

The Existence of Tax Courts in Indonesia From the Colonial Era, Independence, to Reformation

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ABSTRACT

The source of the State Budget is Taxes. Tax is a mandatory contribution that is coercive because it is regulated by law. One of the tax collection systems is self-assessment, where taxpayers are given the freedom to pay and report their taxes independently, the fiscal officer supervises and checks the tax returns reported by taxpayers every year. This difference in opinion on the results of the examination between taxpayers and tax officers is what raises the problem of tax disputes. The problem of tax disputes has existed from the Dutch colonial era to the present. The Tax Court is the body that decides tax dispute cases, the name and duties of the tax court have changed from time to time and with the decision number 26/PUU-XXI/2023 concerning the Tax Court. The authority of the tax court changed to the full authority of the Supreme Court. This article concludes that the Tax Court developed over time, and along with tax reform the Tax Court also underwent reform with the transfer of organizational, administrative, and financial coaching authority to the Supreme Court (MA). With this transfer of authority, it is hoped that the Tax Court can decide tax dispute cases fairly and have legal certainty for the parties to the dispute.

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Introduction

Taxes are the source of the State Budget (APBN). Taxes have a coercive nature because they are regulated in laws in which there are administrative sanctions and criminal sanctions (Erwiningsih, 2021). The tax collection system in Indonesia is that taxpayers are given the trust to calculate, pay, and report their own taxes owed. And this tax reporting is reported in the Tax Return (SPT), this system is called the self-assessment system (Gotama et al., 2020). In order to test compliance, the tax officer conducts tax audits to designated taxpayers. If the results of the tax audit differ in opinion between the taxpayer and the tax officer, then a tax dispute arises. In the framework of law enforcement related to the field of taxation cannot be separated from problems, especially the increasing number of taxpayers and understanding of their rights and obligations in

implementing tax laws and regulations, it is also inevitable that tax disputes arise (Basri & Muhibbin, 2022).

When viewed from the specifications, the parties to the dispute are the government as the fiscus and the people as taxpayers or tax payers. In this case, the fiscus is positioned as a comparator / defendant or the party who receives objections (Khalimi & SH, 2017). While on the other side are the people as taxpayers or tax payers who file lawsuits, objections or appeals. The object in dispute is the government's decision in the field of tax addressed to the people as taxpayers who are considered detrimental to the taxpayer concerned. The dispute is caused by a state administrative decision in the field of tax which the taxpayer is in question because he feels aggrieved by the decision (Ispryarso, 2018).

Tax disputes are resolved in tax court. Law number 14 of 2002 concerning tax administration article 2 reads "The Tax Court is a judicial body that exercises judicial power for taxpayers or taxpayers who seek justice in tax disputes" so that in this case there is a dissynchronization of the Tax Court Law with the Law on Judicial Power". Because according to article 5 paragraphs (1) and (2) reads "(1) Technical judicial guidance for the Tax Court is carried out by the Supreme Court. (2) Organizational, administrative, and financial guidance for the Tax Court shall be carried out by the Ministry of Finance".(Agustina, 2020)

A judicial body (including a special court) can be categorized as one of the actual judicial bodies, namely as the executor of judicial power must meet the following conditions:

- a. The existence of judicial bodies is regulated by law;
- b. The judicial body established must be within one of the four judicial wards;
- c. All judicial bodies in the four judicial wards culminate in the Supreme Court as the highest state court;
- d. Its organization, administration and finances are under the jurisdiction of the Supreme Court (Bravestha, 2017).

In Galang Asmara's opinion, there are at least 2 (two) things behind the need for a tax court, namely: (Suciyani, 2022)

1. The purpose of the tax court is to uphold the concept of the rule of law that requires law enforcement by the judiciary. The law enforced here is a law in the field of taxation related to the enforcement of the rights and obligations of the state and the people in the context of collecting taxes by the state against its people or state residents.
2. The Tax Court functions as one of the legal protection institutions, especially functioning in providing protection to taxpayers and tax payers from the Government's actions in collecting taxes against the people.

