



CRITICAL STUDY OF THE TAX JUSTICE SYSTEM IN INDONESIA

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ABSTRACT

The existence of the Tax Court is very important if it is associated with the concept of the rule of law, namely as a law enforcement agency, especially in the field of tax law. However, the dualism of regulations related to the development of the Tax Court is considered inappropriate because it is not in tune with the reform agenda, which requires the unification of the overall development of the courts, including judges and their registrars. Therefore, a critical study is very important to do in order to develop the concept of the tax justice system in the future. The research method used is a descriptive qualitative research method with data collection techniques obtained through observation activities on tax objects and literature study. The results of the study prove that through the legal basis the tax court is formed in order to provide justice as a result of the emergence of problems between tax subjects (the people) and tax collectors (the government) or can also be referred to as tax disputes. However, the position of the Tax Court in the judicial system in Indonesia does not explicitly state the position of the Tax Court. So this has implications for the concept of one roof and the implementation of dispute resolution in the future.

Keberadaan Lembaga Peradilan Pajak sangat penting apabila dikaitkan dengan konsep Negara Hukum, yakni sebagai lembaga penegakan hukum, khususnya dalam bidang Hukum Pajak. Namun adanya dualisme pengaturan terkait dengan pembinaan Pengadilan Pajak dinilai kurang tepat karena tidak seirama dengan agenda reformasi, yang mana menginginkan penyatuatapan pembinaan pengadilan secara menyeluruh termasuk hakimhakim, dan paniterapaniteranya. Oleh karena itu, studi kritis sangat penting untuk dilakukan dalam rangka menyusun konsep sistem peradilan pajak dimasa yang akan datang. Metode penelitian yang digunakan adalah metode penelitian deskriptif kualitatif yang teknik pengumpulan data diperoleh melalui kegiatan observasi pada objek pajak serta studi literatur kepustakaan. Hasil penelitian membuktikan bahwa melalui dasar hukum peradilan pajak dibentuk dalam rangka memberikan keadilan sebagai akibat timbulnya permasalahan antara subjek pajak (rakyat) dengan pemungut pajak (pemerintah) atau dapat pula disebut sebagai sengketa pajak. Namun kedudukan Pengadilan Pajak dalam sistem peradilan di Indonesia tidak menyebutkan secara tegas posisi Pengadilan Pajak. Sehingga hal ini berimplikasi pada konsep satu atap dan penyelenggaraan penyelesaian sengketa pada pada masa yang akan datang.

Kata Kunci: Studi Kritis, Peradilan Pajak



1. INTRODUCTION

The Tax Court is a specialty in the judicial system in Indonesia and is a means for the public to resolve tax disputes. The Tax Court is a judicial body that exercises judicial power in the settlement of tax disputes between taxpayers and the tax authorities as tax collectors. The problem that exists in society is that Law Number 14 of 2002 concerning the Tax Court (hereinafter referred to as the Law on Tax Courts) does not reflect the spirit of the constitution and is not subject to the judicial system in Indonesia. This can be seen in several ways, as follows:

1. The Tax Court is a judicial institution of the first and final level in examining and deciding tax disputes.
2. The decision of the Tax Court is final and has permanent legal force
3. The recruitment of Tax Court judges is different from other judicial institutions where the Minister of Finance has a very large role in the process of recruiting Tax Court judges.
4. In practice, most of the judges at the Tax Courts are former officials at the Ministry of Finance, especially the Directorate General of Taxes, and are not career judges who come from the career development system in general.

The guidance of judges at the Tax Court is not under the Supreme Court but under the Ministry of Finance. Many people are worried that this situation will affect the independence of judges in examining and deciding cases so that it can potentially lead to a conflict of interest that can damage the objectivity of the tax court. Taxes have an important role in the life of the state, especially in the implementation of development because taxes are a source of state revenue to finance all expenditures, including development expenditures. However, in practice there are often problems or disputes regarding taxation. Tax dispute is a dispute between taxpayers, withholding or collecting taxes, as well as tax bearers and tax officials regarding the implementation of the Tax Law. In this sense, the disputes are: (1) the taxpayer and the tax official; (2) withholding or collecting taxes with tax officials; (3) taxpayers with withholding or tax collectors; or (4) a tax bearer with a tax official.

