional; the idea of objections being independent has been reviewed by the Directorate General of Taxes. It means semi-independent, therefore made separately from the tax office, but still within the scope of the tax director general (Susilo, 2018.). Another opinion, expressed by Tjip Ismail, is that the existence of the objection body should be maintained, not under the Directorate General of Taxation but outside the Directorate General of Taxes but still under the Ministry of Finance (interview with Tjip Ismail, Chair of the Tax Court Bill, 7 January 2012). This opinion was not approved by Herman Juwono (Deputy Chair of the Indonesian Chamber of Commerce and Industry Committee), who stated that it should be a separate independent tax objection institution, ideally not at the tax directorate general or the Ministry of Finance, if it remains under the Ministry of Finance it means it is (not independent) (Kontan, 2018). Darusalam (Managing Partner of Danny Darusalam Tax Center) stated that the objection institution should be independent; that there are two alternatives of independence, firstly, the objection institution is issued by the tax director general but under the Ministry of Finance, secondly, the taxpayer can choose the option to appeal without going through objection attempts.

Another opinion that is different from the three previous opinions, was conveyed by the former Director General of Taxes Mochammad Tjiptardjo, who expressly stated that the view that the abolition of objection institutions or making a more independent unit of objection institutions would not solve the problem. It will not guarantee that if it is formed outside the DG of taxation, it will make the objection institution more effective. Especially if it is done to delete or create a new unit outside the tax directorate, the consequence must be to change the law. It is better to fix the objection institution that is currently available, and make it effective (Bisnis Indonesia, 2009).

Based on several opinions that have been authored by the inventory, the evaluation of objection agencies can be grouped into four types. First, institutions object to retention. Second, the objection institution is amended, its position is issued from the Directorate General of Taxation but remains under the Ministry of Finance. Third, the objection institution is changed, its position is issued from the Directorate General of Taxes and the Ministry of Finance. Fourth, the objection institution is deleted, meaning that it directly submits an appeal in the Tax Court.

Conclusion

In Indonesia, tax dispute resolution has similarities with that of South Korea, Japan and the Netherlands, starting with the settlement of a tax dispute in the objection institution first. However, the difference is that the objection institutions in Indonesia are under the



Directorate General of Taxes. This is what causes doubts about the independence of the objection institutions in Indonesia.

The Tax Directorate General is currently reviewing the division that handles tax objections. Handled by the regional office up until this time, a new unit will be formed at the central level that specifically handles the problem. This plan will make the tax director general more professional, the idea of objections to be independent has been reviewed by the Directorate General of Taxes.

Therefore, according to the authors, objection institutions must be evaluated as independent institutions. The findings practically imply some considerations. The objection institution should be evaluated, because it is not independent and its position is outside the Directorate General of Taxes and the Ministry of Finance. Independent objection institutions should be formed. This independent objection agency is located in the national capital.



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