

THE EXISTENCE OF INDONESIAN TAX COURT VIEWED BY INDONESIAN JUSTICE SYSTEM

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ABSTRACT

Indonesian Tax court existence as board to settle tax dispute has its own characteristic which different from others court in Indonesia. This differences shown from provisions to regulate tax court whether related to tax dispute settlement mechanism or the institution itself. Several characters are attractive to be studied since they have not suitable to Indonesian judiciary system and have not contribute with law protection especially to taxpayer. Those characteristic among others are : first, tax court is the first and the last level of court to investigate and settle tax dispute, tax court does not recognize appeal request and cassation to Supreme Court. Even though there are terms such as 'appeal' but this term becomes ambiguous refer to appeal term common use by Indonesian Judiciary system. Appeal term by Indonesian judiciary system is advance effort from court first level (judiciary) while "appeal" term by tax court is advance effort from administration effort (executive). Second, tax court only located in state capital city. This definitely gives less law protection to taxpayer outside Jakarta would find difficulty to find justice due to long distance which costly and time consuming. The condition examine from court principle, it is not suitable, whereas court first level shall be located in every regency while appeal court located in each province. Third, developing of the organization, the finance of tax court conducted by The Finance Ministry but in judicial system in Indonesia, all of the court development conducted by supreme court. Fourth, tax court judge recruitment neither should be law license undergraduate. Judge must be law expert, tax court judge is law graduate who master tax.

Key word: Tax Court.

INTRODUCTION

The Purposes of Indonesia State whereas stated on Preamble of Constitution of The State of Indonesia 1945 (UUD 1945) manifested through democratic state implementation management, state management carried out via national development on all aspects of the life of nation. National development needs plenty of fund and as possible shall be funded from state self-reliance via domestic state revenue. Any of domestic revenues which very reliable is tax.

The important of tax sector, as state revenue resources shall be respond by the government by conducting efforts to optimize state revenue from tax, among other are tax intensification and extensification. Despitefully, government had created reform policy of tax system started from 1983. One of the most prominent changes is transition from official assessment to self-assessment system. Official assessment is taxation system, which gives authority to government (*fiscus*) to determine tax due amount to taxpayer, while self-assessment is taxation system which gives authority to taxpayer to determine their own tax due amount¹.

According to self-assessment system, whenever society meets criteria of taxpayer then based on Article 2 (1) of The Act number 28 / 2007 concerning General Provision and Tax System (later written as Act No.28/2007) where taxpayer obliges to register in The Directorate General of Taxation office in their residence area or domicile and in return they will receive Tax ID Number. Taxpayer obliged to report their tax liability by tax return and settled their tax due. This large tax granting to taxpayer on self-assessment appropriately being balance with supervising instrument therefore the grant will not be misused. For that purpose, authority for *fiscus* were created to investigate tax (Article 29 (1) , Act 28/ 2007). If investigation report shows any differences or mismatch on taxpayer report on their notification letter and trigger correction then *fiscus* authorize to release Notice of Tax Assessment (SKP) which has equal position to Tax Collection Note. Notice of Tax Assessment can be formed as Tax Underpayment Assessment Letter (SKPKB), Tax Overpayment Assessment Letter (SKPKBT) or Nil Tax Assessment Letter (SKPN). (Article 13, 15,17, 17A Act No.28 /2007).

In practice, taxpayer often disagrees to tax amount apply as tax imposition based as mentioned on Notice of Tax Assessment. The counting differences between *fiscus* and taxpayer raise tax dispute and dispute over tax collection. In order to give law protection especially to taxpayer over state administration officer act, in this case *fiscus*, on tax dispute, taxpayer given opportunity to rise for objection, appeal and lawsuit.

Act of objection shall be apply by taxpayer who disagree to *fiscus* calculation note of tax due as mentioned on Notice of Tax Assessment, taxpayer shall raise obligation to the authorize officer who release the notice. If taxpayer refuses to accept the decision released by authorized officer of their objection, hence taxpayer has right to proposes appeal to tax court (Article 27 Act No.28/2007). Other than objection and appeal, taxpayer also has right to file appeal petition (claim) to tax court if taxpayer refuse the execution of tax collection.