The object in dispute is the amount of tax payable or the imposition of administrative sanctions in the form of interest, fines, or increases. 4 Talking



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about the tax justice system, the existence of the Tax Court is very important if it is associated with the concept of the State of Law, namely as a law enforcement agency, especially in the field of Tax Law. The urgency of the tax judiciary is to adjudicate disputes between the Government as tax fiscus (collector) and taxpayers (tax bearers) as a result of the issuance of a decision regarding the imposition of taxes on individuals or entities or legal entities that are subject to the obligation to pay taxes. 5 Subjects at the Tax Court Institution are in an unbalanced state, namely between the taxpayer or the tax bearer and the authorized official. An independent judge will take on a role to make this situation more balanced. The judiciary as a symbol of the rule of law and the last bastion of justice should be impartial, and providing equal legal treatment is the desire of all levels of society. Judges are the executor and spearhead of the judiciary and those who interact with the community are required to have quality and professionalism in researching, weighing, and determining legal decisions for a case. 6 The objective of administering judicial power is to foster the independence of the administrators of judicial power in the context of realizing a quality judiciary. The independence of the organizers is carried out by increasing their integrity, knowledge, and abilities. A quality judiciary is a product of the performance of these judicial administrators.

2. THEORETICAL STUDY AND HYPOTHESES DEVELOPMENT

Overview of the Tax Court Understanding the Tax Court, Rochmat Soemitro formulates the tax court as a process in tax law which intends to provide justice in tax disputes, both to taxpayers and to tax collectors (government), in accordance with the provisions of the law (positive law) the process is a series of actions that must be carried out by taxpayers or by tax collectors before an agency (administration or judicial institution) that is authorized to make decisions to end disputes. 8 Understanding the Tax Court, Rochmat Soemitro formulates the tax court as a process in tax law which intends to provide justice in tax disputes, both to taxpayers and to tax collectors (government), in accordance with the provisions of the law (positive law) the process is a series of actions that must be carried out by taxpayers or by tax



collectors before an agency (administration or judicial institution) that is authorized to make decisions to end disputes.⁹ The tax court is mandatory for tax taxes due to visits from the court itself, which is free, independent, impartial and reliable in law and justice based on tax laws and regulations as well as a sense of community justice, which is authoritative and recognized by the world. So that every Tax Dispute can be decided fairly and has legal certainty. The Tax Court was established with the assumption that efforts to increase central and local tax revenues, import duties and excise, and local taxes, in practice, are sometimes carried out without increasing justice for the taxpayers themselves. Therefore, the public, in this case the taxpayers, often feel that the increase in tax/duty obligations does not meet the principle of justice, giving rise to various disputes between the taxation agency and the taxpayers. In order to facilitate the settlement of tax disputes, it is felt that there is a need to establish a special judicial body to handle them.

The enactment of Law Number 14 of 2002 concerning the Tax Court which replaced Law Number 17 of 1997 concerning the Tax Dispute Settlement Agency, the Tax Court becomes a strategic institution to resolve the Tax Dispute and is expected to encourage the taxpayer community and its legal apparatus, to implement enforcement of the rule of tax law. The Tax Court established by Law Number 14 of 2002 concerning the Tax Court is a judicial body that exercises Judicial Power for Taxpayers or Tax Insurers seeking justice in Tax Disputes. Article of Law Number 14 of 2002 concerning the Tax Court states that: "The Tax Court is a judicial body that exercises judicial power for Taxpayers or Tax Insurers seeking justice for Tax Disputes". The Tax Court as referred to in Article 2 of Law Number 14 of 2002 concerning the Tax Court is the Tax Court Agency as referred to in Law Number 6 of 1983 concerning General Provisions and Tax Procedures as amended several times, most recently by Law Number 16 of 2009. Law Number 14 of 2002 concerning the Tax Court is contained in the State Gazette of the Republic of Indonesia Number 27 of 2002, Supplement to the State Gazette of the Republic of Indonesia Number 4189, effective as of the date of promulgation of the Law, namely April 12, 2002. Law Number 14 of 2002 concerning the Tax Court was not formed just like that, but was formed based on basic considerations and the laws and regulations that were used as a reference in the making of Law Number 14 of 2002 concerning the Tax Court.



Tax Dispute According to Mustaqiem, the causes of tax disputes are as follows:

- a. Differences in the legal basis used;
- b. Perceptions of the law are different; and
- c. There is a dispute over certain transactions.

