

The Essence of Disimilarity of Tax Court's Decision on A Tax Lawsuit Againsts the Decree of Reduction/Cancellation of Incorrect Tax Detemination Letter

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Abstract

Tax lawsuits allow taxpayers to challenge adverse tax decisions and ensure the protection of rights and fairness. The reform of the tax system from official assessment to self-assessment is regulated by Law Number 6 of 1983 and its amendments, to increase fairness and transparency. Nevertheless, the challenge of legal interpretation remains a major issue. This study explores Article 36 paragraph (1) b of the Tax Law with a hermeneutic approach, which highlights the flexibility of legal interpretation depending on the social, economic, and intentional context of the legislator. The difference in interpretation of the flexible and rigid hermeneutic approach illustrates how legal practitioners and legal dynamics influence the interpretation of the article. The recommendations in the study emphasize the importance of a flexible hermeneutic approach to legal interpretation, by involving legal practitioners to gain diverse perspectives. This is important to ensure policy adaptation in accordance with changes in laws and tax policies.

Keywords: Tax Lawsuit, Hermeneutics, Legal Interpretation, Law Number 6 of 1983

INTRODUCTION

Tax lawsuits are an important mechanism in the tax system that allows taxpayers to file objections to tax administrative decisions that are considered detrimental or not in accordance with the law. Tax lawsuits over the decision to apply for reduction or cancellation of tax determination letters play a crucial role in protecting the rights of taxpayers and ensuring fairness. The discourse on tax court decisions in these cases often reflects a balance between legal certainty and the principle of justice.

Taxes are an important source of revenue for Indonesia, regulated in Article 23A of the 1945 Constitution. In 1983, the tax collection system changed from official assessment to semi-self assessment, then full self assessment with the enactment of Law Number 6 of 1983 (KUP), Law Number 7 of 1983 (PPh), and Law Number 8 of 1983 (VAT and BM VAT), which came into effect on January 1, 1984. This regulation was last amended by Law Number 7 of 2021. Law Number 14 of 2002 concerning Tax Courts and Circular Letter of the Chief Justice of the Tax Court Number SE-08/PP/2017 regulates the administration and enforcement of tax law, including the determination, collection, and settlement of tax disputes. Tax disputes arise from disputes between Taxpayers and tax authorities, which can be filed as appeals or lawsuits to the Tax Court. An appeal is a legal remedy against a decision that can be appealed, while a lawsuit is a legal remedy against tax collection or a decision that can be filed in a lawsuit. In addition to administration, the KUP Law also regulates criminal provisions for deliberate tax violations that harm state revenue, making the tax law an administrative criminal law. Tax law enforcement begins with regulatory counseling, supervision of the implementation of the self-assessment system, reporting of Notification Letters (SPT), and other obligations.

The provisions in Article 27 of Law No. 28 of 2007 allow taxpayers to appeal without having to pay 50% of the tax owed, different from Article 36 paragraph (4) of the Tax Court Law which previously required the payment. This change makes it easier for taxpayers to challenge tax decisions without being burdened by the obligation to make an initial payment. However, this provision only applies to tax years 2008 and above, which can cause legal uncertainty for the previous tax year, add to the administrative burden for the DGT, and cause

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differences in interpretation. Filing a lawsuit in the Tax Court remains important to protect the rights of taxpayers and ensure fairness and transparency in the tax system. The government and DGT are expected to continue to update tax regulations to adapt to current conditions and support the goals of fiscal justice and economic growth. The Tax Court plays an important role in ensuring fair decisions and based on existing facts and evidence, as well as in providing justice to taxpayers. The government must ensure consistency in the implementation of tax regulations to avoid misinterpretation and abuse of authority, as well as support the country's economic and social development. Law Number 6 of 1983 as the main legal basis of Indonesia's tax system has undergone several changes, with the aim of providing a comprehensive and fair legal framework. Government Regulation Number 80 of 2007 regulates in more detail the implementation of the KUP Law, including procedures for tax collection and dispute resolution. Tax audits, regulated in the KUP and PMK Law, are carried out through field inspections that must be completed within six months with the possibility of extension.

