

# Authority of Judicial Bodies in Settling Tax Disputes in Indonesia

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## Abstract

Tax is the main source of state revenue. Since 1984, tax collection in Indonesia has adopted a self-assessment system. In the practice of tax collection, disputes often occur between the Tax Authorities and Taxpayers regarding differences in the calculation of tax payable. The judicial body authorized to handle tax disputes in addition to the Tax Court, can also be resolved in other courts. The problems that arise are what causes tax disputes and how is the authority of the judicial body in resolving tax disputes. This study aims to analyze the authority of the judicial body in resolving tax disputes using the normative legal method. The results of the study show that tax disputes occur because there are differences of opinion between Taxpayers and the Tax Authorities in a legal and/or evidentiary manner. The Tax Court is only authorized to resolve disputes over Tax Authorities' Decisions and tax collections that can be appealed/lawsued. Tax disputes related to Tax Authorities' Decisions that are detrimental to Taxpayers that are not specifically regulated are resolved in the State Administrative Court, while tax collection disputes in the form of hostage-taking of Taxpayers and third-party goods that are confiscated are the authority of the District Court. In conclusion, the authority to resolve tax disputes is not only resolved in the Tax Court, but also has the authority of the State Administrative Court and the District Court.

**Keywords:** *Tax Dispute, Judicial Authority, Dispute Resolution.*



## A. INTRODUCTION

Indonesia is a country rich in natural resources, culture, customs, religion and natural beauty, as well as the diversity of its population which is wrapped in the motto "Bhinneka Tunggal Ika" which means different but still one (Widhia, 2023), but this diversity has not been optimized such as natural wealth and natural resources as the main source of state revenue. The main state revenue in the last 10 (ten) years was 73 - 82% from tax revenue (Gojali & Tarmidi, 2023) and 77% in 2023 (Ministry of Finance, 2024). Increasing tax revenue is very important for Indonesia to stabilize the State Budget (APBN), so the task of the Ministry of Finance Cq Directorate General of Taxes is very large in overseeing state revenues. Not a few in the field there are disputes between the Tax Authorities and Taxpayers (Aji et al., 2022).

Indonesia as a nation governed by the rule of law (rechtsstaat), requires all individuals and institutions to adhere to legal provisions. Article 23A of the 1945 Constitution stipulates that tax collection must be governed by law (Indonesian Constitution 1945). This requirement signifies that the process of tax collection is determined collectively by the people through their representatives in the People's Representative Council (DPR) and serves as a safeguard against arbitrary actions by authorities. Misunderstandings and differing perspectives often lead to tax disputes between tax collectors (Fiscus) and taxpayers. These issues are closely tied to Indonesia's self-

assessment tax system, which entrusts taxpayers with the responsibility to independently calculate, pay, and report their taxes (Anggara, 2016; Asrama, 2006). The Fiscus, in turn, monitors these reports to ensure compliance with applicable tax regulations. During the tax collection process, disagreements frequently arise between taxpayers and the Fiscus, who act as state-mandated tax collectors. These disagreements often escalate into tax disputes. The Ministry of Finance recorded more than 12,000 dispute files submitted to the Tax Court (PP) in the last 5 (five) years and a total of 12,714 tax dispute files in 2023 (Ministry of Finance, 2024). The number of tax dispute files above does not include tax dispute files in other judicial bodies and criminal taxation files at the District Court (Bahasa: *Pengadilan Negeri*).

Article 24 paragraph (1) of the 1945 Constitution establishes that judicial power, as an independent authority, is responsible for administering justice to uphold law and fairness. This principle aligns with the concept of *Trias Politica* introduced by John Locke and further developed by Montesquieu in *L'Esprit des Lois*, which divides government power into three branches: executive, legislative, and judiciary. In Indonesia, the judicial function is carried out by the Supreme Court (Mahkamah Agung) and the Constitutional Court (Mahkamah Konstitusi), where the Mahkamah Konstitusi specifically handles judicial reviews of laws and election disputes, while the rest is the authority of the Mahkamah Agung. In accordance with the concept and basic provisions of the state, the Mahkamah Agung as a judicial institution is the peak of the judicial bodies under it, all courts are under the authority of the Mahkamah Agung. However, there is the Constitutional Court of the Republic of Indonesia Decision Number 26/PUU-XXI/2023 dated May 3, 2023, one of the rulings of which is to move the organizational, administrative and financial development of PP under the Supreme Court no later than December 31, 2026, where previously based on Law Number 14 of 2002 concerning the Tax Court (UU PP) Article 5 paragraph (2) PP was under the Ministry of Finance in this case the Ministry of Finance (Laws and Government Regulations – UU PP, 2023).

Settlement of tax disputes should be the authority of the PP (Pengadilan Pajak), but in practice there is jurisprudence on tax disputes from other judicial bodies such as the PTUN (Pengadilan Tata Usaha Negara) and PN (Pengadilan Negeri). As in the PTUN Decision Number 14/G/2017/PTUN Jkt dated May 31, 2017 regarding the Lawsuit for Cancellation of Receipt of Statement of Assets for Tax Amnesty (PTUN Jakarta, 2017), Decision Number 271/G/2017/PTUN-JKT dated April 17, 2018 regarding the Lawsuit for Cancellation of the Letter of Revocation of Confirmation of Taxable Entrepreneurs (Pengukuhan Pengusaha Kena Pajak) (PTUN Jakarta, 2018) and Decision Number 3/P/FP/2018/PTUN.JKT dated February 1, 2018 regarding the Application to Obtain a Decision and/or Action of a Government Official Agency for Passive or Silent Actions Carried Out by the Respondent as the Head of the Tax Office in Processing in Order to Carry Out/Issue a Decision/Decree on the Application Letter for Revocation of Account Blocking and Exemption/Rejection as Taxpayer of PT Duta Sembilan Kartika on Behalf of Hadi Prakosa (PTUN Jakarta, 2018).

