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## LEGAL REMEDIES FOR TAX DISPUTE RESOLUTION IN INDONESIA

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### **Abstract**

Tax disputes are one of the complex issues in tax law that often arise between taxpayers and tax authorities. Tax dispute resolution ensures fairness and legal certainty in the tax system. This abstract illustrates the general approach used in tax dispute resolution. This abstract discusses several necessary steps or legal remedies in resolving tax disputes. First is the informal approach stage, where taxpayers and tax authorities seek to reach an agreement through dialogue and negotiation. This approach involves meeting between the disputing parties to find a solution acceptable to both parties. This informal approach is an essential first step to avoid escalating disputes. Furthermore, the informal approach does not work. In that case, the disputing party may apply for tax dispute resolution to a more formal dispute resolution body, in this case, the Tax Court or the Tax Dispute Resolution Body. These institutions have structured dispute resolution procedures conducted by independent and neutral parties. This process involves the presentation of legal arguments and evidence from both parties as well as how the application of tax law applies in the field.

**Keywords:** Remedy, Settlement, dispute, tax

### **INTRODUCTION**

Tax disputes are a problem that often arises in the context of tax systems in various countries. When taxpayers or authorities have different perceptions regarding the interpretation of tax law, the amount of tax payable, or the use of other taxation facilities, then tax disputes can arise. Tax dispute resolution ensures fairness and legal certainty in the tax system. Tax dispute resolution involves a series of processes to resolve disputes between taxpayers and authorities. Depending on the tax system and applicable laws, tax dispute resolution procedures may vary from country to country. However, several tax dispute resolution mechanisms are generally commonly used in many countries.

The role of law and the principle of justice is vital in the resolution of tax disputes. A clear and transparent tax system can help reduce tax disputes, while the principle of fairness ensures that decisions taken take into account the rights and obligations of all parties involved. It is essential for parties involved in tax disputes, taxpayers and tax authorities, to understand tax rules and dispute resolution procedures well. The involvement of tax law experts or tax consultants can also help in obtaining satisfactory results. Effective tax dispute resolution can avoid negative consequences, such as high costs, reputational losses, and disruption to business activities. Therefore, efforts to resolve tax disputes should be carried out in good faith and in the spirit of cooperation between the two parties.

One common tax dispute resolution mechanism is through an administrative process. Typically, taxpayers and authorities will negotiate and mediate to reach a mutually beneficial agreement. If the administrative process is unsuccessful, the disputing party may file its case with the tax court or an administrative court specializing in tax disputes. This court has

jurisdiction to decide tax disputes and render binding legal decisions. In addition to administrative and court proceedings, some countries provide alternative tax dispute resolution, such as tax arbitration. Tax arbitration is a dispute resolution process involving a neutral third party appointed to decide a tax dispute based on evidence and arguments presented by each party. Arbitration awards are usually binding and cannot be appealed to a court.

Settlement of tax disputes can also involve international cooperation between countries to avoid double taxation disputes. Many countries have bilateral or multilateral tax treaties that provide for settling tax disputes involving more than one jurisdiction. This helps avoid conflicts and uncertainties arising from double tax disputes. Based on the brief description above, in this **article, the author considers it necessary to explore the Legal Remedies for Tax Dispute Resolution in Indonesia.**

## RESEARCH METHODS

19

The research method used to analyze the application of taxpayer rights in Indonesia based on the formulation of the organization for economic cooperation and development is to use normative legal research methods, namely by examining written law from various aspects, theories, history, philosophy, comparison, structure, composition, scope, material, consistency, article by article, formalities and binding forces and legal language used (Sunggono, 2005). The type of approach used is a normative approach that examines research through laws and regulations (Sunggono, 2005). The techniques for collecting sources of legal materials and legal material analysis techniques carried out are (1) the Snowball method, namely legal materials collected through literature and from the literature, several supporting sources are taken; and (2) Techniques for processing and analyzing legal materials in a systematic and structured way against legal materials, classifying legal materials to facilitate analysis and construction work. The qualitative analysis technique is an analytical technique for analyzing descriptively legal materials.<sup>1</sup>