The tax court is a special court within the State Administrative Court. This is in accordance with Article 9A paragraph (1) of Law Number 51 of 2009 concerning the State Administrative Court which reads "In the state administrative court, a special court may be established which is regulated by law". In the explanation of the article of the PTUN Law, Article 9A paragraph (1) reads "Special courts are differentiation or specialization in the state administrative court environment, such as tax courts".

The tax court has existed since the Dutch Colonial era until now And with the Constitutional Court Decision Number 26/PUU-XXI/2023 concerning the Test Case of Law Number 14 of 2002 concerning the Tax Court against the 1945 Constitution of the Republic of Indonesia which requested organizational, administrative, and financial development for the Tax Court to be carried out by the Supreme Court, it will gradually

move to the Supreme Court. Based on the background above, a problem formulation can be drawn about the history of tax court implementation from the colonial era, independence, to reform, and how the position of the tax court in the judicial system in Indonesia (Suastika, 2021).

Research Methods

The method used in this study is normative research with a legal approach. Normative legal research according to Soerjono Soekanto and Sri Mamuji is research conducted and sourced from library material data or secondary data. Sources or library materials used in normative legal research are primary legal sources, namely: books, journals or articles, theses, dissertations. While secondary legal sources are legal sources of laws, government regulations, and regulations of the Minister of Finance. The normative research approach is a research activity to establish a relationship with the subject under study or the methods used to achieve an understanding of the problem under study. The normative research approach according to Johnny Ibrahim is :

- a. Statutory approach,
- b. Conceptual approach,
- c. Analysis approach,
- d. Comparison approach,
- e. Historical approach,
- f. Philosophical approach,
- g. Case approach.

Results and Discussions

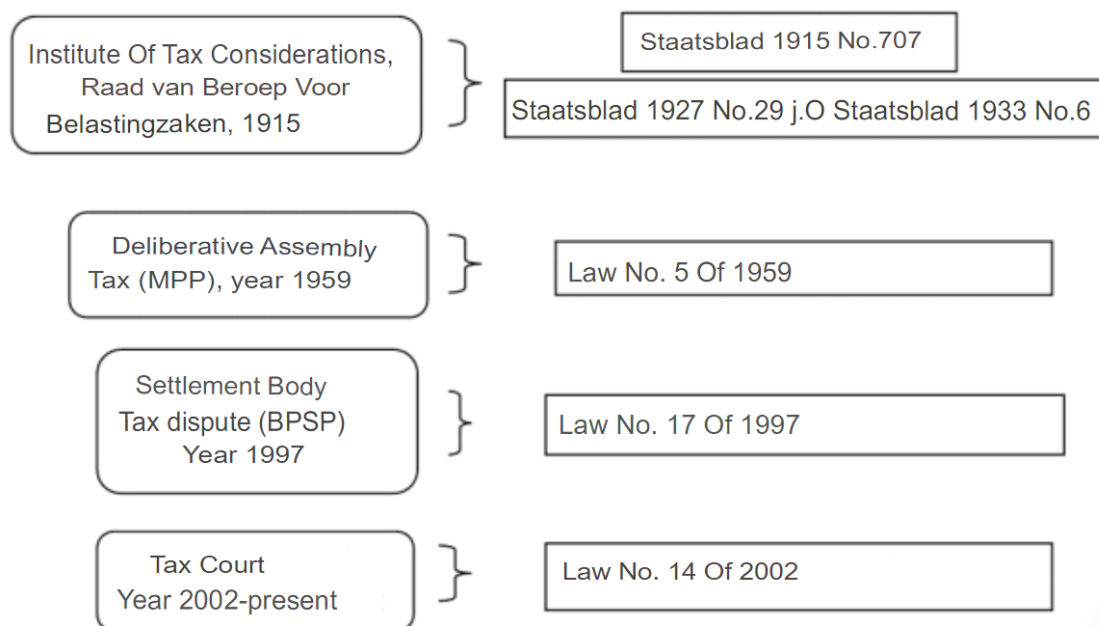
History Of Tax Court Implementation From Colonial Era, Independence, To Reform