The Supreme Court Decision of the Republic of Indonesia Number 2537/K/Pdt/2013, issued on February 20, 2014, at the cassation level, pertains to a civil dispute involving the implementation of tax collection (Mahkamah Agung, 2014). Similarly, the DKI Jakarta High Court Decision Number 122/PID.SUS/2021/PT DKI, dated July 26, 2021, at the appeal level, concerns a criminal case in the field of taxation (PTUN DKI Jakarta, 2021). This fact could confuse lay Taxpayers in seeking justice regarding tax disputes, and has the potential for dualism of the courts, so that they do not get legal certainty. For this reason, the Author is motivated to be able to conduct a statutory study relating to the causes of tax disputes and how the authority of the judicial body is in resolving tax disputes. To what extent is the legal authority of each judicial body in resolving tax disputes between Pengadian Pajak, Pengadilan Tata Usaha Negara, and Pengadilan Negeri.

## **B. LITERATURE REVIEW**

### **1. Devotion Theory**

The theory of devotion, also called the theory of absolute obligation, is a theory that states that the state has the absolute right to collect taxes from its people (Basri & Muhibbin, 2022). As a society, we must be aware that paying taxes is part of our obligation to prove our devotion to the state, because the state is tasked with organizing the interests of the community or its people. So that the basis for tax regulation lies in the relationship between the state and its people (Otto Von Gierke, 2014; Atmosudirjo, 2010; Basah, 1997).

### **2. Theory of Interest**

In the theory of interest, the more individuals who enjoy the services of government work, the greater the taxes collected, because the state protects the interests of the property and lives of citizens by paying attention to the distribution of burdens that must be collected from the community (Brotodihardjo, 2010; Fitri, 2019). The burden is based on the interests of each person including the protection of their lives and property, so it is appropriate that state expenditure to protect it is borne by the community. Tax payments are related to the interests of individuals obtained from state work. People who have more property will pay higher taxes, and conversely those who have less property pay lower taxes to protect their interests (Gandara, 2020; Gojali & Tarmidi, 2023).

### **3. Theory of Authority**

Authority is formal authority or power that originates from laws that are implemented and owned by living beings as legal subjects (Indroharto, 1994). Authority can be obtained in 3 (three) ways (Moh Gandara, 2020): i) authority obtained through attribution, ii) authority obtained through delegation, and iii) authority obtained from mandate.

Attribution authority is obtained from the mandate and provisions of the law that are clearly stated directly in certain articles and the wording of the law to the

recipient of attribution. In delegation authority, the recipient of delegation cannot expand and create new authority, only limited to existing authority, in other words, it is only a delegation of authority from other government agencies and/or officials with legal liability and responsibility moving from the giver to the recipient of the delegation, but the recipient of the delegation has responsibility to the giver of the delegation. Mandate authority is obtained from the giver of the mandate in the form of delegation of authority to the recipient of the mandate as in internal government between superiors and subordinates (Gandara, 2020).

#### **4. Theory of Legal Certainty**

According to Gustav Radbruch, the purpose of law consists of three fundamental values: the principles of justice, expediency, and certainty. There are four fundamental aspects closely related to the meaning of legal certainty itself, which, in essence, make legal certainty a product of legislation:

- a. Law is a positive entity.
- b. The fundamental basis of law is a fact.
- c. The facts contained in the law must be formulated clearly to avoid misinterpretation and facilitate implementation.
- d. Positive law should not be easily changed.

According to Jan Michiel Otto, true legal certainty, or *realistic legal certainty*, requires harmony between the state and its people, who must be oriented toward and understand the legal system of that state. However, this certainty is limited to five conditions:

- a. Legal certainty provides clear, precise, consistent, and easily accessible legal rules.
- b. Government institutions can apply legal rules consistently and adhere to them.
- c. The majority of society holds the principle of agreeing with the substance of the law.
- d. Judges in the judiciary maintain independence.
- e. Judicial decisions can be concretely enforced.

Meanwhile, Sudikno Mertokusumo has a different view from Gustav Radbruch. Rather than considering legal certainty as one of the goals of law, he argues that legal certainty is a guarantee for the proper functioning of the law. Legal certainty is closely related to justice, but law and justice are two different concepts. Law is general in nature, binding on every individual, and applies uniformly, whereas justice is subjective, individualistic, and does not always align with the uniformity of the law.

#### **5. Tax Dispute**

Tax is a mandatory levy, usually in the form of money, that residents must pay as a compulsory contribution to the state or government in relation to income, ownership, purchase prices of goods, and other matters. Law Number 6 of 1983 on General Provisions and Tax Procedures, as amended several times, most recently by

Law Number 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation into Law (*UU KUP*), states in Article 1, point 1: "*Tax is a mandatory contribution to the state owed by individuals or entities, which is coercive based on the law, without direct compensation, and is used for state purposes to maximize public welfare.*"

Taxes have the following characteristics:

- a. Taxes are collected based on the provisions of applicable legislation.
- b. In tax payments, there is no direct individual compensation provided by the government.
- c. Tax collection is carried out by the state, either through the central government or local governments.
- d. Taxes are used to cover government expenditures, and if there is a surplus, it can be allocated for public investment.

Tax serves two main functions: budgetary (budgetair), as a source of funds allocated for financing government expenditures, and regulatory (regulerend), as a tool to regulate economic growth through taxation policies.

There are three tax collection systems (Gojali & Tirmidi, 2023):

- a. Official Assessment System – a tax collection system in which the government has the authority to determine the amount of tax owed by the taxpayer.
- b. Self Assessment System – a tax collection system that grants taxpayers the authority to calculate, pay, and report their own taxes.
- c. Withholding System – a tax collection system in which a third party is given the authority to withhold, pay, and report taxes on behalf of the taxpayer.

Based on the collecting institution, taxes are classified into two types: Central Taxes and Local Taxes.

- a. Central Tax

These are taxes managed and collected by the Central Government through the Directorate General of Taxes and the Directorate General of Customs and Excise:

- 1). Income Tax (PPh): PPh Article 25 for Individuals, PPh Article 25/29 for Companies, PPh Final Article 4 paragraph (2), PPh Article 15, 21, 22, 23, 26;
- 2). Value Added Tax and Sales Tax on Luxury Goods (PPN and PPnBM);
- 3). Import Duty and Export Duty (export and import);
- 4). Land and Building Tax for the Plantation, Forestry, Oil and Gas Mining, Mining for Geothermal Business, Mineral or Coal Mining, and other sectors (PBB P5L);
- 5). Excise Tax;
- 6). Stamp Duty;
- 7). Carbon Tax.