## DISCUSSION

Tax disputes are disputes arising in the field of taxation between Taxpayers or Tax Insurers and authorized officials as a result of the issuance of decisions that can be appealed or filed with the Tax Court based on tax laws and regulations, including claims over the implementation of collection based on the Tax Collection Law by Forced Letter. Article 1 of Law Number 14 of 2002 concerning the Tax Court defines tax disputes as disputes arising in the field of taxation between Taxpayers or Tax Insurers and authorized officials as a result of the issuance of decisions that can be appealed or filed with the Tax Court based on tax laws and regulations.

Based on this definition, the characteristics of tax disputes can be known as follows:

- a. Disputes arising within the scope of tax administration.
- b. The parties to the dispute are WP or Tax Insurers, with DGT as the institution/official authorized to manage tax administration.

- c. There is a state administrative decision that can be appealed or filed as the subject of dispute.
- d. The dispute resolution forum chosen to resolve disputes (choice of forum) is the Tax Court.
- e. Legal references used to resolve disputes (choice of law) are laws and regulations in taxation.

To the definition above, legal remedies that Taxpayers can take to resolve tax disputes include; (1) Objection; (2) Appeals; (3) Claims; (4) Judicial Review.

## A. Objection

Article 25, Article 26, and Article 26A of the KUP Law and PMK 9/2013 to PMK 202/2015 do not explicitly describe the definition of objection. However, in simple terms, the objection is an effort that can be taken by taxpayers who feel dissatisfied with a tax assessment imposed on them or a lawsuit by a third party. In this case, the Taxpayer can file. Object to the Director General of Taxes through the Tax Service Office where the Taxpayer concerned is registered.

### 1. Scope of Objection

Taxpayers can file an objection only to the Directorate General of Taxes on the following:

- a. Underpayment Tax Assessment Letter (SKPKB),
- b. Additional Underpayment Tax Assessment Letter (SKPKBT),
- c. Overpaid Tax Assessment Letter (SKPLB),
- d. Zero Tax Assessment Letter (SKPN),
- e. They withhold or collect taxes by third parties based on tax laws and regulations provisions.

Taxpayers can only object to the material or content of the tax assessment letter, which includes the amount of loss based on the provisions of tax laws and regulations, the amount of tax, or the material or content of tax withholding or collection. In the event that there are grounds for objection other than regarding the material or content of the tax assessment letter or tax withholding or collection, such reasons are not considered in the resolution of the objection.

### 2. Requirements for Filing Objections

There are several requirements for submitting objections, including:

- a. Submitted in writing in Indonesian;
- b. Declare the amount of tax owed or the amount of tax withheld or collected, or the amount of loss according to the calculation of the Taxpayer accompanied by the reasons on which the calculation is based;
- c. One objection is filed only for 1 (one) tax assessment letter, for 1 (one) withholding tax or for 1 (one) tax collection;

- d. The Taxpayer has paid the accrued tax at least the amount approved by the Taxpayer in the final discussion of the examination results or the final discussion of the verification results before the Objection Letter is submitted;
- e. Submitted within 3 (three) months from the date of:
  - a tax assessment letter is sent; or
  - withholding or collection of taxes by third parties;
  - unless the Taxpayer can show that the period cannot be fulfilled due to circumstances beyond the Taxpayer's control;
- f. The Taxpayer signs the Objection Letter, and if a non-Taxpayer signs the Objection Letter, the Objection Letter must be accompanied by an extraordinary power of attorney.<sup>2</sup> as referred to in Article 32, paragraph (3) of the KUP Law<sup>3</sup>; and
- g. Taxpayers do not apply as referred to in Article 36 of the KUP Law.<sup>4</sup>

Suppose the Objection Letter submitted by the Taxpayer needs to meet the requirements as referred to in letter a, letter b, letter c, letter d, or letter f. In that case, the Taxpayer may improve the Objection Letter and resubmit it before 3 (three) months are exceeded. Moreover, the date of submission of the corrected Objection Letter is the date the Objection Letter is received.