Interpretation of laws and regulations is often the cause of injustice and legal uncertainty. The interpretation of laws and regulations in accordance with the mandate of the lawmakers then becomes a very desirable thing to achieve, including in the application of laws and regulations in the field of taxation, especially at the judicial level in the Tax Court, judges' decisions which are often different based on the interpretation and personal preferences of judges cause injustice and legal uncertainty. This then knocked on the heart of the researcher as an academic as well as a practitioner in the field of taxation to study further in the Dissertation regarding "The Essence of a Tax Lawsuit on the Decision of the Application for Reduction or Cancellation of the Tax Determination Letter of the Fundamental Discourse of the Tax Court Decision". The problem that is the critical point of this dissertation is the existence of various substance of the Tax Court's decisions, especially related to Tax Lawsuits that cause injustice and legal uncertainty. The substance of the types of Tax Court decisions on Cases that have the same legal basis, namely a lawsuit against a Decree on an Application for Reduction or Cancellation of SKPKB that is not correct in accordance with Article 36 paragraph (1) letter b / (Decision Letter) is as follows:

Stating that the Lawsuit over the Decree only allows to discuss the Formal Examination Procedure without considering the formal elements in the SKPKB that are requested to be deducted/canceled;

Stating that the Lawsuit over the Decree can consider the Formal Elements of the Examination Procedure and Materials in the determination of the SKPKB;

Stating that the Lawsuit over the Decree can consider the Formal and Material elements of the Examination Procedure which are related to the application of formal norms in the material elements of the examination.

THEORETICAL FRAMEWORK

The theoretical framework for analyzing the essence of tax disputes, particularly regarding decisions on requests for reductions or cancellations of tax assessments, encompasses several key theoretical perspectives. It integrates legal theory, focusing on principles of justice and fairness, and the interpretation of legal texts through approaches such as textualism and purposivism. Taxation theory provides insights into tax compliance and enforcement, as well as dispute resolution mechanisms. Judicial behavior theory explores decision-making models, judicial independence, and accountability, emphasizing how these factors influence judicial outcomes. Legal process theory highlights the importance of procedural fairness, transparency, and the role of judicial review in ensuring compliance with legal standards. Empirical legal studies offer methods for analyzing case law and assessing the impact of legislative changes, while policy and administrative law theory addresses regulatory frameworks and administrative discretion. This integrated framework helps to understand the impact of varying judicial interpretations on fairness and consistency in tax adjudication, aiming to enhance legal certainty and the effectiveness of tax dispute resolution.

METHODOLOGY

This research is a normative or doctrinal legal research. Legal research is intended to produce a rational argument, theory or new concept as a prescription in solving the problems faced. To account for the science in this research, the epistemological aspect is absolutely necessary. The aspect of epistemology that is studied is to question the way this research gains knowledge from the problem being studied. Legal research is a scientific activity, which is based on certain methods, systematics and thinking, which has the purpose of studying one or several specific legal phenomena. While law is usually interpreted as a method or norm. A method or norm is a benchmark or guideline regarding human behavior that is considered appropriate. The law is sometimes also interpreted as a decision from an official. In line with this, the law can also be interpreted as an officer.

RESULTS AND DISCUSSIONS

IMPLEMENTATION OF TAX RIGHTS AND OBLIGATIONS FROM SELF-ASSESSMENT TO ISSUANCE OF TAX DETERMINATION LETTER

The tax system in Indonesia includes several approaches to tax collection, including self-assessment, official assessment, and withholding. While self-assessment is the primary approach that provides Taxpayers with the opportunity to voluntarily calculate, pay, and report their own taxes, the practice also involves other elements such as withholding taxes on income and direct collection by tax authorities. In addition, the implementation of tax administration involves various stages ranging from registration, bookkeeping, calculation, payment, to tax reporting. Although the goal of this system is to improve legal certainty, fairness, and simplicity, there are still challenges in achieving the key prerequisites necessary for the effectiveness of self-assessment, such as the provision of an easier administrative system, comprehensive data, and effective law enforcement against violations. The orientation of change carried out by the Law on Harmonization of Tax Regulations (UU HPP) aims to improve and strengthen the self-assessment system so that it can be more optimal in exploring the potential of taxation in Indonesia.

Tax administration, as an integral part of a country's tax system, involves several key elements that must be well coordinated. First, there are institutions or bodies that have the authority to collect taxes. In Indonesia, the Directorate General of Taxes (DGT) is responsible for this. Second, tax administration involves officials and employees who carry out tax collection duties in accordance with applicable regulations. This process is important to ensure effective tax compliance and collection. Tax reforms, such as the transition from official assessments to self-assessments in 1983, marked significant changes in administrative approaches, allowing taxpayers to calculate, deposit, and report their own taxes. Supervision of taxpayer compliance is an important element in tax administration.