- b. Regional Taxes

Are taxes managed and collected by the Regional Government at both level I (Province) and level II (Regency/City):

- 1). Provincial Government Taxes include Motor Vehicle Tax (PKB), Motor Vehicle Transfer Fee (BBN-KB), Motor Vehicle Fuel Tax (PBB-KB), Surface Water Tax, and Cigarette Tax.
- 2). Regency/City Government Taxes include Hotel Tax, Restaurant Tax, Entertainment Tax, Advertising Tax, Street Lighting Tax, Non-Metallic Mineral and Stone Tax, Parking Tax, Groundwater Tax, Swallow's Nest Tax, Rural and Urban Land and Building Tax (PBB P2), Land and/or Building Acquisition Fee (BPHTB).

## 6. Tax Dispute

A dispute is something that causes differences of opinion, quarrels, arguments. Law Number 14 of 2002 concerning the Tax Court (UU PP) (Tax Court Act, 2002) Article 1 number 5 states that "a tax dispute is a dispute that arises in the field of taxation between taxpayers or tax payers with officials who have the authority as a result of issuing a decision that can be appealed or sued to the tax court based on tax laws and regulations, including lawsuits resulting from collection based on tax collection laws using a writ of execution". From the official definition above, a tax dispute must meet the elements:

- a. Disputes in the field of taxation,
- b. Subject of dispute: Taxpayer or Taxpayer with the Tax Authorities, and
- c. Object of dispute: Decision and implementation of tax collection that can be appealed/lawsued to the Tax Court based on tax legislation including Law Number 19 of 1997 concerning Tax Collection with Letters s.t.d.t.d Law Number 19 of 2000 concerning Amendments to Law Number 19 of 1997 concerning Tax Collection with Distress Letters (PPSP Law) (Tax Court Act, 2000).

In the provisions of the KUP Law, there is nothing that regulates the definition of a tax dispute. Tax disputes arise starting with the issuance of a Determination by a Tax Official through an examination process, which the Taxpayer then disagrees with and submits an administrative effort. The decision on the administrative effort, which if not yet approved by the Taxpayer, is the object of the tax dispute, including the implementation of tax collection.

## 7. Tax Dispute Resolution

Tax dispute resolution is a legal process carried out by Taxpayers/Taxpayers for their rights in seeking justice for differences of opinion or differences of interpretation between the Tax Office and Taxpayers in cases in the field of taxation. In the implementation of tax collection, sometimes there are differences of opinion between the Tax Office and Taxpayers. Taxpayers must be given certainty that they are not harmed and are not treated arbitrarily in the determination of taxes imposed on them (Soemitro, 1976; Sunggono, 2003). Therefore, in order to achieve a fair, effective, and

efficient tax dispute resolution, a more concise vertical re-examination level is needed, considering that taxes are related to the main state revenue.

According to Victor T Thuronyi, a tax administration court is needed so that tax disputes can be resolved properly. Rochmat Soemitro in his book classifies administrative courts into 2 (two), namely pure courts and impure courts (Soemitro, 1998).

- a. Impure administrative courts are all administrative courts that do not fully meet the requirements of an administrative court, such as because there is no dispute, or the agency/official adjudicating is one of the parties.
- b. Pure administrative courts are judicial bodies to try to resolve disputes. Pure administrative courts are administrative courts that meet the requirements that resemble courts conducted by courts.

Legal efforts in taxation are efforts to resolve tax disputes through tax courts when the Decision through administrative efforts made by the Taxpayer cannot be accepted.

## 8. Authority of the Judicial Body

The Tax Court is very important in Indonesia, as evidenced by the existence of a tax dispute resolution body that has developed since the Dutch colonial era, namely the Raad can Beroep voor Belastingzaken which is regulated in Staatsblad (Stb.) 1915 No. 707 as a special body that adjudicates tax disputes. After Indonesia's Independence in 1945, the Raad van Beroep voor Belastingzaken was accommodated and then amended on March 9, 1959 with Law Number 5 of 1959 concerning Amendments to the "Regeling Van Het Beroep In Belastingzaken". Changed to the Chief Justice of the Supreme Court which was later better known as the Tax Advisory Council (MPP). The MPP's absolute competence was expanded with Law Number 6 of 1983 concerning General Provisions and Tax Procedures (UU KUP) which covers almost all complaints regarding tax collection by the Central Government and Regional Governments, including Customs and Excise which can be resolved by the Tax Court (BPP).

For an extended period, the BPP could not be established by the Government. Consequently, the Government created a new body, the Tax Dispute Resolution Agency (BPSP), through Law Number 17 of 1997. The BPSP was authorized to resolve tax disputes, and its decisions carried the same enforceability as court rulings with permanent legal force (*inkracht*), making them immune to further legal challenges in the PTUN or General Court. However, the BPSP's existence was short-lived, ending in 2002 when the Government enacted Law Number 14 of 2002 concerning the Tax Court (Tax Court Law) on April 12, 2002. Since then, the Tax Court has served as the judicial body responsible for handling tax disputes.

The Tax Court can be equated with pure administrative justice as it meets the requirements of a judicial body, namely:

- a. The existence of abstract administrative law/public administration law that is generally binding.

- b. The existence of abstract administrative decisions/public administration decisions that are final and binding on individuals or legal entities.
- c. The presence of parties involved, one of whom is an administrative/public administration official as the defendant.
- d. The presence of an independent court authorized to adjudicate based on the applicable laws and regulations.

The competence of the court covers two aspects:

- a. Attributie (Granting of Authority): Determines whether the court in general (rather than another type of court or judicial body) has the power to examine the type of case referred to in the lawsuit application.
- b. Distributie (Division of Authority): Determines whether the specific court mentioned in the lawsuit application (rather than another court) has the power to examine the particular case referred to in the application (Basah, 1997).