The Tax Court in Indonesia has changed from time to time. This change was also marked by a change in the name of the Tax Court. The following are changes in the Tax Court from Time to Time. The tax judiciary which is intended as a legal institution authorized to resolve tax disputes between taxpayers and fiscus in the Indonesian Tax Law has changed from time to time. The changes are made in accordance with the policies of the ruling government and the approval of the people's representatives. These bodies are:

- a. Tax Advisory Council (MPP), which was valid from the time of the Dutch East Indies until 1997.
- b. From January 1, 1998 to April 11, 2002, the Tax Dispute Settlement Agency (BPSP) was in effect (Dewi, 2010).

The following is the history of the development of tax courts in Indonesia (Rumadan, 2012).

Chart 1. Tax Dispute Resolution Agencies



Tax Consideration Institute (IPP)

Historically, efforts to resolve tax disputes have been pioneered long before independence, actually since the days of the Dutch East Indies, the government at that time had predicted about disputes that occurred in the field of taxation, especially between businessmen and officials in the field of taxation. To minimize disputes and provide solutions for taxpayers who do not receive executive decisions, the Tax Consideration Institute was established in 1915 through *Staatsblad 1915* number 707 and domiciled in Batavia. The purpose of this institution is to provide a means or bridge for taxpayers in maintaining their rights in the field of taxation. The institution was only established in the capital of the colony, because at that time there were not so many disputes. Business growth at that time was increasing, and tax disputes that arose were accumulating day by day. To overcome this, the Tax Consideration Institute is further refined, both the personnel who manage and the authority given. This institution consists of elements of the government, entrepreneurs, and tax experts. This improvement is contained in *the Staatsblad* of 1927 number 20 concerning *Ordonnantie tot Regeling van bet Beroep In Belasting zaken* (Article 1 paragraph (1)). With this ordinance was formed *Raad van Beroep In Belastingzaken*.

Tax Advisory Council (MPP)

The Tax Advisory Council (MPP) is the beginning of the political journey of tax court law born from the provisions of "Staatsblad No. 29 of 1927 (as amended by Law No. 5 of 1959)" (Wedhasari & Parsa, 2021). With the transfer of government power from the Netherlands to Indonesia as a result of independence, there was *a missing link* in the field of tax justice. Government busyness both in the political and security fields grabs attention, so that the resolution of many tax dispute problems cannot be handled properly. Only in 1959 with Law Number 5 of 1959, the Tax Consideration Council (MPP) was formed, whose members consisted of the government, entrepreneurs, and tax experts. MPP is given the authority to examine and decide appeals against objections raised by taxpayers. The settlement of tax disputes includes in addition to state taxes (central government), as well as regional taxes. The organizational structure of MPP, has fulfilled

the size of an organization, namely assisted by the Secretariat which heads the secretariat and juridical and general administrative activities, as regulated in Presidential Decree Number 20 of 1986). With the existence of the assembly, many tax disputes have been resolved, so that truth, justice and law enforcement in the field of taxation began to be felt by the community, especially business people.