¹ Mardiasmo, (1995), *Perpajakan*, Publisher: Andi Yogyakarta, 8

Tax court existence as board that performs as court has individual characteristic that different from other court. This different shown from provisions organize the tax court related to tax dispute settlement mechanism and the board itself. Several characteristic shown that tax court is court the first and the last level on check and settle tax dispute, tax court not recognize appeal law effort and cassation to Supreme Court. Tax court only located at state capital city.

Court technical assistance to tax court conducted by Supreme Court, while organization, administration and finance assistance conducted by Ministry of Finance. Some characteristics are interesting to be studied related to Indonesian jurisdiction system.

TAX COURT AMONG INDONESIAN JURISDICTION SYSTEM

To compare tax judiciary system, whether it is already comply with judiciary system in Indonesia, author will firstly describe dispute settlement mechanism in four other existing judiciaries which is General Court, religious court, military court and state administrative court. As we known the settlement of dispute through court path is conducted by force of justice. This is mentioned in Article 24 (1) Constitution of the Republic of Indonesia 1945 (UUD 1945) which state that, "The judicial power shall be independent and shall possess the power to organize the judicature in order to enforce law and justice"

Further more in Article 24 (2) stated that,

"The judicial power shall be implemented by a Supreme Court and judicial bodies underneath it in the form of general courts, religious courts, military court, and state administrative courts, and by a Constitutional Court"

Judiciary force implementation also mentioned in Article 1 and 18 of the Act number 48 / 2009 concerning judiciary force (later written as Act No. 48/2009) has stated :

"Judiciary force executed by Supreme Court and judiciary body beneath it in public courts, religious courts, military court, state administrative court and a constitutional court"

These four judiciary , each has specific adjudication authority, which can be differed by Laws. Whenever the differences we see can be distinguished into two parts, first special court, to adjudicate specific case or public consist of Religious Court, Military Court and State Administrative Court. Secondly, General Court for common people, whether for civil law or even criminal.

To give further clarity over bodies or institution of judiciary force which implement judiciary above mentioned, hence author explains based on each authority of judiciary as follows :

Supreme Court (MA)

Provisions related to Supreme Court mentioned in Act Number 3 / 2009 which is second revision of Act Number 14 / 1985 concerning Supreme Court (later written as Supreme Court Act).

Supreme Court is The Highest State Court and the last state judiciary (cassation) means final verdicts given by other court lower than Supreme Court can be requested for cassation. Besides authorize to check and decide cassation request, Supreme Court also has several authority as follows ²:

Supreme Court authorizes to settle dispute related to prosecute authorize and judicial review request of court verdict which already has received absolute legal force. Supreme Court authorizes to conduct highest supervision on judicial implementation within all judicials over implementation of judiciary force.

General Court

Basic law for General Court is Act Number 8 / 2004 considering revision Act Number 2 / 1986 considering General Court (later written as Act of General Court)

General Court is one of the executors of Judiciary Power for people who seek for justice in general, it has an authority to investigate and settle criminal and civil ligation.

Judiciary power in general court conducted by Districts Court as first level and High Court that is appeal court and at top is Supreme Court.

Religious Court

Basic law that organize Religious Court is Act Number 3 / 2006 constitute of revision Act Number 7 / 1989 considering Religious Court (later written as Act of Religious Court). Referred as Religious Court is Islamic Religious Affair Court.

² Supreme Court Authority mention on Article 24 Constitution of The Republic Indonesia (UUD 1945) and on Act No.48/ 2009 Jo Act No.3/ 2009

The principles of duty and authority of Religious Court are to investigate and settle dispute between Moslem related to certain matter that shall be settle based on Islamic shari'ah. Hence its yustibel only limited to Moslem.