According to R. Subekti and R. Tjirosoedibio, court competence is divided into two types:

- a. Absolute Competence: The authority of a judicial body to examine, decide, and resolve specific legal disputes when compared with the authority of another court within the same legal jurisdiction.
- b. Relative Competence: The authority of a judicial body to adjudicate cases within a different jurisdiction of the same type of judicial environment. Relative competence concerns the authority of courts within the same judicial system but with different territorial jurisdictions. The location and jurisdiction of a court play a crucial role in its functioning (Basah, 1997).

## C. METHOD

This study utilized a normative legal research method, incorporating a statute approach, case approach, and historical approach. The collection of legal materials, including primary and secondary sources, was carried out through a qualitative research approach. Primary legal materials comprised binding sources such as the 1945 Constitution and tax-related legislation, along with laws governing judicial bodies responsible for resolving tax disputes or cases. Secondary legal materials included expert opinions from influential books, scientific legal journals, legal cases, and jurisprudence relevant to the research topic. Additionally, tertiary materials, such as dictionaries, encyclopedias, newspapers, articles, journals, and papers, were used to provide guidance or explanations for primary and secondary sources.

The gathered legal materials were analyzed to address the research problems, leading to theoretical studies on legal principles, concepts, and rules. The analysis involved techniques such as description, interpretation, evaluation, and systematization. The descriptive technique aimed to represent phenomena or the legal and non-legal propositions encountered accurately. The data analysis was conducted systematically using both descriptive and qualitative methods. The descriptive method involved detailed and precise explanations of specific phenomena relevant to the study, while the qualitative method focused on systematically presenting the

findings using legal theories and positive law. This approach ensured that the research problems were explained logically, scientifically, and in a clear, comprehensible manner.

## D. RESULT AND DISCUSSION

### 1. Causes of Tax Disputes

The definition of tax dispute is regulated in Article 1, point 5 of the Tax Court Law (UU PP), which states: *"A tax dispute is a dispute arising in the field of taxation between a taxpayer or tax bearer and an authorized official as a result of issuing a decision that can be appealed or sued before the Tax Court based on tax laws and regulations, including lawsuits arising from tax collection under the tax collection law using a forced letter."*

If a dispute does not meet the three essential elements of the official definition, it cannot be classified as a tax dispute. These three elements are:

- a. A dispute in the field of taxation.
- b. Subjects of the dispute: The taxpayer or tax bearer versus the tax authority (Fiskus).
- c. Object of the dispute: A tax-related decision or tax collection action that can be appealed or sued before the Tax Court based on tax regulations, including the Tax Collection Law (UU PPSP).

The provision is a limitation of tax disputes in a broad sense, which logically tax disputes are all disputes related to taxation, both taxes in the sense of central government and regional government taxes, as well as in the sense of types or kinds of taxes themselves, and both civil and criminal. Thus, the law has limited what tax disputes can be appealed/lawsuited for examination and decided by the Tax Court.

Since 1984, Indonesia has adopted a self-assessment system in tax collection, namely Taxpayers calculate, pay and report their taxes owed independently. Taxpayers calculate, pay and report their taxes owed by filling out and submitting a Tax Return (SPT) correctly, completely and clearly (based on the provisions of material law and formal law) to the Tax Office. Article 12 paragraph (2) of the KUP Law has provided a guarantee to Taxpayers that the amount of tax owed according to the submitted SPT is the amount of tax owed in accordance with the provisions of tax laws. The Tax Office is given the authority to test the SPT that has been reported by the Taxpayer is filled out correctly, completely and clearly based on the provisions of tax laws which are guaranteed based on the provisions of Article 12 paragraph (3) of the KUP Law. The guarantee of the Law is very clear that by adopting a self-assessment system, the tax owed according to the SPT is correct according to the Law, unless the Tax Office obtains evidence that the Taxpayer's SPT was not filled out correctly.

Testing conducted by the Tax Office on Taxpayer's SPT through a tax audit mechanism with the aim of testing Taxpayer compliance in fulfilling their tax obligations and other purposes, which in practice often results in differences in perception between Taxpayers and the Tax Office. These differences in perception are common because the Tax Office and Taxpayers have different/conflicting interests,

because taxes function as a budget/receipt (budgetair) (Gjali & Tarmidi, 2023), so that the Tax Office is interested in exploring sources of funds to finance government expenditures as much as possible, while Taxpayers are interested in making as much profit as possible with expenditure efficiency, including taxes. When associated with the theory of interests and the theory of devotion, the more Taxpayers should enjoy services from government work such as protecting the interests of Taxpayers' property and lives, the facilities and infrastructure provided, the greater the taxes collected by the government, and Taxpayers must be aware that paying taxes is an obligation to prove their devotion to the state, because the state has the absolute right to collect taxes from Taxpayers.

For example, testing compliance with tax obligations in the Corporate Income Tax Return, the Tax Office tests the Taxpayer's Corporate Income Tax Return which can include:

- a. The truth of business turnover,
- b. The truth of the cost of goods sold,
- c. The truth of other income from outside the business,
- d. The truth of gross income reduction,
- e. The truth of the calculation of tax payable, and the truth of the calculation of tax credits, and
- f. The truth of other tax obligations,

All of which are tested whether: 1) The application of the Tax Law by the Taxpayer is in accordance with the provisions of the relevant tax legislation, and 2) The truth of the material in letters a to f above is truly in accordance with the bookkeeping documents and their validity.