Tax Dispute Resolution Agency

To provide a clearer color for tax dispute resolution institutions, through Law Number 17 of 1997, a judiciary-like body was formed, namely the Tax Dispute Settlement Agency or abbreviated as BPSP. This body has broader authority and is intended to replace the position of the Tax Consideration Panel, namely in addition to examining and deciding tax dispute issues, as well as customs and excise. Although it is not a court, but a forum for hearing and deciding disputes, consisting of the Chairman and members (three in total), acting as judges. The decision is in the form of a decision by the Chairman of the Tax Dispute Resolution Agency or BPSP. With the expansion of the judiciary, BPSP members in addition to tax sources, tax experts (consultants, members of the House of Representatives), entrepreneurs, as well as experts in the field of customs and excise. This is done in connection with the promulgation of Law Number 11 concerning excise. Disputes in the field of customs and excise have been resolved through the Director General of Customs and Excise. The decision is final and immediately enforceable. While legal remedies to a higher level, it is not possible, so it is felt that the powers of the bureaucracy are too broad and people who carry out customs activities do not have the right to defend themselves. In order to support and anticipate the emergence of disputes in this field, customs and excise elements began to be included in tax courts. Especially for appeals received by BPSP after January 1, 1995 to be examined for appeal material, fulfillment of formal provisions in addition to the period of time, also paying off taxes owed that must be paid and stated in the decision, is carried out before filing the appeal. Many parties feel that this provision is a heavy burden imposed on taxpayers if taxpayers are unable to pay off the outstanding taxes that must be paid at 100%. The opportunity for taxpayers to seek truth and justice to the judiciary is closed. From the provision on the obligation to pay off all (100%) taxes owed, it can be concluded that:

- There are allegations / concerns from the government that BPSP, is only used as a means / way for taxpayers to delay tax payments whose process lasts relatively long. This concern actually does not need to occur, if you listen to article 25 paragraph (7) of the Law on General Provisions and Tax Procedures of 1983, which states that objections do not delay the obligation to pay taxes and the implementation of tax collection, meaning that when filing objections and appeals, repayment should have occurred. Thus Article 34 can be considered to be excessive.
- There is an assumption that basically all taxpayers are dishonest, but the measure of dishonesty has not been or cannot be determined with certainty. The uncertainty of taxpayer dishonesty can be proven after evidence of tax audit results, which take place in accordance with applicable regulations.
- For the moderate-minded, consider that repayment is intended as a guarantee for the payment of taxes owed and to avoid state losses, as a result of non-payment of taxes. But with a note that the Fiscus must pay attention to the *track record* of the Annual Notification in question.

The burden felt by BPSP is getting heavier, every day the incoming disputes are increasing, and with the provision of repayment of 100% of the tax owed, there are temporary taxpayers who turn back to the State Administrative Court. In addition to no

requirement to settle taxes owed before appeal, this court is also authorized to examine and decide disputes that occur between government officials and persons or legal entities outside the government, caused by decisions of state administrative officials. This is because; *First, the* decision of the panel of judges experienced technical problems due to the absence of judges who have expertise and experience in the fields of tax, customs, and excise. *Second,* the possibility of the verdict being unclear or *biased*. *Third,* the decision is difficult to implement, because the institution that must implement the decision already has provisions in its own legislation in its field.

Regarding the position of BPSP at that time, some proposed to be subordinated to the Supreme Court, because BPSP as a judicial institution, had not culminated in the Supreme Court. On this proposal, the thought arose to separate between decisions that are general and those that are specific or technical. Tax dispute issues that have their own style, nature, and characteristics can be submitted to a special court. Meanwhile, disputes over decisions within the scope of other state administrations are still examined and decided by the State Administrative Court. After going through very tight discussions and debates both in the community, between experts and people's representatives in the House of Representatives, finally in 2002 Law Number 14 of 2002 concerning the Tax Court was promulgated contained in the Supplement to the State Gazette of the Republic of Indonesia Number 4189 of 2002.

Tax Court

The establishment of the Tax Court is subject to Law Number 14 of 2002, with considerations, among others, stated that:

- The increase in the number of Taxpayers is balanced with the understanding of Taxpayers of their rights and obligations in implementing tax laws and regulations. This awareness and understanding causes inevitable the emergence of tax problems. Conversely, the fiscal apparatus that is increasingly aware of the implementation of good and clean government, will be more obedient and obedient to regulations, conscientious, and careful (*good governance*) in carrying out their duties.
- Tax disputes require a fair resolution with fast, cheap, and simple procedures and processes, therefore require a platform to facilitate disputes.
- BPSP, although comprehensive and has a wider scope, has not shown as a judicial body that can examine and decide disputes that have permanent legal force.