Carried out by the DGT through the Account Representative, this supervision includes the analysis of data and information that leads to requests for explanations or visits to taxpayers. Responses from taxpayers can vary, ranging from data justification to the submission of corrective tax returns. The results of this oversight can trigger further processes, such as tax audits, depending on the findings and analysis conducted. Tax audit is the next stage in an effort to ensure taxpayer compliance. Conducted by tax officers who have the authority and skills, this audit aims to test taxpayers' tax compliance in accordance with applicable legal provisions. This process involves the collection and analysis of objective evidence to assess the reasonableness of fulfilling tax obligations. Audit standards, both general and implemented, are a guide in carrying out tax audits. This includes careful preparation, the use of appropriate methods and techniques, and accurate documentation of the findings of the examination results. The audit report is the output of this process, providing a clear picture of the taxpayer's tax compliance and the necessary follow-up, such as the Tax Determination Letter. This process, from supervision to inspection, shows how effective tax administration can ensure fairness and compliance in tax collection. This not only supports optimal state revenue but also builds trust and transparency in the relationship between taxpayers and tax administration.

Audit is once again a series of activities to collect and process data, information, and/or evidence that are carried out objectively and professionally based on an audit standard to test compliance with the fulfillment of tax obligations and or for other purposes in order to implement the provisions of tax laws and regulations. An examination to test compliance with the fulfillment of tax obligations must be carried out on Taxpayers who submit an application for a refund of overpayment of taxes as referred to in article 17B of the KUP law.

Audits to test compliance with the fulfillment of tax obligations can be carried out in terms of meeting the following criteria:

Taxpayers submit a notification letter stating overpayment, in addition to those who submit an application for a refund of overpayment of tax as referred to in article 17B of the KUP law

Taxpayers who have been given a preliminary refund of overpayment of tax

Taxpayer submits a notification letter stating a loss

Taxpayers carry out mergers, consolidations, expansions, liquidations, dissolution or will leave Indonesia forever

The taxpayer makes a change in the financial year or bookkeeping method or due to the revaluation of fixed assets

The taxpayer does not submit or submit a notification letter but exceeds the period that has been set in the warning letter selected to be audited based on risk analysis

Taxpayer submits the selected notification letter

Tax legal remedies can be interpreted as a step regulated by law given to taxpayers to obtain justice. This includes several forms of efforts that can be made by taxpayers to respond to tax administrative actions or decisions. First, taxpayers can make objections by submitting an application to the authorized official such as the Director General of Taxes for tax administration at the central level, or the Governor/Regent/Mayor for tax administration at the regional level in accordance with the mandate of regional regulations. Second, Taxpayers can submit an application for reduction or cancellation of the Tax Determination Letter or Tax Bill Letter, both related to the tax principal and administrative sanctions. This application is submitted to the authorized tax administrator. Furthermore, there are further legal remedies in the form of lawsuits and appeals to the tax court. This lawsuit can be filed to resolve tax disputes that arise after the existence of a Tax Decree or in other cases related to the implementation of a Tax Decree. Finally, the Taxpayer can conduct a review to the Supreme Court as a last resort after the issuance of a tax decision that has an impact on the collection action. Overall, tax legal remedies provide protection to taxpayers to ensure that any tax provisions or decisions imposed on them are in accordance with the applicable legal provisions and provide an opportunity to fight for their rights in order to obtain justice.

CONCLUSION

Administrative and juridical instruments in Indonesia's tax system have not yet fully succeeded in increasing public compliance and awareness of tax obligations. Although the self-assessment system is implemented with the aim of changing the perception of taxes from a burden to a voluntary obligation, the complexity of the procedures involved can cause a psychological burden for taxpayers. In addition to self-assessment, the imposition of taxes such as VAT, PPnBM, and income tax also uses the official assessment and withholding mechanism. However, important prerequisites such as ease of administration, complete data availability, and effective law enforcement are still not fully met. As a result, the potential of taxation in Indonesia has not been fully utilized. The amendment to the Law on General Provisions and Tax Procedures (KUP Law) through the Tax Harmonization Law (HPP Law) aims to improve and strengthen the self-assessment system. The main focus is to provide legal certainty, fairness, and simplicity in the tax process. Thus, it is hoped that this change can reduce the complexity of procedures, increase taxpayer compliance, and optimize the potential for state tax revenue.