The final result of the audit process is the issuance of a Decision by the Tax Office which, if not approved by the Taxpayer, then the Taxpayer is guaranteed by law to submit an application for administrative efforts to the Tax Office. The decision issued by the Tax Office and not approved by the Taxpayer, if associated with the definition of a tax dispute based on the Tax Court Law, then the dispute cannot be categorized as a tax dispute based on the law. The final result of the Taxpayer's administrative efforts to the Tax Office is the issuance of a Decision by the Tax Office which, if not approved by the Taxpayer, then the dispute against the Decision is a tax dispute based on tax laws and regulations that can be appealed/lawsuited to the Tax Court. For example, the legal effort of Appeal/Lawsuit against Tax Disputes handled in Tax Court:

- a. Appeal Case in Tax Court

In the Tax Court Decision Number PUT-002035.16/2023/PP/M.XXA of 2024 to PUT-002046.16/2023/PP/M.XXA of 2024 dated April 30, 2024 concerning the Appeal against the Decision of the Director General of Taxes (DGT) dated December 8, 2022 concerning Taxpayer Objections to the Tax Underpayment Assessment Letter (SKPKB) for Value Added Tax (PPN) for Goods and Services dated January 24, 2022 for the tax period January to December 2017, which is a legal and evidentiary dispute, where the core of the problem is that there is a different interpretation between the Tax

Authorities and Taxpayers in the provisions of Law Number 8 of 1983 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods s.t.d.t.d. Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law (hereinafter "VAT Law") Article 4 paragraph (1) and Article 4A paragraph (3) letter f, where the Taxpayer is of the opinion that the Taxpayer's business activities are not included in religious services that are not subject to VAT as stipulated in Article 4A paragraph (3) letter f of the VAT Law. However, on the contrary, the Taxpayer is of the opinion that in substance the Taxpayer's business activities are included in religious services that are not subject to VAT as stipulated in Article 4A paragraph (3) letter f of the VAT Law. The opinion of the Panel of Judges confirms what has been argued by the Taxpayer that the Taxpayer's business activities are religious services that are not subject to VAT as stipulated in Article 4A paragraph (3) letter f of the VAT Law and grants the Taxpayer's appeal in its entirety.

b. Tax Court Lawsuit Case

In the Tax Court Decision Number PUT-009285.99/2021/PP/M.XXA of 2022 to PUT-009296.99/2021/PP/M.XXA of 2022 dated June 21, 2022 concerning the Lawsuit against the Decision of the Director General of Taxes dated August 4, 2021 concerning the Cancellation of Tax Assessments on Underpaid Tax Assessment Letters Based on Article 36 paragraph (1) letter b due to the Taxpayer's Application, SKPKB VAT Goods and Services dated December 10, 2020 for the tax period January to December 2016, which is a legal dispute. Where the core of the problem is the authority of the Directorate General of Taxes in issuing SKPKB VAT Goods and Services which is carried out before the confirmation of PKP in office against Taxpayers which is not in accordance with the provisions of applicable tax regulations, so that the SKPKB VAT that has been issued by the Directorate General of Taxes has no legal basis.

The Tax Assessment Letter must be canceled by law. In addition to the SKP issued not having a legal basis, the basis for the correction made by the Tax Office to the receipt of the provision of religious services which are considered to be subject to VAT is also not in accordance with the provisions of tax laws and regulations, where the provisions of Article 4A paragraph (3) letter f of the KUP Law have mandated that religious services are included in certain services that are not subject to VAT. The author is of the opinion that the provisions regarding the criteria and/or details of religious services as stipulated in Article 4A paragraph (3) letter f of the VAT Law, namely in the Regulation of the Minister of Finance Number PMahkamah Konstitusi-92/PMahkamah Konstitusi.03/2020 dated August 22, 2020, were not yet in effect at the time of the tax audit for the 2016 tax year. The Ministerial Regulation regulates the details of religious services where the Taxpayer's business activities are as a travel agency which is subject to VAT. There is a famous legal adage, namely "lex specialis derogate legi generali" which means that if the law that applies specifically takes precedence over the law that applies generally. Because the law that specifically regulates this has not yet come into force, the general rules that apply are the provisions of Article 4A paragraph (3) letter f of the VAT Law which stipulates that

religious services are not subject to VAT. So that the Panel of Judges granted the entire Taxpayer's lawsuit.

From the description of the example of tax disputes in the appeal and lawsuit efforts at the Tax Court above, the Author is of the opinion that the provisions regarding the criteria and/or details of religious services as stipulated in Article 4A paragraph (3) letter f of the VAT Law, namely in the Regulation of the Minister of Finance Number PMK-92/PMK.03/2020 dated August 22, 2020, have not yet been applied for the 2016 and 2017 tax years. The Ministerial Regulation regulates the details of religious services where the Taxpayer's business activities are as a travel agency that is subject to VAT. There is a famous legal adage, namely "*lex specialis derogate legi generali*" which means that if the law that applies specifically takes precedence over the law that applies generally. Because the law that regulates specifically has not yet been applied, the general rules that apply are the provisions of Article 4A paragraph (3) letter f of the VAT Law which stipulates that religious services are not subject to VAT.

Based on the description above, it can be concluded that the cause of tax disputes is due to the implementation of the self-assessment system which gives trust to Taxpayers to calculate, pay, and report the taxes they owe independently, so that there are differences of opinion between Taxpayers and the Tax Authorities in terms of:

- a. Juridical, namely the application of tax laws, and/or;
- b. Proof, namely the material truth of the components of the SPT test in accordance with the bookkeeping documents and their validity.

## **2. Authority of the Tax Court (PP – *Pengadilan Pajak in Bahasa*)**

The authority of the Tax Court is an attribution authority, where the authority is obtained based on the mandate and provisions of the law which are clearly stated directly in certain articles and the wording of the law. Included in the type of absolute competence, "if faced with the authority of a court from another judicial institution that has the same legal area" for example faced with the authority between the Tax Court and the State Administrative Court which both have the authority in resolving administrative disputes/state administrative disputes including tax disputes but have different absolute authorities that have been determined by legislation.

The provisions of Article 2 of the PP Law state that the Tax Court is a judicial body that exercises judicial power for Taxpayers or Taxpayers who seek justice for tax disputes. Law Number 5 of 1986 concerning the State Administrative Court as amended by Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning the State Administrative Court (UU PTUN) Article 9A and its explanation states that within the State Administrative Court, a special court can be established which is regulated by law. A special court is a differentiation or specialization within the State Administrative Court, for example the Tax Court.

