

## Reformulation of Tax Dispute Resolution in Indonesia

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### Abstract

The researcher focuses on research the tax disputes arising from the issuance of tax assessment (SKP) central taxes administered by the Directorate General of Taxation, Ministry of Finance. Authors interested in researching tax dispute considering in the last decade there was an increase in the number of tax disputes that the dispute is highly significant, if in 2005 there were only 2,613 files received into the Tax Court, in 2015 tax disputes paid were 12.486 files<sup>1</sup>, or it increases more than fourfold. There should be a solution for the increase of number of tax disputes that is very significant to avoid the accumulation of case with a very great number of case that in the end will be difficult to resolve by the Tax Court, so that the settlement of disputes in the form of decisions that provide justice for the parties of lawsuit cannot be determined immediately, it is contrary to human nature that crave the justice. The arrangement of tax dispute resolution, it is done in stages ranging from objections to the Directorate General of Taxation, the Appeal to the Tax Court and Review to the Supreme Court. The dispute resolution is a win-lose, so that the party that is defeated will always feel dissatisfied and do further legal remedies if it is necessary until the last legal remedy in the form of judicial review (*PK*). Settlement of disputes by the rules that is set out in legislation currently requires a long time, because it is based on the principle of legality in accordance with the theory of the constitutional state, the implementation of dispute resolution should be based on applicable legislation, the completion of objections during the twelve (12) months, the completion of the appeal during 16 (sixteen) months and a review during six (6) months. In addition, the dispute resolution needs costs that are not cheap because to raise objection the taxpayers must pay first the taxes owed in SKP that the correction value of tax is approved. For the appeal, it also requires the taxpayer to pay 50% of the tax due, beside that the Tax Court is only at Jakarta and place of the hearing only at Yogyakarta and Surabaya, so for the taxpayers who are far away from that location for example from the area of central and east Indonesia, it will take much time and cost to attend the court of appeal for several times. Dispute resolution is not simple, it takes very long time so that it needs expensive cost that is contrary to the sense of people justice, especially justice for taxpayers who are seeking justice in the resolution of tax disputes. The writer proposes a solution to the settlement of tax disputes primarily through alternative dispute resolution (*Alternatif Penyelesaian Sengketa (APS)*) in the form of mediation, so that the litigation effort is a last legal remedy if the mediation does not reach an agreement. Mediation is done by the expert of mediator and the independent, therefore the writer recommend that the government establish the institution for dispute resolution and tax mediation (*Badan Penyelesaian Sengketa dan Mediasi Pajak (BPSMP)*) which is a non-ministerial government institution that have a duty to research and decide the tax objection and become the independent mediator in a tax dispute. This institution is needed considering the existing arrangements all this time give authority to the Directorate General of Taxation to investigate and decide the objections of taxpayers, while that institution is the institution that make *SKP* and it is responsible for reach the tax revenue target.

**Keywords:** Tax, Regulation, Reformulation, Tax Dispute Resolution

### 1. Introduction

Taxes are the main source of state revenue and the largest source of development financing in Indonesia. In line with the significant contribution and this strategic position, the tax sector must be managed in such a way so that this sector has a high reliability in many ways, including in dispute resolution and legal certainty.<sup>2</sup> Thus, a significant contribution to the development is maintained and even increased. In fact, the settlement of a tax dispute takes a relatively long time, case arrears are very large, and the volume of arrears is growing. Besides, the tax funds are always needed at any time for development financing.

The matter of the length of time the tax dispute resolution, fundamentally it violates the principle which is simple, fast and inexpensive. This issue is interesting because the role of an independent judiciary, which is not influenced by any party, clean, and professional has not been realized as expected. This causes public

<sup>1</sup> Berdasarkan data statistik Pengadilan Pajak (diolah).

<sup>2</sup> Kepastian hukum menunjuk kepada pemberlakuan hukum yang jelas, tetap, konsisten dan konsekuen, yang pelaksanaannya tidak dapat dipengaruhi oleh keadaan-keadaan yang sifatnya subjektif. Indikator adanya kepastian hukum di suatu negara itu sendiri adalah adanya perundang-undangan yang jelas dan perundang-undangan tersebut diterapkan dengan baik oleh hakim maupun petugas hukum lainnya. Abdul Rachmad Budiono, *Pengantar Ilmu Hukum* (Malang, Bayu Media Publishing, 2005), hlm. 22.

confidence in the judiciary has declined.<sup>1</sup> In contrast, the alternative dispute resolution is increasingly in demand because it is confidential.<sup>2</sup> Therefore, the matter of resolution of tax disputes through alternative dispute resolution (ADR) is important to think about.

Tax plays a very important role in order to promote the general welfare in accordance with the objectives of the Republic of Indonesia.<sup>3</sup> Article 23A of the Constitution of the Republic of Indonesia Year 1945 (NRI Constitution of 1945) establishes "Taxes and other that is coercive for the purposes of the state is governed by law".