Meanwhile, according to Muhammad Djafar Saidi that the emergence of tax disputes brintikan on two very principal things. First, not to take legal actions as ordered by tax law norms. Second, taking legal actions but not in accordance with tax law norms. The parties related to the emergence of tax disputes are taxpayers, tax cutters or collectors, tax bearers, and tax officials. These parties are a source of tax disputes due to lack of legal awareness in the implementation or enforcement of tax law.

As for the classification of tax disputes, tax disputes can be classified as follows:

- a. Formal Dispute It arises when the tax authorities or taxpayers or both do not comply with the procedures or procedures set out in the tax law and tax court law.
- b. Material Dispute
- c. If there is a difference in the amount of tax payable, tax overpayment (restitution) or tax underpayment.

3. METHODOLOGY

Legal research is a scientific activity based on certain methods, systematics, and thoughts that aim to study one or several certain legal phenomena by analyzing them. The method used in this research is normative juridical research, while the research design used is descriptive research, including formulative and exploratory studies that want to know for the purposes of further studies. This study aims to investigate matters relating to law, both formal and non-formal law, through a literature study that is used to help complete this article with various reading sources, such as textbooks, journals, and so on related to the problem being researched.

Operational Types of Research Variables The operational definition is a brief description of the variables studied, so that it can be operationalized in



empirical research, the determination of the operational definition determines the benchmark and reference in conducting data analysis. The operational definitions of the variables used for this research are:

1. Knowing the legal basis for the establishment of a tax court in Indonesia.
2. Knowing the position and authority of the tax court in Indonesia.
3. Data Types and Sources If viewed from the data source, the data collection in this study can use primary data sources and secondary data.

The data used in this study are primary data and secondary data that are directly related to the object of research.

1. Primary data. Primary data is data collected directly from the object under study. This data is obtained through the literature that is directly related to the tax courts in Indonesia.
2. Secondary data. Secondary data is collected and obtained from statistical data and legal sources, in this case the regulation on tax justice in Indonesia.
3. Method of collecting data Data is very important in compiling other scientific research, researchers spend sufficient time in conducting research to obtain data that can support the sustainability of the research. The main purpose of a study is to obtain data, in this study the method of collecting data is carried out in 2 (two) ways, namely: library research. This literature study is carried out by studying books, scientific works, journals, and documents related to the problems that will be discussed in this research. This literature study was conducted to strengthen the theoretical basis in this research.
4. Data analysis In conducting this research, the researcher used a qualitative descriptive analysis method approach, namely seeking information through regulations, relevant books and observing and analyzing tax courts and tax disputes to then be interpreted and drawn conclusions on the legal basis for the establishment of tax courts in Indonesia. and the position and authority of the tax court in Indonesia.



4. DISCUSSION

Legal Basis for the Establishment of a Tax Court in Indonesia In a state of law, the role of judicial institutions is indispensable for the achievement of the rule of law. This law enforcement effort is applied in various fields, and one of them is in the field of Taxation to provide justice as a result of the emergence of problems between tax subjects (people) and tax collectors (government) or it can also be referred to as tax disputes. From this, the Tax Court was formed through Law Number 14 of 2002 concerning the Tax Court. The principle of institutionally administering judicial power also requires that judicial power exercised by the judiciary through judges is carried out by maintaining the independence of the judiciary, therefore all interference in judicial affairs by other parties outside the jurisdiction of the judiciary is prohibited, except in the cases referred to in 1945 Constitution of the Republic of Indonesia. Everyone who intentionally interferes in judicial affairs shall be punished according to the provisions of the legislation.

Then related to special courts, the provisions of Article 27 paragraph (1) of Law Number 48 of 2009 concerning Judicial Powers affirm that special courts can only be formed in one of the judicial environments under the Supreme Court. The explanation of the provisions of this article states that what is meant by special courts are, among others, juvenile courts, commercial courts, human rights courts, courts for criminal acts of corruption, industrial relations courts, and fisheries courts within the general judiciary, as well as tax courts within the jurisdiction of the general court. state administrative court. The legal basis for the establishment of a Tax Court in Indonesia is:

- a. Article 5 paragraph (1) of the 1945 Amendment of the 1945 Constitution of the Republic of Indonesia, which reads: "The President has the power to make laws with the approval of the House of Representatives".
- b. Article 20 of the 1945 Amendment of the 1945 Constitution of the Republic of Indonesia, which reads:
 - 1) The House of Representatives holds the power to make laws.
 - 2) Each draft law is discussed by the House of Representatives and the President for mutual approval.
 - 3) If the draft law does not get mutual approval, the draft law may not be submitted again in the session of the House of Representatives at that time.
 - 4) The President ratifies a draft law that has been mutually agreed



to become law.” Article 24 of the 1945 Amendment of the 1945 Constitution of the Republic of Indonesia, which reads: 1. Judicial power is an independent power to administer justice to uphold law and justice 2. Judicial power is exercised by a Supreme Court and judicial bodies under it in the General Courts, Religious Courts, Military Courts, State Administrative Courts, and by a Constitutional Court.” The judicial power in the above provisions confirms that the Tax Court as a judicial body carries out its functions and authorities to enforce law and justice as stated in Article 24 Paragraph (1) of the 1945 Constitution (Third Amendment) which states that, “Judicial power is an independent power to administer justice. in order to uphold law and justice”, and also to emphasize that the Tax Court is a purely administrative judicial body where this institution is independent, not part of one of the disputing parties. Thus the Tax Court according to Article 2 of Law no. 14 of 2002 above is domiciled as the executor of judicial power, especially in the field of taxation. Based on the description above, it can be concluded that the Tax Court Institution has a juridical basis as the first and last level Judicial Institution in examining and deciding tax disputes under the State Administrative Court, the Tax Court Judge must be able to make an objective decision based on applicable law and also based on beliefs that are fair and provide benefits to society.

4.2 The Position and Authority of the Tax Court in Indonesia

The current Tax Court was established based on Law Number 14 of 2002 concerning the Tax Court. Article 2 of Law Number 14 of 2002 includes the definition of the Tax Court as follows: “The Tax Court is a judicial body that exercises judicial power for taxpayers or tax bearers seeking justice for tax disputes. “Based on this understanding, it can be seen that the Tax Court is a judicial institution that is used as a means for the people as taxpayers or tax bearers to obtain justice in the field of taxation. The tax court in Indonesia is an administrative court that specializes in taxation. A judiciary is said to be an administrative court if it fulfills the elements, namely that one of the disputing parties must be an administrator (administrative official), who becomes bound because of the actions of an official within the limits of his authority, and public law or administrative law applies to the issues raised. In Article 2 of Law no. 14 of 2002 concerning the Tax Court, it is stated that, “The Tax Court is a judicial body that exercises



judicial power for taxpayers or tax insurers seeking justice for tax disputes."

The authority of the Tax Court is to decide cases regarding tax disputes. Article 1 point 5 of this law states the definition of a tax dispute as follows: "A tax dispute is a dispute that arises in the field of taxation between a taxpayer or tax bearer and an authorized official as a result of the issuance of a decision that can be appealed or sued to a tax court based on tax laws and regulations, including lawsuits on the implementation of collection based on the Law on Tax Collection by Forced Letter. Regarding the position of the Tax Court in the judicial system in Indonesia, Law Number 14 of 2002 concerning the Tax Court does not explicitly state where the position of the Tax Court is. Several articles contained in Law Number 14 of 2002 concerning the Tax Court which are not directly related to the position of the Tax Court, are as follows: 1) Article 2: "The tax court is a judicial body that exercises judicial power for taxpayers or tax bearers seeking justice for tax disputes." 2) Article 3: The Tax Court is the court of the first and final level in examining and deciding tax disputes" 3) Elucidation of Article 3 states that: the tax court is the court of the first and final level of examination of tax disputes. Therefore, the decision of the Tax Court cannot be filed with the general court, state administrative court or other judicial body, unless the decision is in the form of "unacceptable" concerning authority/competence. 4) Article 77: (1) "The decision of the Tax Court is the final decision and has permanent legal force. (2) The Tax Court may issue an interim decision on the Lawsuit regarding the application as referred to in Article 43 paragraph (2) (3) The disputing parties may submit a review of the Tax Court's decision to the Supreme Court. Based on these provisions, it can be seen the following things:

- a. The Tax Court is a judicial body that exercises judicial power.
- b. The Tax Court is under the Supreme Court;
- c. The Tax Court is the court of first and last instance in tax disputes.
- d. The Tax Court does not recognize the judiciary at the level of appeal and cassation;



e. The Supreme Court has the authority to adjudicate tax disputes in the judicial review process.