The position of the Tax Court is within the State Administrative Court, and the State Administrative Court is under the Supreme Court, but in terms of

organizational, administrative, and financial development, the Tax Court is carried out by the Ministry of Finance in casu the Ministry of Finance. There is a Decision of the Constitutional Court of the Republic of Indonesia Number 26/PUU-XXI/2023 dated May 3, 2023 which tests the material against Article 5 paragraph (2) of the PP Law and states that Article 5 paragraph (2) of the PP Law is contrary to the 1945 Constitution and does not have permanent legal force that is binding as long as it is not interpreted as the Supreme Court in stages implemented no later than December 31, 2026. For this reason, the Ministry of Finance must have started and immediately submit to the Organizational, Administrative, and Financial Development for the Tax Court to be carried out by the Supreme Court as stated in the Decision, considering that there are 2 (two) years left before the expiration of the time decided by the Supreme Court.

The authority of the Tax Court in resolving tax disputes is directly regulated in Law Number 14 of 2002 concerning the Tax Court (UU PP) to examine and decide on tax disputes as stipulated in Article 31 which states that the Tax Court has the duty and authority to examine and decide on tax disputes. The Tax Dispute in question is a tax dispute that based on tax laws and regulations and the PPSP Law can be appealed/lawsuited to the Tax Court as officially understood in Article 1 number 5 of the PP Law.

The provisions of Article 1 number 5 of the PP Law have provided a limitation that tax-related disputes that can be declared as tax disputes and the implementation of tax collection that can be appealed/lawsuited only to the Tax Court are for tax disputes and the implementation of tax collection regulated in the provisions of tax laws and regulations including those regulated in the PPSP Law. Thus, tax-related disputes that are not regulated in tax laws and regulations including the PPSP Law cannot be categorized as tax disputes based on the PP Law. So that the tax-related disputes become the absolute authority/competence of other judicial bodies besides the Tax Court

The limitation of tax dispute categories based on the PP Law according to the author can actually provide legal certainty to Taxpayers/Taxpayers in seeking justice related to disputes in the field of taxation where to file legal efforts, whether submitted to the Tax Court or to other judicial bodies, including the State Administrative Court and District Court. However, what needs to be considered is that Taxpayers/Taxpayers can be confused about the limitation of tax dispute categories based on the PP Law, because in general logical thinking the Tax Court is a court that can try all disputes related to taxation or tax disputes in a broad sense. This is reasonable and common because from the name itself it is the Tax Court, of course the tax judicial body that can handle all disputes in the field of taxation. For example in the case:

- a. Lawsuit for Cancellation of Receipt of Statement of Assets for Tax Amnesty in PTUN Decision Number 14/G/2017/PTUN Jkt dated May 31, 2017, and Application to obtain a Decision and/or action by a Government Official body for passive or silent actions taken by the Respondent as Head of the Tax Office in processing to carry out/give a Decision/Decree on the Application Letter for

Revocation of Account Blocking and Release/Rejection as Tax Guarantor of PT Duta Sembilan Kartika on behalf of Hadi Prakosa in PTUN Decision Number 3/P/FP/2018/PTUN.JKT dated February 1, 2018 filed by the Taxpayer/Tax Guarantor to PTUN. PTUN based on its competence to hear and decide that the two TUN disputes are included in the category of tax collection implementation disputes based on the PP Law which is the absolute authority of PP, so that PTUN decided that the dispute is not the absolute authority of PTUN and rejected the Lawsuit filed by the Taxpayer/Tax Guarantor.

- b. Civil dispute at cassation level The lawsuit relates to the dispute over the Implementation of Tax Collection in the Supreme Court Decision Number 2537/K/Pdt/2013 dated February 20, 2014 which was handled at the first level by the Central Jakarta District Court with Decision Number 413/Pdt.G/2010/PN.Jkt.Pst dated June 21, 2011 and at the appeal level by the DKI Jakarta High Court with Decision Number 347/Pdt/2012/PT.DKI dated December 13, 2012. The lawsuit at the first level and appeal was won by the Taxpayer/Taxpayer, the District Court decided that the dispute was actually a dispute over the implementation of tax collection, but it is the District Court's authority to examine, try, and decide on the dispute, one of the contents of the Decision of which is to indirectly release the Taxpayer/Taxpayer from their obligation to pay tax debts. However, the dispute at the cassation level was won by the DJP (Fiskus), the Supreme Court stated that the dispute related to taxation was a dispute over the implementation of tax collection based on the PP Law, which according to tax laws and regulations is the absolute authority of the PP.
- c. Lawsuit for Cancellation of the Letter of Revocation of Confirmation of Taxable Entrepreneurs (PKP) in PTUN Decision Number 271/G/2017/PTUN-JKT dated April 17, 2018. According to the Author, the dispute related to taxation should be the authority of the PP to examine and decide, because the dispute over the Revocation of Confirmation of PKP when viewed from the object of the dispute is much more competent in examining the Judge who certainly has the ability and experience in the fields of taxation, finance, accounting and law is more qualified when compared to the PTUN Judge. However, due to the limitation of the category of tax disputes based on the PP Law, the dispute related to taxation cannot be categorized as a tax dispute or a dispute over the implementation of tax collection based on the PP Law, so that the dispute becomes a TUN Dispute which is the absolute authority of the PTUN. The State Administrative Court is correct that the tax dispute is a State Administrative dispute that is not related to tax disputes and/or tax collection implementation disputes as regulated in the PP Law and the PPSP Law.

It can be concluded that tax disputes that can be examined and decided by PP are tax disputes and/or tax collection implementation only for disputes that can be appealed/lawsuited to PP based on tax laws and regulations including the PPSP Law.