Tax is basically mandatory contributions to the state owed by individual or entities that are coercive based on the Act, by not getting the rewards directly and used for the purposes of the state for the welfare of the people.<sup>4</sup> This definition is similar to what is proposed by Leroy Beaulieu in his *Traité de la Science des Finances: "L'impôt et la contribution, soit soit directe dissimulée, que Exige La Puissance Publique des habitants ou des Biens pur subvenir aux dépenses du Gouvernement "*.<sup>5</sup>

In general, there are three (3) types of tax disputes that are<sup>6</sup>:

- 1) Regulation Dispute;
- 2) Tax Assessment Dispute and
- 3) Tax Collection Implementation Dispute and other decisions from tax authority.

**Regulation Dispute** occurs when Tax Regulation either the Act or regulations of the implementation underlying such as the Government Regulation (PP), the Regulation of the Minister and the Directorate General of Taxes, Regulations of governor/ mayor / regent sued by the taxpayer because it is incompatible or contrary to the Constitution or legislation which are higher. The provision of lower regulatory must not be contrary to higher regulations which is already *adagium* adopted in the legal system that is *Lex Superior derogat legi Inferior* (law which the rank is higher annul the laws which the degree is lower). Likewise, reviewed from *stufenbau* by Hans Kelsen that states, "the law of a State that is tiered, and legal norms are lower than that"<sup>7</sup>:

**Tax assessment disputes** occur because the taxpayer does not agree with a tax assessment established by the tax authorities, for Central Government Tax is managed by the Directorate General of Taxes of Ministry of Finance, while the Local Tax is managed by the Provincial Government and District Government. Legal efforts are taken by the taxpayer on which he disagreed the tax assessment through objection to the tax authority that establish Tax Assessment Letter (SKP). If the taxpayer is still dissatisfied with the Objection Verdict, the taxpayer can bring the appeal to the Tax Court. If the taxpayer or the Tax Authority is dissatisfied with the Appeal Verdict of Tax Court so he/she may file appeal to the Supreme Court (MA).

**Implementation Dispute of Tax Collection and other verdicts**, which is a lawsuit filed by the taxpayer for the implementation of the collection by the tax authorities or for their other verdicts related to the implementation of tax regulations beside the Tax Assessment Letter (SKP) established by taxation authority which is not in accordance with the applicable laws and regulations. Implementation Dispute of Tax Collection and another Assessment Letter which is the absolute authority of the Tax Court.

This study focuses on the tax dispute levied by the Central Government in the form of Income Tax (Income Tax), and Value-added Tax and Sales Tax of luxury goods, which are managed by the Directorate General of Taxes, Ministry of Finance for the Determination of Tax by Director General of Taxes in the form of establishment of

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<sup>1</sup> Kepastian hukum menunjuk kepada pemberlakuan hukum yang jelas, tetap, konsisten dan konsekuen, yang pelaksanaannya tidak dapat dipengaruhi oleh keadaan-keadaan yang sifatnya subjektif. Indikator adanya kepastian hukum di suatu negara itu sendiri adalah adanya undang-undangan yang jelas dan undang-undangan tersebut diterapkan dengan baik oleh hakim maupun petugas hukum lainnya. Abdul Rachmad Budiono, *Pengantar Ilmu Hukum* (Malang, Bayu Media Publishing, 2005), hlm. 22.

<sup>2</sup>Badan Perencanaan Pembangunan Nasional, *Program Pembangunan Nasional 2000-2004 (PROPENAS)*, diakses pada 20 Maret 2016, <http://bappenas.go.id/id/data-dan-informasi-utama/dokumen-perencanaan-dan-pelaksanaan/download-lengkap-propenas-2000-2004/hlm.III-1>.

<sup>3</sup>Badan Pembinaan Hukum Nasional, *Masalah Hukum Arbitrase Online*, (Jakarta: Badan Pembinaan Hukum Nasional, 2010), hlm. 19.

<sup>4</sup>Alinea keempat Pembukaan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

<sup>5</sup>Pasal 1 (1) Undang-Undang No. 6 Tahun 1983 tentang Ketentuan Umum dan Tata Cara Perpajakan, Lembaran Negara Republik Indonesia Tahun 1983 Nomor 49, Tambahan Lembaran Negara Republik Indonesia Nomor 3262 sebagaimana telah diubah dengan Undang-Undang Nomor 16 Tahun 2009 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 5 Tahun 2008 Tentang Perubahan Keempat Atas Undang-Undang Nomor 6 Tahun 1983 Tentang Ketentuan Umum dan Tata Cara Perpajakan Menjadi Undang-Undang.. Lembaran Negara Republik Indonesia Tahun 2009 Nomor 62, Tambahan Lembaran Negara Republik Indonesia Nomor 4953.