If the Taxpayer submits an objection, the period of repayment of accrued tax that is not approved in the final discussion of the examination results or the final discussion of the verification results as stated in the Underpaid Tax Assessment Letter and Additional Underpaid Tax Assessment Letter, and has not been paid at the time of filing the objection, is suspended up to 1 (one) month from the date of issuance of the Objection Decree.

### 3. Objection Resolution Flow

**The flow of tax dispute resolution through objection legal remedies is as follows:**

- a. In the process of resolving objections, the Director General of Taxes is authorized to:
  - a) Borrow books, records, data, and information in hardcopy and/or softcopy form to Taxpayers related to disputed material through submission of a request letter for borrowing books, records, data, and information;
  - b) Ask Taxpayers to provide information related to the disputed material through the submission of a request letter;
  - c) Request information or evidence related to the disputed material to third parties who have a relationship with the Taxpayer through the submission of data requests and information letters to third parties;
  - d) Review the Taxpayer's premises, including other necessary premises;
  - e) Discuss and clarify the necessary matters by summoning the Taxpayer through the submission of a summons;

- 1) The summons letter shall be sent by 10 (ten) working days before the date of discussion and clarification of tax disputes.
  - 2) Discussion and clarification are set forth in the minutes of discussion and clarification of tax disputes.
- f) Conduct examinations for other purposes to object to obtaining objective data and/or information that can be used as a basis for considering objection decisions.
- b. Taxpayers must fulfill the loan and/or request by 15 (fifteen) working days after sending the loan request letter and/or information request letter.
- c. If up to 15 (fifteen) working days after the date, the loan request letter and/or information request letter is sent expires, the Taxpayer does not lend part or all of the books, records, data, and information and/or does not provide the requested information, the Director General of Taxes submits:
- The second loan request letter; and/or
  - The second letter of inquiry.
- d. Taxpayers must fulfill the second loan and/or request by 10 (ten) working days after the date the loan letter and/or second request is sent.

#### 4. Objection Resolution Timeframe

The timeframe for resolving objection remedies is as follows:

- a. The Director General of Taxes, within a maximum period of 12 (twelve) months from the date the Objection Letter is received, must give a decision on the objection submitted.
- b. The period is calculated from the date the Objection Letter is received until the Objection Decision Letter is issued.
- c. If a Taxpayer files a lawsuit to the Tax Court on a letter from the Director General of Taxes stating that the Taxpayer's objection is not considered, the period of 12 (twelve) months is suspended, starting from the date of sending the letter from the Director General of Taxes to the Taxpayer until the Director General of Taxes receives the Tax Court Lawsuit Decision.
- d. Suppose the above period has been exceeded and the Director General of Taxes does not give a decision on the objection. In that case, the objection submitted by the Taxpayer is considered granted. The Director General of Taxes issues an Objection Decree by the submission of the Taxpayer's objection within a maximum period of 1 (one) month since the period of 12 (twelve) months expires.

#### 5. Revocation of Objection

- a. Taxpayers can withdraw objections submitted to the Director General of Taxes before receipt of the notification letter to attend (SPUH) by the Taxpayer.

- b. Revocation of objection submission is carried out through the submission of an application by fulfilling the following requirements:
- The application must be submitted in writing in Indonesian and may state the reason for the revocation;
  - The Taxpayer signs the application letter, and if the Taxpayer does not sign the application letter, the application letter must be accompanied by an extraordinary power of attorney;
  - The application letter must be submitted to the Tax Service Office, where the Taxpayer is registered, with a copy to the Director General of Taxes and the Head of the Regional Office of the Directorate General of Taxes, who is superior to the Head of the Tax Service Office.
- c. The Director General of Taxes must provide an answer to the request for revocation of the objection in the form of an approval letter or rejection letter.
- d. Taxpayers who withdraw objections that have been submitted to the Director General of Taxes cannot apply for the reduction or cancellation of incorrect tax assessment letters.
- e. If the Taxpayer withdraws the objection, the Taxpayer is deemed not to have filed an objection.
- f. If the Taxpayer is deemed not to have objected, the tax accrued in the SKPKB or SKPKBT that is not approved in the Final Discussion of the Examination Results or the Final Discussion of the Verification Results becomes a tax payable from the date of issuance of the SKP.