The provisions of Article 1 number 6 state that "Appeal is a legal effort that can be made by Taxpayers or Taxpayers against a decision that can be appealed, based on applicable tax laws and regulations". Article 1 number 7 of the PP Law states that "A lawsuit is a legal effort that can be made by Taxpayers or Taxpayers against the implementation of collection or against a decision that can be filed a lawsuit based on applicable tax laws and regulations". The resolution of tax disputes in the PP involves legal actions such as appeals or lawsuits against decisions made by tax officials, which can be contested through the PP, in accordance with tax laws and regulations, including those related to tax collection under the PPSP Law. The tax officials authorized to issue the decisions being disputed include the Central Government Tax Director General, the Director General of Customs and Excise, as well as regional government tax officials. As specified in Article 1 of the PP Law, these officials include the Director General of Taxes, Director of Customs and Excise, Governors, Regents/Mayors, or other officials appointed to enforce tax laws and regulations. Decisions of the Central Government Tax Officials (DJP) that can be appealed/lawsuited to the PP are regulated and determined in the KUP Law, PP Law, PPSP Law and in other tax laws and regulations that include central government taxes such as the Tax Amnesty Law, Customs Law, PBB Law, and Excise Law, as well as regional government taxes regulated in the PDRD Law and PBB Law. The author has detailed that the Decisions of Tax Officials that can be appealed/lawsuited to the PP consist of the following:

- a. Tax Official decisions that can only be appealed to the Tax Court include: Decisions on Objections to Central Government Taxes, Decisions on Objections to Regional Government Taxes, Decisions on the Determination of Import Duty, Decisions on the Revocation of Excise Business Licenses, and Decisions rejecting PBB Taxpayer status.
- b. Tax Official decisions that can only be appealed to the Tax Court also include: Decisions on preventative actions related to tax collection, Decisions regarding the implementation of tax decisions not covered by Article 25, paragraph (1) and Article 26 of the KUP Law, and the Issuance of Determination Letters and Objection Decision Letters that do not follow the procedures or methods specified in tax laws and regulations.
- c. Tax collection actions that can only be appealed to the Tax Court include: Implementation of Compulsory Letters, Orders for Confiscation, and Auction Announcements.
- d. Disputes over the implementation of the Tax Amnesty Law can only be appealed to the Tax Court, specifically concerning the application of the tax amnesty program.

Article 2 of the PP Law clarifies that the PP is a judicial body that exercises judicial power for Taxpayers seeking justice in tax disputes. According to Article 9A of the PTUN and its explanation, a special court can be established within the State Administrative Court, which is governed by law. A special court refers to a specialized court, such as the Tax Court. While the PP operates within the PTUN framework, and

PTUN is under the Mahkamah Agung, the Ministry of Finance handles the organizational, administrative, and financial development of the PP.

The Constitutional Court of the Republic of Indonesia issued Decision Number 26/PUU-XXI/2023 on May 3, 2023, which reviewed the materiality of Article 5, paragraph (2) of the PP Law and ruled that it is contrary to the 1945 Constitution. The decision stated that Article 5, paragraph (2) would not have binding legal force unless it is implemented by the Supreme Court in stages by December 31, 2026. Therefore, the Ministry of Finance must begin preparations and promptly submit plans for the organizational, administrative, and financial development of the Tax Court to the Supreme Court, considering the two years remaining before the deadline set by the decision.

### **3. Authority of the State Administrative Court (Pengadilan Tata Usaha Negara)**

The authority of the State Administrative Court is outlined in Law Number 5 of 1986 as last amended by Law Number 51 of 2009 concerning State Administrative Courts (UU PTUN, 2009). According to Articles 47 and 50 of the PTUN Law, the PTUN is authorized to examine, decide, and resolve state administrative disputes (TUN) involving State Administrative Decisions (KTUN) at the first instance level. Based on the provisions of Article 1 number 10 of the PTUN Law, it states that "A State Administrative Dispute is a dispute that arises in the field of state administration between a person or civil legal entity with a state administrative body or official, both at the center and in the regions, as a result of the issuance of a state administrative decision, including personnel disputes based on applicable laws and regulations". TUN disputes arise due to the issuance of KTUN by a State Administrative Body or Official (Pejabat TUN) both at the center and in the regions against a person or civil legal entity. Based on the PTUN Law, there are 3 (three) elements that a dispute is a TUN Dispute:

- a. The disputed legal issue is in the field of TUN/government administration,
- b. The legal subjects of the parties are individuals or civil legal entities as Plaintiffs, and the TUN Agency or Official who issued the Decision as Defendant and/or Respondent,
- c. The disputed object must be in the form of a KTUN and/or TUN/government administration action.

If we look at the 3 (three) elements above, according to the Author, Tax Disputes fall into these three elements with the following explanation:

- a. The disputed legal issues are in the field of TUN/government administration  
The Decree/Decision is issued by the Tax Official/Administrative Official in carrying out his/her authority as the office holder, namely as an official who has the authority to collect taxes. This action is included in the government's actions in the field of public law, so that the law that regulates the actions of this administrative official is public law.

- b. The legal subjects of the parties are individuals or civil legal entities as Plaintiffs, and the State Administrative Agency or Official who issued the Decision as Defendant and/or Respondent

When viewed from the parties, a tax dispute is a dispute between a subject/civil legal entity as a Taxpayer and a Tax Official who has the authority to collect taxes. While SKP/KEP (in Bahasa: *Surat Ketetapan Pajak/Keputusan*) can be categorized as a State Administrative Decree/KTUN (Beschikking). However, it must be interpreted that a tax dispute is a special administrative dispute because a tax dispute does not discuss the legality of a decision but is related to the calculation of losses from a tax collection.

- c. The disputed object must be in the form of a KTUN and/or TUN/government administration action

Disputed objects, tax dispute objects are SKP and/or actions taken by Tax Officials or Administrative Officials in the field of taxation of the Directorate General of Taxes and Directorate General of Customs and Excise for central taxes and the Head of Regional Government for regional taxes. Tax disputes are disputes over the issuance of SKP including SKP and tax collection actions. SKP is intended for certain taxpayers, so it can be said that the SKP has an individual character.

When viewed from the parties, the object of the administrative official dispute, and its legal field, it can be said that tax disputes have almost the same character as administrative disputes (TUN disputes), the difference lies in tax disputes not only questioning the Determination but also related to the calculation of the disputed tax figures. However, between Pengadilan Pajak and Pengadilan Tata Usaha Negara have different absolute authorities which are regulated based on laws and regulations. TUN disputes are administrative disputes and PP has a position as a special court in the Pengadilan Tata Usaha Negara environment which can be included in the category of administrative disputes or Tata Usaha Negara disputes. If there is a dispute that meets the three elements based on the PTUN Law above, it is a TUN dispute that can be filed a lawsuit and the authority to examine, try, and resolve is Pengadilan Tata Usaha Negara.