<sup>6</sup>Terjemah bebasnya: "Pajak merupakan kontribusi langsung maupun tidak langsung, yang pelaksanaannya dapat dipaksakan oleh kekuasaan publik baik terhadap masyarakat maupun atas barang untuk pembiayaan belanja negara". Rimsky K. Judisseno, *Pajak dan Strategi Bisnis: Suatu Tinjauan tentang Kepastian Hukum dan Penerapan Akuntansi di Indonesia*, (Jakarta: PT. Gramedia Pustaka Utama, 2005), hlm. 13.

<sup>7</sup>Tjip Ismail, *Pengaturan Pajak Daerah di Indonesia*,(Jakarta: Yellow Printing, 2007), hlm. 150.

Tax assessment letter (*SKP*).

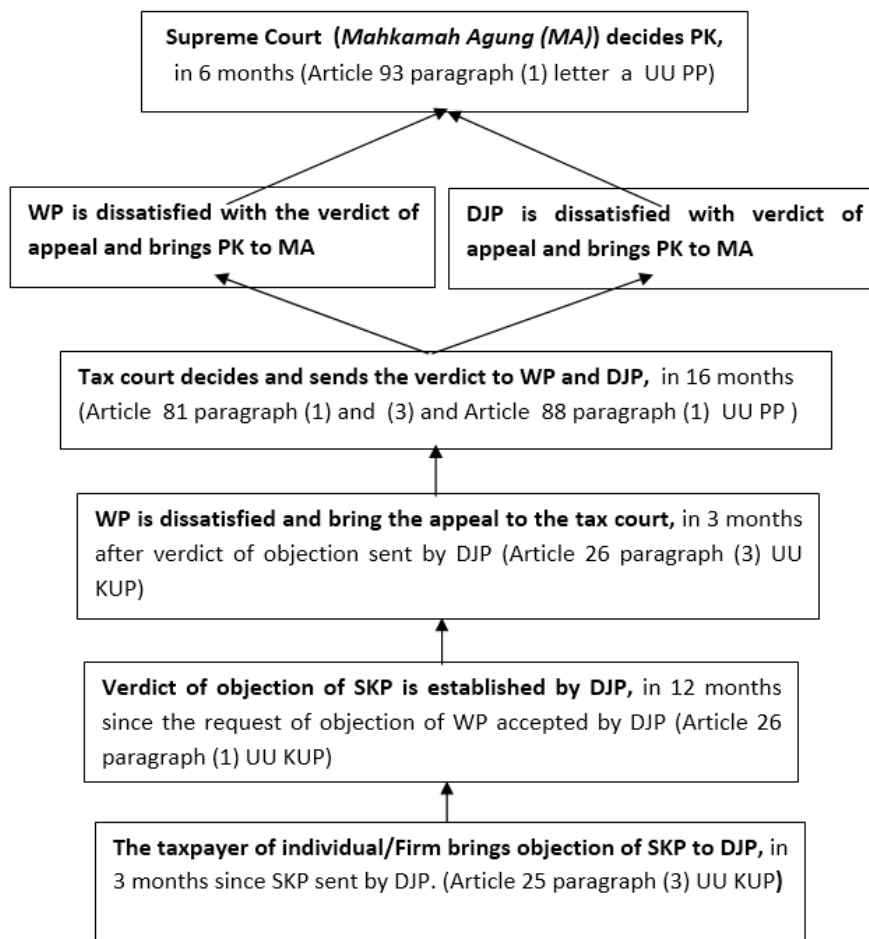
Act gives right to the taxpayer to take legal efforts in the resolution of tax disputes in the form of objection to the Tax Authority/ Directorate General of Tax, Appeals and or lawsuit to the Tax Court and Review to the Supreme Court, it is the legal protection of the taxpayer from arbitrary actions of Tax Authority, it extremely relevant to what was revealed by Prof. Sudarsono<sup>1</sup>:

“Abuse of power, including the power (*detournement de pouvoir*) and acts of arbitrary (*willekeur / abus de pouvoir*) is a phenomenon that has long existed, also at the same time reminds us of the importance of control toward the use of authority itself, moreover with the presumption principle of validity (*vermoeden van rechtmatigheid=praesumptio iustae causa*), which requires us to judge an act of government as valid first before any decisions or rules that states on the contrary. This principle can encourage a person to abuse his authority or act arbitrarily when control toward the use of the authority itself is weakened or reduced.”