Since the issuance of the Tax Court Law Number 14 of 2002, the position of the Tax Court is considered confusing. Because, Article 10 of the Law on Judicial Power Number 48 of 2009 states; paragraph 1, Judicial power is exercised by a Supreme Court and judicial bodies under it, and by a Constitutional Court; paragraph (2), Judicial bodies under the Supreme Court. include judicial bodies within the general judiciary, religious courts, military courts, and state administrative courts. It does not state that the Tax Court is within the jurisdiction of the tax court. In the Tax Court Law Number 14 of 2002, both in the articles and explanations, there are no provisions that require or clearly state the existence of the Tax Court in the judiciary, while Article 5 of the Tax Court Law Number 14 of 2002 only mentions The technical development of the judiciary in the Tax Court is carried out by the Supreme Court, while the organizational, administrative and financial development is carried out by the Ministry of Finance. Considering that tax disputes are included in the realm of state administrative matters, many opinions include the Tax Court within the state administrative court. However, there is no legal basis so there is a need for an in-depth study of the position of the tax court within the judicial structure in Indonesia. Based on the above understanding, it can be seen that the Tax Court is a judicial institution that is used as a means for the people as taxpayers or tax bearers to obtain justice in the field of taxation. Its authority is to decide cases regarding tax disputes. Article 1 point 5 of this law states the definition of a tax dispute as follows: "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 sued to the Tax Court based on tax laws and regulations, including a lawsuit against the implementation of collection based on the Law on Tax Collection by Forced Letter." Regarding the position of the Tax Court in the judicial system in Indonesia, Law Number 14 of 2002 does not explicitly state where the position of the Tax Court is. Some of the articles contained in Law Number 14 of 2002 which are not directly related to the position of the Tax Court are as follows: Article 2: "The tax court is a judicial body that exercises judicial power for taxpayers or tax insurers seeking justice in disputes tax." Article 33: (1) "The Tax Court is the court of the first and last level in examining and deciding



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tax disputes" If the above provisions are reviewed, there is not a single article in Law Number 14 of 2002 which explicitly states the position of the Tax Court in the justice system in Indonesia. Based on this, it is necessary to examine more in relation to the position of the tax court in the judicial structure in Indonesia and its relationship with the constitution and laws and regulations related to taxes. The existence of dualism in the development of the Tax Court is considered inappropriate because it is not in tune with the reform agenda, which requires the unification of the overall court development, including the judges and their clerks. Therefore, organizational, administrative, and financial development at the Tax Court, which is still at the Ministry of Finance, should immediately be integrated with its technical-judicial guidance at the Supreme Court. The current Tax Court is domiciled in the State Capital as stipulated in Article 3 of Law Number 14 of 2002. Thus, the Tax Court is always located in Jakarta provided that the state capital does not move. According to the author, this is not in accordance with the principles of justice, namely the principle of simple, fast, and low-cost case settlement. This is considering that the potential for this tax dispute is very large because the number of taxpayers is increasing throughout Indonesia. Besides the increasing number of taxpayers from year to year, the range of Indonesia's territory from Sabang to Merauke, from Miangas to Rote Island is very far from Jakarta. As with taxpayers in Jayapura, for example, if the person concerned is not satisfied with the Tax Assessment Letter (SKP) or Tax Collection Letter (STP) issued by the Tax Service Office in Jayapura, of course the distance between Jayapura and Jakarta is very far. Taxpayers will pay a fairly large fee for transportation, accommodation and it takes longer time than if the Tax Court is in the area where the taxpayer is located, at least in the Provincial Capital

5. CONCLUSION

The Tax Court is a judicial institution that is used as a means for the people as taxpayers or tax bearers to obtain justice in the taxation sector. The tax court is needed to resolve tax disputes because of the vision of the tax court itself, which is free, independent, impartial and reliable in enforcing law and justice based on tax laws and regulations as well as a sense of community justice, which is authoritative and recognized by the world.



The authority of the Tax Court is to decide cases regarding tax disputes. Since the issuance of the Tax Court Law Number 14 of 2002, the position of the Tax Court is considered confusing. The existence of dualism in the development of the Tax Court is considered inappropriate because it is not in tune with the reform agenda, which requires the concept of a single court as a whole, including judges and clerks.

Therefore, organizational, administrative, and financial development at the Tax Court, which is still at the Ministry of Finance, should immediately be integrated with its technical-judicial guidance at the Supreme Court. Moreover, the Tax Judiciary Institution is declared as the first and last level judicial institution in examining and deciding tax disputes so that it is hoped that the direction of the tax justice system will be clear in the present and future considering that there will be more potential disputes in the taxation sector that will occur.

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