Judiciary power in the Religious Court conducted by Districts Religious Court, High Religious Court as level of appeal judiciary and Supreme Court as the highest court.

Military Court

Basic law of Military Tribunals is Act number 31 / 1997 considering Military Court. Judiciary power in Military Court carried out by judiciary bodies which is Military Court, High Military Court, Prime Military Court and estuary to Supreme Court. In military judiciary known as judiciary specialism such as Military Battle Court.

Judiciary of military in first level carried out by Military Court. Name, domicile and law area of Military Court appointed based on Commander Decree. Military Judiciary trial is possible to be held outside law area as long as received permission from Chief of Prime Military Court.

Establishment basic of High Military Court is Act. Name, domicile and law area of High Military Court appointed with Commander Decree. If necessary, trial implementation can be held outside law area after permission from Chief of Prime Military Court.

High Military Court has duties and authorities such as : on first level court to investigate and settle criminal which defendant is soldier or one of the defendant is the rank of major and higher, as considered in Article 9 (1 b, c and d) Act Number 31 / 1997. High Military Court authorizes to investigate and settle criminal case in appeal level with case, which already decided by Military Court .

Prime Military Court domiciled in State Capital city and its law territory consists of Indonesia. Prime Military Tribunal established based on Act.

Duty and authority of Prime Military Court is to investigate and settle criminal military case and dispute of The Armed Forces Administrative (Article 42 Act number 31 / 1997). Continued to cassation submission, appeal to Supreme Court (Article 44 (5) Act Number 31 / 1997).

State Administrative Court

State administrative court existence is regulated in Act number 51 / 2009 concerning second revision of Law Number 5 / 1986 concerning state administrative court (later written as Act of State Administrative Court).

State administrative judiciary is one of judiciary force executor for the people to seek for justice on dispute of state administrative. Administrative dispute is dispute arise in state administrative between people or civil law body with State Administrative Body, in center state or district as result of the issuance of State Administrative Decree, including employment dispute according applicable laws (Article 1 (10) Act of State Administrative Court).

Above article can be formulated as follows :

First, Administrative dispute subject is person or civil law body with body or State Administrative Officer. Second, Administrative dispute object is State Administrative Decree. State Administrative Decree refers to Article 1 (9) Act of State Administrative Court) is written stipulating issued by body or State Administrative Officer contains with law acts based on applicable law with nature of individual, final and concrete which create law effect to person or civil law body.

If someone or civil law body feels its interest was being harmful over State Administrative provision as mentioned on Article 1 (9) Act of State Administrative Court, then its given right to submit written lawsuit to an authorize court to cancel or to abort the verdict to be invalid or illegitimate.

To solidify the lawsuit then it shall be provide with rigid reason. Article 53 (2) provides reasons which can be use as lawsuit base as follows :

- a. Sued administrative verdict contradict to applicable laws.
- b. Sued administrative verdict contradict to good governance general norms.

Courts implement judiciary power in State Administrative Courts are District State Administrative Court, High State Administrative Court and at the top Supreme Court.

State administrative dispute besides able to be accomplished through court there is also dispute that can be dissolved earlier through administrative effort as mentioned in Article 48 of State Administrative Act as follows :

- (a) In the event of State Administrative Body or Officer with given authority by or based on Laws and regulations to settle regularly of certain state administrative disputes, then those disputes shall be dissolved by available administrative effort.
- (b) New court authorizes to investigate, decide and settle state administrative dispute as mentioned in verse 1 if all of administrative efforts already being use.

Based on Article 48 by its content and explanation, by positive law, in this matter State Administrative Court, settlement of administrative dispute can be conducted by : first, administrative effort, second, through court.

Based on above description, it is shown that each court has different absolute competition (adjudicate authority), seen from type of case, case subject and its object.

As Article 21 Act No. 48/2009 (Act of Judiciary Power,) each judiciary bodies above in organization, administrative and financial lies under the rule of Supreme Court.