Tax dispute resolution is in hierarchy starting from the process of objection to the Directorate General of Tax, Appeal to the Tax Court and Judicial Review (PK) to the Supreme Court. Normative dispute resolution process takes time:

Objection	12 months
Appeal	15 months
PK	06 months
Total	33 months

The followings are The Chart of Resolution of Tax Dispute, Objection, Appeal and Review, as follows:  
**CHART OF RESOLUTION OF TAX DISPUTES, OBJECTIONS, APPEALS AND REVIEW**



**NOTES:**

- KUP Law = Law Number 36 year 1983 on General Provisions and Tax Procedures that were amended several times, most are recently amended by Law number 28 year 2007.

<sup>1</sup> Sudarsono, *Pilihan Hukum dalam Penyelesaian Sengketa Tata Usaha Negara Di Peradilan Tata Usaha Negara*, Naskah Pidato Pengukuhan Jabatan Guru Besar dalam Ilmu Hukum Administrasi Negara Fakultas Hukum Universitas Brawijaya, Malang, 2008, hlm. 1.

- PP Law = Law Number 14 Year 2002 on the Tax Court, SKP = tax assessment letter.
- DJP = Directorate General of taxes of KEMENKU, WP = Taxpayer, PK = Review.

Based on the background described above, the research problems are:

- a. Why a tax dispute resolution arrangement has not met the principles of dispute resolution which are simple, fast, and inexpensive?
- b. What are the legal implications as a result of the resolution of the tax dispute that could not meet the principles of dispute resolution which are simple, fast, and inexpensive?

## 2. Research Method

The research design which is used in this study is a normative legal research. Hadin Muhjadi and Nunuk Nuswardani<sup>1</sup>, states “normative legal research is a study that evaluate the legal issues from the standpoint of legal science in depth toward the formed legal norms.” Normative law research method in this dissertation is aimed to study the tax dispute resolution arrangements in Indonesia.

The researcher uses several approaches as means to analyze the problem. The approaches used in this legal research are:

- 1) *Statute Approach.*
- 2) *Conceptual Approach.*
- 3) *Historical Approach*<sup>2</sup>, And
- 4) *Comparative Approach.*

## 3. Results and Discussion

### 3.1. Results and Discussion Against Tax Dispute Process Objections.

Objection is the beginning of process of tax dispute resolution on Tax Assessments that is not approved by the taxpayer. This objection process is an administrative effort which resolution is undertaken by the Directorate General of Taxation.

Regulation for filing an objection when it is seen from time to time, the rules are getting tougher and there is a tendency, that to file an objection is not simple, because the requirement to file an objection is increasing, for example, it must be filed in writing, in Bahasa Indonesia and states the amount of tax that must be paid by WP as well as the reasons, moreover, the regulations at this time (the third amendment of the Act of KUP, which is amended by Act Number 28 year 2007), to file a objection there are additional requirement that they must pay the amount of tax shown on SKP that the correction is approved by WP, The problem will arise if the tax is approved by WP that the correction value is quite large, so WP cannot afford to pay. If the requirements are not met, the letter of objection cannot be considered and processed further, so that WP did not have a chance to examine the SKP in order to obtain justice.

In the research process the objection that is applied currently is that there are provisions which limit the right of proof by WP namely, evidence, records and information that are not given at the time of the tax inspection process before SKP is published, it cannot be considered as the evidence at the time of the objection, except for the evidence of third party which at the time of the inspection process has not yet owned by WP.

Time is given to DJP during the 12 (twelve months) to examine and decide objections of WP, if during that time the DGT has not decide the objection, the objection of WP is considered to be accepted. Period of 12 months is a long time for WP to obtain legal certainty whether the objection is received, partly accepted, rejected or even the amount of tax due is added by the DGT.

Related to the time of dissolution of tax objection, when it is compared with the objection of Customs and Excise as stipulated in the Customs Act it stipulates that the Directorate General of Customs and Excise had to make a decision on the objection determination within 60 (sixty) days since the objection is received, if within such period, it does not meet the requirement, the objection is considered to be received, the regulation is explained in the following<sup>3</sup>:

- (1) People who has objection to the determination of Customs and Excise officials on tariff and / or customs value for the calculation of import duty may file a written objection only to the Directorate

<sup>1</sup>Hadin Muhjadi dan Nunuk Nuswardani, *Penelitian Hukum Indonesia Kontemporer*, (Jogyakarta: Genta Publishing, 2012), hlm. 9. Sutandyo Wignjosobroto, membagi sifat penelitian hukum menjadi dua, yaitu penelitian hukum doktrinal dan non doktrinal. Sutandyo Wignjosobroto, *Metode Penelitian Hukum*, 1974, hlm. 89. Pendapat beliau tersebut sama dengan pendapat Burhan Ashshofa, yaitu membagi dua katagori/jenis penelitian hukum, yaitu doktrinal dan non doktrinal. Metode doktrinal adalah setiap penelitian hukum yang mendasarkan sebagai norma. Sedangkan non doktrinal adalah hukum sebagai tingkah laku atau mengkonsepkan hukum sebagai tingkah laku. Penelitian non doktrinal ini disebut juga penelitian Empirik. Burhan Ashafa, *Metode Penelitian Hukum*, (Jakarta: Rineka Cipta, 1988), hlm. 34.