## 6. Additional Terms

Taxpayers who raise objections cannot apply:

- a. Deduction, elimination, and cancellation of administrative sanctions in the form of interest, fines, and increases owed by the provisions of tax laws and regulations;
- b. Reduction or cancellation of incorrect tax assessment letter; or
- c. Cancellation of the tax assessment letter from the results of the examination or verification carried out without:
- Submission of Notification of Examination Results or Notification of Verification results; or
  - Final Discussion of Examination Results or Final Discussion of Verification Results with Taxpayers.

## B. Appeal

If the Taxpayer is still unsatisfied with the Objection Decree on the objection filed, the Taxpayer can still appeal to the Tax Court Agency. The Appeal is a legal remedy that can be

taken by a Taxpayer or Tax Insurer against a decision that can be appealed based on applicable tax laws and regulations. Appeal Decision is the Decision of the tax court on an appeal against an Objection Decree submitted by a Taxpayer.

### 1. Appeal Requirements

- a. Taxpayers can appeal only to the tax judiciary against the Objection Decree.
- b. The application shall be submitted in writing in Indonesian with clear reasons by 3 (three) months since the Objection Decision Letter is received and accompanied by a copy of the Objection Decree.
- c. Against 1 (one) Decision, submitted 1 (one) Appeal Letter.

### 2. Appealing Parties

- a. Appeals can be filed by the Taxpayer, his experts, heirs, an administrator, or his legal representative.
- b. If the Appellant dies during the Appeal process, his heirs may continue the Appeal, the legal representatives of his heirs, or the beneficiary if the Appellant goes bankrupt.
- c. If, during the Appeal process, the Appellant merges, splits/expands businesses, or liquidates, such applications may be continued by the party receiving responsibility for such merger, merger, split/expansion of businesses, or liquidation.

### 3. Revocation of Appeal

An appeal can be submitted to the Tax Court. Revoked appeals are removed from the dispute list by:

- Determination of the Chairman of the affidavit of revocation is submitted before the hearing is held;
- The Decision of the Tribunal/Single Judge thorough examination of the affidavit of revocation is submitted in the hearing with the consent of the Appellant.
- Appeals that have been revoked through an injunction or judgment cannot be refilled.

### C. Lawsuit

A lawsuit is a legal remedy that a Taxpayer or Tax Insurer can take against the implementation of Tax collection or against a decision that can be filed in a Lawsuit based on applicable tax laws and regulations. Lawsuit Decision is the Decision of the tax court on claims against matters that, based on the provisions of tax laws and regulations, can be filed as a lawsuit.

#### 1. Application Requirements

- a. The Lawsuit is filed in writing in Indonesian to the Tax Court.
- b. The period for filing a Claim against the implementation of Tax collection is 14 (fourteen) days from the collection date. This period is not binding if the said period cannot be fulfilled due to circumstances beyond the control of the plaintiff. The extension



<sup>14</sup> of the period is 14 (fourteen) days from the end of the circumstances beyond the plaintiff's control.

- c. The period for filing a Claim against a Decision other than a Claim is **30 (thirty) days** from receipt of the challenged Decision. This period is not binding if the said period cannot be fulfilled due to circumstances beyond the control of the plaintiff. The extension of the period is 14 (fourteen) days from the end of the circumstances beyond the plaintiff's control.
- d. Against 1 (one) billing implementation or 1 (one) Decision filed 1 (one) Lawsuit Lawsuit Letter.
- e. The Lawsuit is accompanied by clear reasons, stating the date of receipt, the execution of the billing, or the Decision being challenged and accompanied by a copy of the document being sued.