REFERENCES

- Book
- Agus Irianto et al. (1995). *Seri Perpajakan, Undang-Undang KUP 1994 Catatan dan Latar Belakang*. PT. Bina Renaparawira, Jakarta.
- Amerson, Richard J. (1997). "Equality and Equal Opportunity for Welfare." In Louis P. Pojman & Robert Westmoreland (Eds.), *Equality: Selected Readings*, 229–241. New York: Oxford University Press.
- Amrah Muslimin (1985). *Beberapa Asas dan Pengertian Pokok Tentang Administrasi dan Hukum Administrasi*. Alumni, Bandung.
- Bachsan Mustafa (1985). *Pokok-Pokok Hukum Administrasi Negara*. Alumni, Bandung.
- Bagir Manan (1995). *Pertumbuhan dan Perkembangan Konstitusi Suatu Negara*. Penyunting Mashudi & Kuntana Magnar, Mandar Maju, Bandung.
- Barnet, Richard J. & R.E. Muller (1984). *Global Reach*. Terjemahan Drs. Setiawan Abadi, LP3S, Jakarta.
- Bohari (1993). *Pengantar Hukum Pajak*. Rajawali Press, Jakarta.
- Burkhead Jesse (1956). *Government Budgeting*. New York: John Wiley & Sons, Inc.
- Bruggink, J.J.H. (1996). *Refleksi Tentang Hukum*. Terjemahan Arief Sidharta, Citra Aditya Bakti, Bandung.
- Chidir Ali (1993). *Hukum Pajak Elementer*. Pengantar Prof. DR, Rochmat Soemitro, PT. Eresco, Bandung.
- Journal
- Bima, M. R. (2019). Hal Ikhwal Kegentingan Yang Memaksa Sebagai Landasan Pembentukan Peraturan Pemerintah Pengganti Undang-Undang. *Jurnal IUS Kajian Hukum Dan Keadilan*, 7(1), 97–106. <https://doi.org/10.29303/ius.v7i1.595>
- Bima, M. R. (2019). THE MATTER OF EMERGENCY AS A BASIS FOR THE ESTABLISHMENT OF GOVERNMENT REGULATION REGARDING LAW REPLACEMENT. *Jurnal IUS Kajian Hukum Dan Keadilan*, 7(1), 97–106. <https://doi.org/10.29303/ius.v7i1.595>
- Bima, M. R. (2023). The Dispute on Determination of the General Election Commission Members: A Study of Administrative Effort Implementation. *SIGn Jurnal Hukum*, 4(2), 277–290. <https://doi.org/10.37276/sjh.v4i2.163>
- Bima, M. R., & Ramadani, R. (2020). Position of Supervisory Board Organ and Its Implications for the Institutional Corruption Eradication Commission. *Law Reform: Jurnal Pembaharuan Hukum*, 16(2), 179–197. <https://doi.org/10.14710/lr.v16i2.33770>
- Bima, M. R., Rahadi, R., & Husen, L. O. (2023). Analisis Pemberlakuan Omnibus Law Dalam Sistem Perundang-Undangan Indonesia. *Journal of Lex Philosophy (JLP)*, 4(1), 145–159. <https://doi.org/10.52103/jlp.v4i1.1494>
- Budhiasty, R., Razak, A., Sampara, S., & Hidjaz, M. K. (2020). IMPLEMENTATION OF THE FUNCTIONS OF THE CITY GOVERNMENT IN THE ADMINISTRATION OF PUBLIC SERVICES IN THE HEALTH SECTOR IN THE CITY OF MAKASSAR. *Meraja Journal*, 3(3). <https://doi.org/10.33080/mrj.v3i3.137>
- Guntur, R. T. A., Ahmad, K., & Bima, Muh. R. (2020). VIOLENCE IN HOUSEHOLD IN ISLAMIC LAW PERSPECTIVE. *Meraja Journal*, 3(2), 149–161. <https://doi.org/10.33080/mrj.v3i2.109>
- Hamrullah Hamrullah, Baharuddin Badaru, Muhammad Rinaldy Bima, 2021, Efektivitas Penerapan Sistem Pembuktian Terbalik Dalam Tindak Pidana Korupsi Gratifikasi, <https://pasca-umi.ac.id/index.php/jlg/article/view/568>
- Hidjaz, M. K., Mamonto, M. A. W. W., & Buana, A. P. (2020). Legal politics of party simplification in Indonesia: A study based on the political party regulatory model. *International Journal of Criminology and Sociology*, 9, 1210–1225. <https://doi.org/10.6000/1929-4409.2020.09.141>
- Husen, L. O., Muhammad, M., Baharuddin, H., & Qamar, N. (2020). The Principle of Good Governance: A Study of the Implementation of 'Algemene Beginselen Van Behoorlijk Bestuur' in the Legal System in Indonesia. *International Journal of Innovative Research and Development*, 9(6). <https://doi.org/10.24940/ijird/2020/v9/i6/jun20067>
- Husen, L., Anwar, A. I., Rahman, S., & Hidjaz, M. K. (2023). IMPLEMENTATION OF LEGAL GUARANTEES FOR HUMAN RIGHTS PROTECTION IN INDONESIA. *Journal of Law and Sustainable Development*, 11(4). <https://doi.org/10.55908/sdgs.v11i4.624>
- Interpretasi dan Koherensi dalam Penalaran Hukum <https://plato.stanford.edu/entries/legal-reas-interpret/>
- Khairum, M., Fahmal, A. M., & Kamal Hidjaz, &. (2021). Kewenangan Lembaga Peradilan Sebagai Institusi Penegak Hukum Dalam Mewujudkan Perdamaian Sebagai Bentuk Penegakan Keadilan. *Journal of Lex Generalis (JLS)*, 2(9). <https://pasca-umi.ac.id/index.php/jlg/article/view/630>
- Khalid, Afif. "Penafsiran Hukum oleh Hakim dalam Sistem Peradilan di Indonesia." *Al-Adl*, vol. 6, no. 11, 2014, <https://neliti.com/id/publications/225122/penafsiran-hukum-oleh-hakim-dalam-sistem-peradilan-di-indonesia>
- M. R. Bima, "IMPLEMENTATION OF STATE OF EMERGENCY WITHIN THE CONSTITUTIONAL LAW SYSTEM IN INDONESIA," *Diponegoro Law Review*, vol. 4, no. 1, pp. 122–135, Apr. 2019. <https://doi.org/10.14710/dilrev.4.1.2019.122-135>
- Qamar, N., Husen, L. O., Nawi, S., & Wahid, W. A. (2023). The enforcement of the Regional House of Representatives in Indonesia: A normative review. *Cogent Social Sciences*. *Cogent OA*. <https://doi.org/10.1080/23311886.2023.2220235>
- Rauta, Umbu, and Ninon Melatyugra. 2018. "Hukum Internasional Sebagai Alat Interpretasi Dalam Pengujian Undang-Undang". *Jurnal Konstitusi* 15 (1):73–94. <https://doi.org/10.31078/jk151s4>