<sup>2</sup>Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana (edisi pertama cetakan ke tiga), 2007), hlm.93.

<sup>3</sup>Undang-Undang nomor 10 Tahun 1995 tentang Kepabeanan, yang telah diubah dengan Undang-undang nomor 17 Tahun 2006, Pasal 93.

- General in thirty days since the date of the determination by submitting a deposit as much as the import duty that must be paid.
- (2) Directorate General decides the objection as referred to paragraph (1) within a period of sixty days since the objection is accepted.
  - (3) If the objection referred to paragraph (1) is rejected by the Directorate General, the deposit is thawed and import duty owed is deemed to have been paid, and if objections are received, the deposit is returned.
  - (4) If within a period of sixty days as mentioned in paragraph (2) the Directorate General does not give a decision, that objection is considered to be accepted and the deposit is returned.
  - (5) If the guarantee referred to paragraph (1) in the form of cash and refund the deposit referred to paragraph (3) and (4) is done after a period of sixty days, the Government provides an interest rate of two percent per month for maximum twenty-four month.

The period of time for submitting objection and objection resolution in some countries that the authors summarized from the report of End Alignment of Academic Paper *RUU The Law Amendment of KUP* is published by the National Law Development Agency depicted as follows<sup>1</sup> :

Country	The proposal of objection after SKP established	The objection resolution after objection letter accepted by tax authority
England	30 days	45 days
Australia	60 days	56 days (8 weeks)
Canada	90 days	60 days
Philipine	30 days	60 days
Indonesia	3 months	12 months

As we can see from the above comparison it can be concluded that the period of time of objection dispute resolution in Indonesia is very long which is 12 months.

From the above description, it can be analyzed further that:

First, a proposal of tax objection that is applied currently must meet several administrative requirements such as: filed in three months after the date of SKP that has been sent, must give clear reasons and if it is related to dispute of tax value that has to be paid, the WP should state how many tax values that has to be paid by the tax payers, as well as having to pay taxes in the agreed SKP during the process of tax audits. With that condition that is not simple it can happen that the WP's objection proposal does not meet the formal requirement so that the objection can not be processed further, thereby WP parties can not access the tax dispute process to obtain justice. Reviewed from justice theory, this case has damaged the sense of public justice especially the taxpayers who face a tax dispute.

Second, the timing of objection resolution that is very long, this very long dispute resolution is an injustice, as stated by William Penn in his book *Some Fruits of Solitude*, Year 1693<sup>2</sup>: "*To delay Justice is Injustice*". This long resolution of disputes also violates sense of public justice, especially taxpayers.

Third, the proposal of objection requires cost that is not small, if WP propose an objection then he must pay taxes first which is contained in approved SKP in the process of tax audits, and if objection of WP is not granted or granted partly on underpayments of tax, then WP will incur a penalty of 50% of the tax that is not paid in the decision letter, beside that because filing an objection is not simple and not all WP master the objection process then he should hire a professional to help represent or assist the taxpayer. Cost of a tax dispute resolution that which is not cheap, it can make the taxpayer in liquidity problems that cannot access the objection process, so that it is contradictory to the sense of public justice especially the tax payer.

The process of settlement of the tax dispute on the level of objection is not simple, it requires a long time and will not be cheap, especially in conditions of WP that propose the objection of the underpayments SKP (SKPKB), if the taxpayer lose then WP will incur a penalty of 50% of the tax that is not paid.

An alternative tax dispute resolution to resolve the above problem is required, such as on a tax dispute mediation conducted by an independent party. Therefore, the researcher suggests that it needs to make an Institution of Dispute Resolution and Tax Mediation (*BPSMP*) which is a non-ministerial government institution that has a duty to handle the objection and become the independent mediator of a tax dispute between WP and the Directorate General of Taxation.

### 3.2. Results and Discussion toward Tax Dispute Appeal Process.

The appeal is filed by the taxpayer (WP) who is not satisfied with the objection verdict of Directorate General of

<sup>1</sup> BPHN, *Penyelarasan Naskah Akademik Rancangan Undang- Undang tetnang KetentuanUmum dan Tatacara Perpajakan*, (BPHN, Jakarta, 2015), hlm.93.

<sup>2</sup> [www.bartleby.com/1/3/162.html](http://www.bartleby.com/1/3/162.html) diakses pada tanggal 10 November 2016.