So, if there is a tax dispute that is not specifically regulated in tax laws and regulations, it is a State Administrative Dispute that is the authority of the State Administrative Court. This provision is in accordance with the legal adage "lex specialis derogate legi generali" that the law that applies specifically is prioritized over the law that applies generally, if it is not regulated in special regulations, of course general regulations can be applied. So, if there is a tax dispute that is not regulated in special regulations, namely tax laws and regulations, then general State Administrative Regulations can be applied, namely the State Administrative Court Law. As in the case of the Lawsuit for Cancellation of the Letter of Revocation of the Confirmation of Taxable Entrepreneurs (PKP) in Decision of the State Administrative Court Number 271/G/2017/PTUN-JKT dated April 17, 2018 which is not specifically regulated in tax laws and regulations, so it becomes the authority of the State

Administrative Court. Tax officials do not issue decisions that are within their authority, such as Tax Overpayment Decision Letters (SKPKPP), Tax Repayment Orders (SPMKP), do not issue or revoke Taxable Entrepreneur Confirmation, and so on.

Based on the description above, it can be concluded that the absolute authority/competence of the State Administrative Court in resolving tax disputes is to examine, try, decide, and resolve disputes that are not specifically regulated in tax laws and regulations including the PPSP Law, so that the tax dispute becomes a TUN dispute, including: 1) Decisions of Tax Officials that cannot be appealed/lawsued to the Tax Court based on tax laws and regulations, and 2) The validity of authority, alleged abuse of authority, and unlawful acts.

#### **4. Authority of the District Court (PN)**

Pengadilan Negeri as a general court under the Mahkamah Agung, is authorized to examine, try, and decide both criminal and civil cases in accordance with the relevant laws and regulations. This authority is outlined in Law Number 48 of 2009 concerning Judicial Power (UU KK), specifically in Article 25, which states that "Badan Peradilan under the Mahkamah Agung include judicial bodies within the general court system, religious courts, military courts, and state administrative courts." General courts, such as the District Court, have the jurisdiction to handle criminal and civil cases as prescribed by law. Pengadilan Negeri also has the authority to examine, try, and decide cases related to criminal and civil matters in the field of taxation. The taxation disputes mentioned in the problem formulation do not involve criminal offenses in the field of taxation as defined by the Judicial Power Law and the Criminal Code (KUHP). However, tax disputes regulated under Article 34 paragraph (3) and Article 38 paragraph (1) of the PPSP Law provide authority to the Pengadilan Negeri to examine, try and decide on disputes regarding the implementation of tax collection regarding the implementation of the hostage-taking of Taxpayers and regarding the confiscation of goods confiscated by third parties. Lawsuits/Objections are submitted only to the District Court.

Tax dispute case filed by Taxpayer and examined by PN in Supreme Court Decision Number 2537/K/Pdt/2013 dated February 20, 2014 concerning civil dispute of Lawsuit related to dispute of tax collection implementation at cassation level. The Taxpayer's Lawsuit was examined, tried, and decided at first instance by Central Jakarta District Court Number 413/Pdt.G/2010/PN.Jkt.Pst dated June 21, 2011, and upheld at Appeal level by DKI Jakarta High Court Decision Number 347/Pdt/2012/PT.DKI dated December 13, 2012. PN Decision with one of its rulings stating Taxpayer/Taxpayer is declared not included in the definition of Taxpayer so that blocking of Taxpayer's account has no legal force and requested to Bank through Fiscus to issue letter of lifting of blocking of Taxpayer's assets. However, in the examination at the cassation level at the Supreme Court, it was revealed that it examined, decided, and retried this case with one of its rulings that was contrary to the District Court Decision at the first level and Appeal.

It was determined that tax disputes, as defined by statutory regulations, do not fall under the jurisdiction of the District Court for examination and resolution. Instead, such disputes are within the authority of the PP, as they pertain to the implementation of tax collection as outlined in the KUP Law and the PPSP Law. According to Article 23, paragraph (2) of the KUP Law, in conjunction with Article 37 of the PPSP Law, lawsuits from taxpayers regarding the implementation of a Compulsory Letter, Orders for Confiscation, or Auction Announcements must be directed to the tax court. At the cassation level, the Tax Office prevailed, as it was established that the dispute concerned the execution of tax collection related to the seizure of the taxpayer's assets, as stated in Article 23, paragraph (2) of the KUP Law. This is not a dispute involving the hostage-taking of the taxpayer or the confiscation of third-party goods, as specified in Articles 34 and 38 of the PPSP Law, which fall under the jurisdiction of the Pengadilan Negeri.

Based on the description above, it can be concluded that the absolute authority/competence of the District Court based on the provisions of the law in resolving disputes related to taxation is to examine, try, and decide criminally and civilly related to taxation which includes:

- a. Criminal acts in the field of taxation, and
- b. Disputes regarding the implementation of tax collection, including: 1). hostage taking of Taxpayers, and 2). confiscation of third-party goods that are also confiscated.

## E. CONCLUSION

Based on the description in the discussion, it can be concluded that: 1) Tax disputes occur because there are differences of opinion between Taxpayers and Tax Authorities in terms of law and/or evidence resulting from the implementation of the self-assessment system; 2) The authority of the Judicial Body in resolving tax disputes is as follows: a) The Tax Court has the authority to resolve disputes against Tax Official Decisions and/or the implementation of tax collection that can be appealed/lawsued to the Tax Court based on tax laws and regulations including the PPSP Law; b) The State Administrative Court has the authority to resolve disputes that are not specifically regulated in tax laws and regulations including the PPSP Law; and c) The District Court has the authority to resolve tax collection disputes in the form of taking the Taxpayer hostage, and confiscating third party goods that are also confiscated.

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