Given these matters, it is considered necessary to establish a Tax Court that is in line with the judicial power system in Indonesia and is able to create justice and legal certainty in Tax Dispute Resolution. In fact, there is an increased understanding of tax regulations, and the growth of awareness to pay taxes is getting better. Conversely, there are still many taxpayers who do not understand their tax rights and obligations, due to the lack of socialization of tax regulations that often change. Conversely, there is an assumption that according to prevailing custom (*ad usum*) the taxpayer's reluctance to deal with the court is a judicial system, felt convoluted, scary, through a long process and lack of attention to justice and truth. But this assumption is dismissed by the reality that occurred in the Tax Court, in accordance with the fact that:

- The appeal process in the Tax Court, sought to be cheap (no obligation to pay fees for clerkship, trial, or duplication for minutes of proceedings).
- The schedule and time of the trial that have been set in the list of normal trial days.
- Adjournment hearings are expected to be no more than 14 working days.
- The tax court only requires the presence of the appellant or defendant. While the appellant or plaintiff may attend the hearing of his own volition, unless summoned by the

haki on the basis of reasonable reasons. The court will review (evaluate) the decision of the Tax Officer and must be defended before the court. Here it can be seen that what is asked for classification of truth is not the taxpayer, but instead the taxpayer who is given the opportunity to provide defense by presenting reasons, rebuttals, responses, to decisions that have been taken by tax officials.

In proceedings before the court, the plaintiff can be represented by a lawyer, advocate or legal representative. In practice, it is also known as Legal Consultant. All of which can be interpreted as someone who conducts or provides advice (advice) and defense "represents" for others who relate (clients) to the resolution of a legal case. Advocates in carrying out their profession are subject to professional ethics (Cahyady, 2019). Law Number 14 of 2002 concerning the Tax Court Article 34 reads:

(1) The parties to the dispute may each be accompanied or represented by one or more legal representatives with a Special Power of Attorney.

(2) To become a legal representative, the following conditions must be met:

a. Indonesian citizen;

b. have extensive knowledge and expertise about tax laws and regulations; c. other requirements stipulated by the Minister.

(3) In the event that the legal representative accompanying or representing the appellant or plaintiff is a blood relative or a person up to the second degree, an employee, or a custodian, the requirements referred to in paragraph (2) shall not be required.

This regulation regarding Tax Attorney is further regulated in the Minister of Finance Regulation Number 184 / PMK.01 / 2017 concerning Requirements to Become a Legal Representative at the Tax Court Article 2 reads "Every individual to become a Legal Representative at the Tax Court must meet general requirements and special requirements". Article 3 reads "The general requirements to become a Legal Representative as referred to in Article 2 are as follows:

a. is an Indonesian citizen; and

b. have extensive knowledge and expertise about tax laws and regulations". Article 4 reads "Extensive knowledge and expertise about tax laws and regulations as referred to in Article 3 point b is evidenced by:

a. Bachelor Diploma IV diploma in fiscal administration, accounting, taxation, and/or customs and excise from an accredited university; or

b. Bachelor / Diploma IV diploma from an accredited university other than in the field referred to in letter a which is equipped with one of the following additional evidence:

1. Diploma III diploma in taxation and/or customs and excise from an accredited university;

2. Tax brevet from the agency or institution organizing the tax brevet;

3. Certificate of customs and excise expertise from customs and excise education and training agencies or institutions; or

4. A letter or document showing experience working with government agencies in the technical field of taxation and/or customs and excise".