On its function to run justice, each judiciary needs several regulations to be used as guidance, it thereby complies to its judiciary characteristic which is abstract rule with public binding, hence in settle each judiciary case also has its own regulation to be used as reference to resolve a case, whether material or formal provision. Formal law or mostly called law of procedure or process law regulates law enforcement with materials determined in law material³. Judiciary without material law will paralyzed because not knowing what will be incarnated, in contrary judiciary without law of procedure will be wild since there is no clear limits on implementing its authority⁴.

Formal law as law of procedure, contains elements of material and formal. Material element of Law of procedure in law (Dutch) called "*actienrecht*" (*substantive law of procedure*), is provision regulates law relation due to proceeding.

Formal law material regulated on ways that need to be undertaken on proceeding, that is regulate on way to use authority like determine on material element, such as how to raise an appeal⁵.

According to above mentioned, it is shown that law of procedure also describe procedure or dispute settlement mechanism from each existing judiciary. On settling dispute, each judiciary has differ mechanism with each other, but if reviewed from law effort provided by four judiciaries above, it is appear the similarity such as first level of law effort, appeal law, cassation also extraordinary law effort of judicial review.

Besides those four judiciaries, inside the fourth judiciary it is possible to form specific judiciary bodies upon Laws, such event described in Article 27 Act of Judiciary Power which state :

"Specific judiciary only can be formed inside one of judiciaries who situated inside judiciary under Supreme Court as mentioned in Article 25"

Speaking about specific criteria of Court, Paulus Effendie Lotulung argues that specific nature can be based on specific authority to judge (competency), type of cases, law of procedure or specific process case⁶.

On April 12, 2002, born new judiciary adds judiciary amount in Indonesia, Tax Court. Tax Court established based on Act Number 14 / 2002, state gazette year of 2002 Number 27 concerning Tax Court. Tax Court is judiciary body that implement judiciary power to taxpayer or tax bearer who searches for justice over tax dispute. The born of Tax Court at the beginning has juristic problem due to its not proclaims itself as specific from four Courts which is already being signal by Article 27 Act of Judiciary Power mentioned above. That problem later resolved with revision of Act of Judiciary Power Number 4 / 2004 Article 15 that gives explanation Tax Court is example of specific court entering on State Administrative Court. Improvement of Tax Court position by the end is strengthen with few Laws revision whether Laws concerning State Administrative Court or even Laws concerning public provision and Tax procedure that acknowledge Tax Court as specific judiciary among State Administrative Court.

There is only one Tax Court and located in State Capital city. Court technical coaching for Tax Court conducted by Supreme Court, while other coaching such as organization, administration and financial for Tax Court conducted by Ministry of Finance.

As judiciary body, tax court has power describe as follows :

1. Tax court has duty to investigate and settle tax dispute
2. Tax court on appeal level only investigate and settle disputes over objection letter verdict, except determine by applied laws.
3. On lawsuit, tax court investigates and settles dispute among issues that can be filed based on Article 23 (2) Act 28/2007.

³ Sudikno Mertokusumo, (1984),*Bunga rampai Ilmu Hukum*, Liberty, Yogyakarta, hlm. 201.

⁴ Sjahrhan Basah,(1989) , *Eksistensi Tolok Ukur, Badan Peradilan Administrasi Di Indonesia*, Bandung, 31.

⁵ *Ibid*, 82

⁶ Paulus Effendie Lotulung, (2000), *Wewenang Pengadilan Dalam Penanganan Sengketa Pajak*, Berita Pajak No. 1410 / Tahun XXXII, 41-42

Tax Court is first and last level to investigate and settle tax dispute.

As other procedural law, in Tax Court procedure also contained tax dispute settlement mechanism. In that procedure, as implicit shows that tax dispute settlement knows administrative effort, which is objection effort. Tax dispute that can be settled through objection is dispute due to taxpayer disagree to Notice of Tax Assessment and to taxation by third party based on provisions of laws. If taxpayer perceive disadvantage over Notice of Tax Assessment released by fiscus, or on taxation by third party then it deserves to propose appeal to the officer who released it.