Taxes of objection proposal of WP toward the Tax Assessment Letter (*SKP*). Analysis of the appeal process can be explained as follows:

First, a tax appeal request that is applied in accordance with legislation provision at this time must meet several administrative requirements / formal requirements that are: it is filed in three months after the sent date of objection verdict, it must give the clear reasons and if it is related to the dispute of the tax value that must be paid so the WP should state how much the tax value that must be paid by the tax payers, and have to pay the tax in the approved *SKP* during the process of tax audits. With that provision that is not simple it can happen that the appeal request of WP does not meet the formal requirements so that the appeal is not accepted, thus the WP cannot access the tax dispute process to obtain justice. Reviewed from the theory of justice, this case has damaged the sense of public justice especially the taxpayers who face a tax dispute.

Second, the time of the appeal is very long according to the provision that is 16 (sixteen) months, when compared with the Circular Letter of Supreme Court date 10th of September, Number 3 of 1998, about the case resolution at maximum time 6 (six) months, even with the latest Circular Letter of Supreme Court on March 13, 2014, SE Number 2 in 2014, stipulated that the resolution of case at first level court not later than five (5) and at the court of appeal level no later than three (3) months. This appeal dispute resolution that is very long also violates sense of public justice, especially taxpayers who are seeking justice.

Third, the appeal request apparently need the cost that is not a bit, if WP propose the appeal he must first pay taxes contained in the approved *SKP* in the process of tax audits, where the trial is only available at Jakarta, Yogyakarta and Surabaya, so the WP that files the appeal outside those cities would require transport costs, accommodation and the longer time and more expensive, beside that because the appeal is not simple and not all WP master the process of appeal then he should hire a professional to help in representing or assisting the taxpayer. In addition, if an appeal of WP is not granted or granted partly on underpayments of tax, then the WP will incur a penalty of 100% of the tax that is not paid in Appeal Verdict, the cost of tax appeal dispute resolution that is not cheap can cause the taxpayer that is in the liquidity problems cannot access the appeal process, so it is contradictory to the sense of public justice especially the taxpayer.

Fourth, the Tax Court in the organization, administration and finance are still under the Ministry of Finance that is not in accordance with Law Number 48 of 2009 which embraces one roof system in the sense that the Court is fully under the guidance of the Supreme Court either in technic of judicature, organizations, administration or finance. These conditions give rights to the Minister of Finance to recruit judges of Tax Court, set up the organization, administration and finance of Tax Court, on the other hand the Finance Minister is very concerned and responsible for the achievement of the target of tax revenue, so that normatively there is an interest of Finance Minister who can conditioned so that the tax court favoring the interests of achieving the tax revenue as one of the main tasks of the Minister of Finance.

Fifth, the appeal dispute resolution either it is simple with small dispute value or complicated dispute with the large dispute value which is processed in the same way, so that the process is time consuming and inefficient, on the other side it causes more cases in arrears.

Sixth, the dispute resolution process of tax appeal is not simple, quick and inexpensive, it is not separated from the principle of legality under constitutional state adopted by Indonesia, so the resolution of disputes should be in accordance with applicable legislation in this case it is regulated in Law Number 14 of 2002 on the Tax Court. Formulation of that appeal dispute resolution arrangement is not in line with the consideration preamble in that Constitution<sup>1</sup>:

By the increasing number of taxpayer and understanding their rights and obligations in implementing law and regulation of taxation, the emerge of tax dispute is inevitable which requires a fair resolution with the procedures and processes that are fast, cheap, and simple; that the Institution of Tax Dispute Resolution is not a judicial institution that culminates in the Supreme Court; therefore we need a Tax Court in accordance with the system of judicial power in Indonesia and able to create fairness and legal certainty in tax dispute resolution.

Reviwed from the law and regulation the formulation of articles in the Act of Tax Court had not yet achieved what they want from the intent of making laws, therefore the provision of Act Number 14 of 2002 should be reformulated in order to give better legal certainty and justice for community, especially for taxpayers who seek justice.

The author believes it is time to do a change in order that for a dispute that is simple and has little value, it is necessary to apply the procedural law that is easier and faster as the civil dispute, the Supreme Court has established a Supreme Court Regulation Number 2 of 2015 on the resolution of the simple lawsuit with material lawsuit value at most Rp 200,000,000 (two hundred million), with the regulation such as:

- 1) Lawsuit resolution is not later than 25 (twenty five) days after the first trial. (Article 5 paragraph 3).
- 2) Examination by a single judge and if at the time of the examination the judge state that the lawsuit is not a simple lawsuit, the judge make the determination that the claim is not a simple suit and stricken from the

<sup>1</sup> Undang-Undang Nomor 14 Tahun 2002 *op.cit*, menimbang huruf c, d,e dan f.