ZAINUDDIN, M. R. B., MUSLIM HAQ M. ., (2023). LEGAL IMPLICATIONS OF FACTUAL ACTION AS ABSOLUTE COMPETENCE OF ADMINISTRATIVE COURTS. *Russian Law Journal*, 11(3). <https://doi.org/10.52783/rlj.v11i3.1944>

Regulation

Article 5 paragraph (1), Article 20, and Article 23A of the Constitution of the Republic of Indonesia of 1945;

Law No. 6 of 1983 concerning General Provisions and Taxation Procedures (Statute Book of the Republic of Indonesia No. 49 of 1983, Supplement to Statute Book of the Republic of Indonesia No. 3262) as amended several times, most recently by Law No. 16 of 2009 concerning the Stipulation of Government Regulations in Lieu of Law No. 5 of 2008 concerning the Fourth Amendment to Law No. 6 of 1983 concerning General Provisions and Taxation Procedures into Law (Statute Book of the Republic of Indonesia No. 62 of 2009, Supplement to Statute Book of the Republic of Indonesia No. 4999);

Law No. 7 of 1983 concerning Income Tax (Statute Book of the Republic of Indonesia No. 50 of 1983, Supplement to Statute Book of the Republic of Indonesia No. 3263) as amended several times, most recently by Law No. 36 of 2008 concerning the Fourth Amendment to Law No. 7 of 1983 concerning Income Tax (Statute Book of the Republic of Indonesia No. 133 of 2008, Supplement to Statute Book of the Republic of Indonesia No. 4893);

Law No. 8 of 1983 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods (Statute Book of the Republic of Indonesia No. 51 of 1983, Supplement to Statute Book of the Republic of Indonesia No. 3264) as amended several times, most recently by Law No. 42 of 2009 concerning the Third Amendment to Law No. 8 of 1983 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods (Statute Book of the Republic of Indonesia Year 2009 No. 150, Supplement to Statute Book of the Republic of Indonesia No. 5069);

Law No. 11 of 1995 concerning Excise (Statute Book of the Republic of Indonesia No. 76 of 1995, Supplement to Statute Book of the Republic of Indonesia No. 3613) as amended by Law No. 39 of 2007 concerning Amendments to Law No. 11 of 1995 concerning Excise (Statute Book of the Republic of Indonesia No. 105 of 2007, Supplement to Statute Book of the Republic of Indonesia No. 4755);

Law Number 11 of 2016 concerning Tax Amnesty (Statute Book of the Republic of Indonesia Number 131 of 2016, Supplement to Statute Book of the Republic of Indonesia Number 5899);