Over fiscus's verdict, if taxpayer (juktiebelen) still unsatisfied, then deserve to propose appeal to Tax Court after fulfilling the provisions. Besides above dispute over appeal verdict (appeal verdict is verdict over appeal submitted by taxpayer due to Notice of Tax Assessment (SKP)), dispute between taxpayer with fiscus can occur on effect of tax collection and other resolutions released by fiscus. Toward implementation of Distress Warrant, Confiscation Letter or Notice of Auctions and other resolutions released by fiscus as described above by author, taxpayer has a right to propose claim to Tax Court enclose with requirements determined by Laws.

As duty and authority of Tax Court, court authorize to investigate and settle tax dispute caused by submission of appeal through Tax Court stipulated firmly in law of Procedure Article 34 to 88 Act Number 14 / 2002.

Compared to judiciary system in general, tax dispute settlement mechanism is similar to administrative dispute settlement mechanism applied on State Administrative Court, one of its similarities in Law which regulate state administrative judiciary also known as administrative effort. Administrative effort presence by state administrative law indeed admitted its presence as administrative dispute settlement.

Even though there are similarities with State Administrative Court, nevertheless its has several terms that differ tax dispute settlement with dispute settlement of state administrative and even with judiciary in general related to Article 77 that Tax Court verdict is final decision with fixed final power. This provision if referred to provision of Article 31 (2) and 3 Act of Tax Courts shows tax dispute settlement has specific mechanism that different with other dispute mechanism. Tax court position when dealing with dispute over objection effort hold the position as appeal institution, yet when dealing with law suit , Tax Court position which is first and last level court, it can be concluded that there are no appeal over dispute verdict.

Term of appeal over objection verdict also becomes disambiguate refer to judiciary system in Indonesia since term of appeal actually is advance effort of law from first level, meanwhile in tax court appeal is advance effort from administrative effort (tax dispute settlement by fiscus).

On the other hand in dispute tax settlement does not recognize cassation act of law and only identify extraordinary act that is judicial review. The specification on tax dispute settlement like this is intended for appeal institution and cassation will not be referred as tax payment suspension considering the importance of tax role as state fund source.

The absence of appeal tax effort and cassation can be happened according to Article 23 and 26 Act of Judiciary Power. Article 23 Act of Judiciary Power stipulates "Over court verdict in appeal level it can be proposed for Supreme Court by related parties except other mentioned. However if related to legal protection especially to taxpayer where in this concept desired in occurrence of balance in right and obligation, is it thereby has comply with the concept?

According to Sjahrhan Basah, "In a state, relation between state administrative (fiscus) and citizen (taxpayer) will be seen, state administrative has duty and authority, while citizen has right and obligation⁷. Tax collection on citizen is an authority owned by state (fiscus), is acting with accordance to power relies on state. Fiscus has an authority to enforce or to grant administrative sanction if taxpayer unable to comply their tax obligation. On the other side, the existence of inherent right on citizen cannot be released from law protection that has to be provided to them, since missing of one of elements of right then it is impossible for right to be incarnated without any law protection⁸. One of many ways accordance to providing law protection for taxpayer is by providing access to search for law enforcement to the highest level court.

Tax Courts existence as institution that implement judiciary power were requested to be able to provide law protection especially to taxpayer or tax bearer to search justice over tax dispute, among other with fast, quick and affordable trials. Quantity of Tax Court which only one obviously not in line with this principle considering taxpayer domicile nor only from Jakarta and that condition will reduce taxpayer interest from outside Jakarta to carried out for law enforcement to Tax Court. The lack of taxpayer interest can be understood considering cost and time loss.

Related to that, in 2013 Tax Court gave solution with launched court outside tax court domicile (outside Jakarta) that is in Yogyakarta and Surabaya, yet it cannot be considered as accurate solution since Indonesia taxpayer spread in 34 provinces. According to research done by author, if shown from recapitulation of submission of appeal and dispute in 2012 shown there are 7,325 submissions. From these submissions, only 1,150 cases request for outside trial, with description of 900 cases held in Surabaya and 250 cases held in Yogyakarta⁹.