## **2. Parties Who Can File a Lawsuit**

A lawsuit can be filed by the plaintiff, his heirs, an administrator, or his legal representative accompanied by clear reasons, stating the date of receipt, execution of billing, or the Decision being challenged and accompanied by a copy of the document being sued. If, during the Lawsuit process, the plaintiff dies. His heirs can continue the Lawsuit, the legal representatives of his heirs, or his heirs in the event of bankruptcy plaintiffs. If, during the Lawsuit process, the plaintiff merges, merges, splits/expands the business, or liquidates, the application can be continued by the party who accepts responsibility for the merger, merger, split/expansion of the business, or liquidation.

## **3. Objects That Can Be Filed A Lawsuit**

- a. Execution of Warrants, Warrants to Execute Seizures, or Announcement of Auctions;
- b. Preventive decisions in the framework of tax collection;
- c. Decisions relating to the implementation of tax decisions, other than those stipulated in Article 25 paragraph (1) and Article 26;
- d. Issuance of a Tax Decree or Objection Decree, which in its issuance is not by the procedures or procedures that have been regulated in the provisions of tax laws and regulations.

## **4. Retraction of Lawsuit**

- a. Against the Lawsuit, a statement of revocation can be filed with the Tax Court.
- b. Revoked claims are removed from the dispute list by:
  - Determination of the Chairman of the affidavit of revocation is submitted before the hearing;
  - The Decision of the Tribunal/Single Judge thorough examination of the affidavit of revocation is submitted after the hearing with the defendant's consent.

- c. A lawsuit dismissed through the determination of the chairman or the Decision of the Tribunal/Single Judge cannot be refiled.

#### D. Judicial Review

If the Taxpayer is still unsatisfied with the Appeal Decision, the Taxpayer still has the right to apply for a Review by the Supreme Court.

##### 1. Application Requirements

1. An application for judicial review can only be submitted 1 (once) time to the Supreme Court through the Tax Court.
2. The application for judicial review does not suspend or stop the implementation of the Decision of the Tax Court.
3. The Procedural Law applicable to the judicial review examination is the procedural law of the judicial review examination as referred to in Law No. 14 of 1985 concerning the Supreme Court, except as expressly stipulated in the Tax Court Law.

##### 2. Application Period

The timeframe for applying for judicial review is differentiated based on the reason for filing the review.

No.	Judicial review can only be requested based on the following reasons:	Timeframe for applying for Judicial Review:
1.	If the tax court's Decision is based on lies or deceptions of the opposing party, that is known after the case is decided or based on evidence later declared valid by the criminal judge.	Submitted no later than <b>3 (three) months</b> from the discovery of lies or deception or since the Judge's Decision of the criminal court acquires permanent legal force.
2.	If there is essential and decisive new written evidence, which, if known at the trial stage in the tax court, will result in a different decision.	They were submitted <b>3 (three) months</b> after the discovery of evidence letters. The date of discovery must be declared under oath and certified by the authorized official.
3.	If a thing has been granted that is not demanded or more than what is demanded, except those decided under Article 80 paragraph (1) point b and c. The contents of Article 80, paragraph (1) letters b and c: The Decision of the Tax Court can be: 1. grant in part or whole; 2. increase the Taxes due;	Submitted by <b>3 (three) months</b> after the Decision is sent.
4.	If a part of the claim has yet to be decided without considering the causes.	It was submitted <b>3 (three) months</b> after the Decision was sent.
5.	If there is a decision manifestly not by the applicable laws and regulations provisions.	It was submitted <b>3 (three) months</b> after the Decision was sent.

### 3. Decision Period

The Supreme Court examines and decides the application for judicial review provided that:

1. Within 6 (six) months from the receipt of the review application by the Supreme Court taken, a decision, if the Tax Court decides on ordinary procedural examination;
2. Within 1 (one) month since the Supreme Court received the application for judicial review, a decision has been taken if the Tax Court decides on a quick event examination.
3. The verdict on the application for judicial review must be pronounced in a hearing open to the public.