- case register and ask to restore the cost of case to the plaintiff. (Article 11 paragraph 3)
- 3) Legal remedy against the decision of the simple lawsuit is a objection, which must be filed in seven (7) days after the verdict is pronounced. Article 21)
  - 4) Examination of objections are made by senior judges that are appointed by the Chief of the Court. Verdict on objection must be made not more than 7 (seven) days after the establishment of the panel. (Article 25 paragraph (2) and Article 27)
  - 5) The objection verdict is the final verdict that there is no appeal legal effort available, cassation or a review (Article 30)

Tax dispute resolution that is simple with dispute value below Rp 200,000,000 (two hundred million) needs to be pursued through the examination with fast procedure and finished in no more than two months as simple lawsuit resolution as stipulated by PERMA Number 2 Year 2015. This changes should be made in the draft of Law amendment on tax court, before Law of tax court amended, there should be Perma related to the resolution of simple tax dispute.

### 3.3. Results and Discussion toward Tax Dispute Review Process.

Eventhough the verdict of tax court appeal has permanent legal power, the parties of the dispute still can file legal action that is Review (PK) to the Supreme Court (MA), as stipulated that<sup>1</sup> : The parties of the dispute may file a review of the taxes court verdict to the Supreme Court.

#### The term of the Supreme Court must decide Review<sup>2</sup>:

- (1) Supreme Court examines and decides an application for review with the following provisions:
  - a. within a period of 6 (six) months after the application for review is received by the Supreme Court, he has taken a decision, in the case of the Tax Court he reach a decision through the examination of a regular procedure;
  - b. within a period of one (1) month after the application for review is received by the Supreme Court, he has taken a decision, in the case of the Tax Court he reach a decision through the examination of fast procedure.
- (2) A decision on the application for review referred to paragraph (1) must be stated in an open session for public.

According to researchers, the procedures and the timing of the dispute at the level of judicial review (PK) has been set adequately.

### 3.4. The Implication of Law of tax dispute resolution that does not fulfill simple, fast and low cost principle.

#### 3.4.1 the implication of law of dispute resolution in the objection level

Legal product of dispute resolution at the level of objection is in the form of objection verdict established by the Directorate General of Taxes. That verdict may be granted entirely or part of the objection demand of WP, reject or increase the amount of tax due.

Objection verdict which cause underpayments of tax, WP does not file appeal, then in accordance with Article 25 paragraph (7) of Act Number 6 of 1983 on General Provisions and Tax Procedures were last amended by Act number 28 Year 2007, the total of tax due becomes due 1 (one) month after the objection verdict was established, therefore the Tax Office (KPP) where WP is registered will collect actively toward the main tax and a fine of 50% because the objection is not granted or granted partly as stipulated in Article 25 paragraph (9) of the Act number 6 of 1983 on General provisions and Tax Procedures as amended lastly by Act Number 28 of 2007.

#### 3.4.2. Legal implication of the Dispute Resolution on the Appeal Level

Legal products from a tax dispute resolution processes on appeal is the Appeal Verdict of Tax Court. An appeal is a decision that already has permanent legal power in the sense that the verdict has to be implemented by the relevant authorities, even the parties both WP and the DGT may undertake judicial review of the decision.

Appeal verdict which cause the underpayments of tax, because it has permanent legal power, then in accordance with Article 25 paragraph (7) of Act Number 6 of 1983 on General Provisions and Tax Procedures were last amended by Act Number 28 Year 2007, the total tax due becomes due upon the Appeal Verdict was established, therefore the Tax Service Office (KPP) where WP is registered will collect actively toward the main tax and penalty of 100% of the tax that is paid less by establishing Tax Bill Letter (*Surat Tagihan Pajak/STP*).

Appeal verdict that cause the emerge of an excess of taxes paid by WP, the WP will receive a refund of excess of taxes paid, in accordance with Article 27 A of Law Number 6 of 1983 on General Provisions and Procedure of Taxation, WP is entitled to remuneration interest at 2% per-month from the date of SKP

<sup>1</sup> Undang-Undang Nomor 14 Tahun 2002 *op.cit*, Pasal 77 ayat (3)

<sup>2</sup> Undang-Undang No. 14 Tahun 2002, *op.cit*, Pasal 93.

pronounced to the date of announced Appeal Verdict, a maximum of 24 months or 48%.

### 3.4.3. Legal Implications on Dispute Resolution at the Level of Review

Judicial review is the last legal effort that can be taken either by the WP taxpayer and by The Directorate General of Taxation.

Appeal verdict of Tax Court, as has been stated above it already has a permanent legal power and the verdict has been able to be conducted directly, so that PK verdict has a Legal Implications:

- a. PK is filed by the Directorate General of Taxation (DGT) due to dissatisfaction over the Verdict Appeal Tax Court that is generally related to the tax amount according to the DGT that should be less paid, if this PK was granted so the DGT will collect the tax to the WP on the tax that is paid less plus a fine of 100 %. When PK DGT is rejected, then there are no legal implications because the right of WP has been met when the appeal verdict has been established.
- b. PK that is filed by WP is usually related to the right of WP on the tax overpayment or tax debt that should not be existed, if PK WP is granted then WP is entitled to receive back the excess of taxes that are paid and interest of 2% per month, at maximum time 24 month or 48% of the amount of excess of taxes paid. In the case of PK WP is rejected, then there are no further legal implications, because the tax that should be paid by the WP has been paid when the appeal verdict has been established.