⁷ Sjahrhan Basah, (1992) , *Perlindungan Hukum Terhadap Sikap Tindak Pejabat Administrasi Negara*, Bandung, 2

⁸ Soerjono Soekanto, (1989) *Kegunaan Sosiologi Hukum Bagi Kalangan Hukum*, PT. Citra Aditya Bakti, Bandung, 52

⁹ Summary of The Submission of Appeal , (2012) , Source Tax Court

Such condition if seen from principle of judiciary implementation, shall not comply with existing principle of judiciary implementation, whereas ideally the first level of court located in each district or city government while appeal court located in province.

As judiciary institution, Tax Court also requested to be independent judiciary free from other party intervention, therefore able to create an objective decision. Objectivity of Tax Court becomes doubtful when it is related to coaching of organization, administration and finance of Tax Court which is conducted by Ministry of Finance. As judiciary institution, one of requirements that need to be complied is independency of the institution, apart from other power influence or intervention. Coaching of organization, administration and finance of Tax Court which is conducted by Ministry of Finance, feared to be able to open executive intervention over released verdicts by Tax Court Institution.

Laws of Judiciary Power Principles firmly stated that to conduct judiciary to uphold the law and justice, judiciary power is state authority that independent from other intervention. In event to manifest that, one of ways is to carry out strict separation between judicative and executive position. This separations carried out by alter coaching of administrative and financial judiciary bodies that earlier under each judiciary (Article 11 Act Number 14 / 1970) to be under Supreme Court power (Article 11 Act Number 35 / 1999). This alternation applied since coaching during this time carried out by executive considered provide chances to the authority to intervene inside trial process also the growing of collusion and negative practices in trial process. This provision also stressed on Article 21 Act Number 48/2009 that stipulated organization, administrative and Supreme Court financial and other judiciary body under it is under Supreme Court power.

Tax court objectivity also becomes doubtful when related to neutrality if judges, refer to judge majority of Tax Court is appointed from Ministry of Finance officer that being off duty or pension. There are concerns to judge independency if Tax Court judge dominated by ex-officer of Ministry of Finance¹⁰. With that domination can raise subjective verdict and only advantage origin institution of the judge, it thereby mentioned by Sutan Remy Syahdeni¹¹.

Domination of Tax Court judge from Ministry of Finance ex-employees, that most of Tax Court judges is appointed from Ministry of Finance ex-employees related to provision in Article 9 F Act of Tax Court that judge must holds expertise in tax and graduate from Law or any other. The possibility of judge that not graduate from Law school raise the fact that Tax Court judges are dominated by person without Law background, this reality already been admitted by previous Chairman of Tax Court Abdullah Anshari Ritonga. Related to that, according to Anshari Ritonga, recruitment of Tax Court judge nowadays prioritizes to Law graduate with tax expertise.

From abovementioned Tax Court existence shown as judiciary force executor has its own regulation differ with other judiciary, whether related to dispute settlement mechanism as well as regulation related to the institution itself.

CONCLUSION:

As judiciary body runs judiciary power, provisions to regulate about tax court in fact has many weaknesses, therefore several changes needed to manifest compliance court to Indonesian judiciary system that able to provide law protection. Those changes are related to tax dispute settlement mechanism. In tax dispute settlement to provide larger law protection and compliance to judiciary system in general, author recommend to establish Tax Court level I, Tax Court Level II, Cassation and Judicial Review. Other changes relate to institution improvement, to secure law protection especially to taxpayer then need additional amount of Tax Court represent each district/city and province. In accordance to provide objectivity insurance of verdict, coaching of organization, administration and financial of Tax Court shall be conducted by Supreme Court. Likewise requirement to become Tax Court judge should be Law graduate with expertise in taxation.

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¹¹ *ibid*