### 4. Revocation of Application

A request for judicial review may be withdrawn before it is decided, and if it has been withdrawn, it cannot be filed again.

### E. Other Dispute Resolution

Beyond the limitations stipulated in the Tax Court Law and to provide a sense of fairness, Indonesian tax provisions provide a vast space for taxpayers to choose a dispute resolution forum based on the complexity of the disputed material and the time and costs allocated. Article 16 and Article 36 of the KUP Law provide options for resolving tax disputes through the mechanism of "administrative court (quasi-judiciary)" through the process of rectifying, reducing or eliminating administrative sanctions, reducing or canceling administrative decisions (Tax Assessment Letters and Tax Bills) that are incorrect and cancellation of tax audit results carried out without submission of notification letters of audit results or final discussion with Taxpayers.<sup>5</sup>

Another dispute resolution forum taxpayers can take is to follow legal procedures (pro justitia) regulated in Articles 25 and 27 of the KUP Law and Article 77 of the Tax Court Law. Through this mechanism, taxpayers can file an objection to the Director General of Taxes against an administrative decision (tax assessment letter and withholding or collection of tax by a third party) which an appeal process can follow in the tax court and, as an extraordinary legal remedy, judicial review in the Supreme Court. The last dispute resolution forum that can be pursued by taxpayers, especially for tax disputes related to international investments and transactions, is a dispute resolution mechanism regulated in international agreements in the fields of taxation (Double Taxation Avoidance Agreement / P3B), investment (Bilateral Investment Treaty / BIT), and free trade (Free Trade Agreement / FTA) through mutual agreement procedures (Mutual Agreement Procedure (MAP), consultation, and international arbitration.

Article 57 of Government Regulation Number 74 of 2011 concerning Procedures for the Implementation of Tax Rights and Fulfillment of Obligations stipulates that Taxpayers can take the mechanism of "administrative court" or legal procedures with international agreements simultaneously (multiple choice of forums) until the hearing has been declared sufficient by the Tax Court. However, taxpayers cannot go through the "administrative court" mechanism and legal procedures for the same tax dispute material (fork-in-the-road approach). Various tax

dispute resolution mechanisms are expected to provide extensive opportunities for taxpayers to obtain fair and efficient dispute resolution. Implementing a fork-in-the-road approach guarantees no accumulation of tax disputes in specific dispute resolution mechanisms due to duplication of WP applications. Nevertheless, today most WPs prefer dispute resolution through "administrative court" mechanisms or legal procedures.

Resolution of tax disputes through international arbitration is unpopular due to the high costs of dispute registration and lawyer services and the absence of international arbitration institutions that specialize in handling tax disputes, so WPs must register their disputes with arbitrators who handle trade and investment disputes in general, such as the International Centre for Settlement of Investment Disputes and United Nations Commission on International Trade Law. However, in the future, the resolution of tax disputes through international arbitration will receive much attention along with the implementation of Base Erosion and Profit Shifting Action 14 through the Multilateral Instrument, which mandates more effective dispute resolution, including a clause to apply mandatory binding arbitration in the Mutual Agreement Procedure (MAP) process.

## CONCLUSION

Resolving tax disputes in Indonesia involves various stages, ranging from efforts to resolve through informal communication between taxpayers and tax authorities to the trial stage in the tax court or general court. One way of resolving tax disputes is through mediation or negotiation mechanisms between taxpayers and tax authorities. Mediation is an attempt to reach a peace agreement through the help of a neutral third party. Negotiation is a process of bargaining between two parties to reach an acceptable agreement. In addition, there is also an alternative to tax dispute resolution, namely through arbitration, where the disputing parties agree on dispute resolution by an independent and neutral third party. The arbitral award is usually final and binding on both parties. If settlement through mediation, negotiation, or arbitration is fruitless, the tax dispute may be referred to a tax court or a general court. In court, the disputing parties will present relevant legal arguments and evidence, and the judge will give the final Decision.

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PAGE 8

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PAGE 9

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PAGE 10

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PAGE 11

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PAGE 12

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