Tax dispute resolution that does not meet the principle of simple, quick and inexpensive legal cause the implications of law as follows:

- a. Resolution of disputes which are complicated and not cheap make WP becomes difficult to access the tax dispute resolution in order to seek justice, it is contrary to the sense of justice for people, especially for WP who has objection to the tax assessment letter.
- b. Old dispute resolution cause the national income of the disputed tax that is supposed to be the state's right to be late received by the State, so that national income is reduced so that it becomes deficit and Budget and Expenditure (APBN) is increased.
- c. Overpayment of tax in dispute that should be the right of the taxpayer is received lately, because a long dispute resolution and the state should pay the exchange for an interest rate of 2% per month up to 24 months or 48%, consequently the burden of APBN is increasing to pay interest return.

## 4. Conclusion

Based on the analysis above, it can be concluded as follows:

- (1) The resolution of tax dispute is resolved through litigation/ claim in the court and multilevel process starting from objection, appeal and PK. Besides, simple dispute or a dispute with a small value or the complex dispute with great value are settled in the same way. To file an objection, appeal and review it must meet requirements in order that the demand of legal effort meet the formal requirements, such as the period of time to input the request of legal effort and the terms of the contents of a letter of objection, appeal and review should be made in such a way as in order to be clear the tax that is owed by the applicant and the reasons, so to make a request letter of legal effort it needs professionals such as tax consultant / attorney of the tax Court to make it.

Resolution of dispute takes a long time because it is based on the principle of legality in accordance with the theory of the constitutional state, the implementation of dispute resolution should be based on applicable legislation, the completion of objections during the twelve (12) months, the completion of the appeal of 16 (sixteen) months and a review of six (6) months,

Dispute resolution costs that are not cheap because to file an objection the taxpayers must first pay off taxes owed in that the correction value of tax that is approved. To file an appeal, it also requires the terms that the taxpayer must pay 50% of the tax due, beside that the Tax Court is only existed at Jakarta, Yogyakarta and Surabaya, for the taxpayers who are far away from those locations for example from the area of central and eastern of Indonesia, it will take time and cost to attend several times of appeal court.

Dispute resolution is not simple, it takes very long and protracted and it requires costly so it is contrary to the sense of justice, especially justice for taxpayers who have tax disputes that are seeking justice.

- (2) Resolution of tax disputes that do not meet the principles which are simple, fast and inexpensive cause the legal implications for taxpayers, which is not easy to access the resolution of a tax dispute for justice, because the dispute resolution process is complicated and takes high costs which is associated with the condition that they must pay a partial amount of tax which has been approved in the SKP, and there is a risk of WP that will incur a penalty of 100% of the taxes to be paid if it loses on appeal in the tax court. Tax Dispute resolution which takes long time cause the state tax that should have been received becomes too late, so the tax revenue target can disturb the achievement target of tax revenue and the budget that becomes deficit would be higher. On the other hand, if there is a right of WP on the



overpayment of taxes, then state must pay remuneration interest of 2% per month up to 24 months or 48%, the longer the resolution of disputes, the greater interest that has to be paid by the State.

## 5. Suggestion

- 1) Author recommends to the Government, in order to form an Institution of Dispute Resolution and Tax Mediation (BPSMP) is the government institution of non-ministerial domiciled at Jakarta and has representative offices in each capital city of province, which is responsible for handling and deciding tax objections and be a mediator on the tax dispute between the tax authorities and the taxpayer, either mediation process before it is established or after SKP is established by the tax authorities.
- 2) Changes / further regulation related to formal legal arrangements / general provisions and taxation procedures are explained as follows:
  1. It is set in order that the tax dispute resolution is conducted earlier by a non litigation through mediation, if mediation is not reached so it takes legal effort through litigation.
  2. A period of disputes resolution of objections is accelerated from 12 months to 4 months.
  3. For filing an objection and appeal WP is not required to pay the tax due, but the legal effort does not preclude the collection of tax.
- 3) Change of regulation / arrangement related to the provisions of the Tax Court Law is explained as follows:
  1. Resolution of disputes of simple tax appeal that the value of the dispute is Rp 200 million and under of it is dealt with fast procedure, so it is not dealt with regular procedure.
  2. Tax Court Judge should make the mediation of the tax dispute between the WP and the Defendant / tax authorities earlier, before entering the material tax disputes.
  3. Duration of dispute resolution of tax appeal is accelerated from twelve (12) months to 6 (six) months.

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