Article 5 reads "The specific requirements to become a Legal Representative as referred to in Article 2 are as follows:

a. have a Taxpayer Identification Number;

b. have proof of receipt of submission of Annual Income Tax Return (SPT) for the last 2 (two) years,

c. have a Police Record Certificate;

d. does not have the status of a Civil Servant or state official;

- e. sign an integrity pact;
- f. has passed a period of 2 (two) years after being honorably discharged as a Tax Court Judge for a person who has served as a Tax Court Judge; and g. have the permission of a legal representative.

Tax Courts In The Indonesian Judicial System

The function of the tax court is not only to enforce tax law, but also as an instrument of legal protection for the people as taxpayers when dealing with the government as the ruler who has the position of the fiscus (Devitasari, 2020). The judicial body for taxpayers who seek justice in resolving tax dispute issues exercising judicial power is the tax court (Ispriyarso, 2018). The Tax Court is positioned within the scope of the State Administrative Court due to the nature of the problem and the personality of the litigant. Viewed from the point of view of the subject of the dispute, namely the litigants, the Tax Court and the State Administrative Court have similarities, namely the meeting of elements of the people as individuals and the government part of the party whose decision or decree is disputed (Wedhasari & Parsa, 2021).

This is in accordance with law number 14 of 2002 concerning the tax court, and this shows that the tax court is part of the judicial power in Indonesia. The legal basis of judicial power is regulated in the Constitution of the Republic of Indonesia in 1945 Article 24 reads:

- "(1) The judicial power is an independent power to administer justice in order to uphold law and justice.
- (2) Judicial power shall be exercised by a Supreme Court and subordinate judicial bodies within the general court, religious court, military court, administrative court, and by a Constitutional Court.
- (3) Other bodies whose functions relate to judicial power shall be provided for in law."

The composition of judicial power is:

- a. Supreme Court
- b. General judiciary
- c. Religious courts
- d. Military Justice
- e. State Administrative Court

All regulations set by special and independent institutions are enacted in the form of special rules that are subject to the principle of *lex specialis derogate lex generalis* which means that special regulations override general regulations (Huda, 2013).

The tax court is a court that has two bodies in overseeing its authority and responsibility, this is in accordance with article 5 of the tax court law which reads:

- "(1) The technical guidance of the judiciary for the Tax Court shall be carried out by the Supreme Court.
- (2) Organizational, administrative, and financial guidance for the Tax Court shall be carried out by the Ministry of Finance.
- (3) The guidance referred to in paragraph (1) and paragraph (2) shall not reduce the freedom of the Judge in examining and deciding Tax Disputes."

Decision Number 26/PUU-XXI/2023 concerning the Tax Court on the main grounds that the norm provisions tested for constitutionality by the Petitioners are: Article 5 paragraph (2), which states: Organizational, administrative, and financial development for the Tax Court is carried out by the Ministry of Finance. to the phrase: "Department of Finance" insofar as it is not interpreted as "Supreme Court". *Conditionally Unconstitutional* with: Article 1 paragraph (3), which states: The State of Indonesia is a

State of Law Article 24 paragraph (1), which states: Judicial power is an independent power to administer justice in order to uphold law and justice Article 24 paragraph (2), which states: Judicial power is exercised by a Supreme Court and judicial bodies subordinate to it within the environment the general court, the religious court, the military court, the administrative court, and the Constitutional Court. Article 28D paragraph (1), which states: Everyone has the right to recognition, guarantee, protection and just legal certainty and equal treatment before the law.

That related to the Development of the Tax Court, the Framer of the Law placed it in the provisions of Article 5 of the Tax Court Bill which in full reads as follows:

- (1) Technical guidance of the judiciary of the Tax Court shall be carried out by the Supreme Court.
- (2) The organizational, administrative, and financial guidance of the Tax Justice Agency shall be carried out by the Ministry of Finance.
- (3) The guidance referred to in paragraph (2) shall be transferred to the Supreme Court gradually.
- (4) The guidance referred to in paragraph (1) and paragraph (2) shall still guarantee the freedom of the Judge in examining and deciding tax disputes.

Conclusion

The tax court has existed since the colonial era of Belanada, and until now its existence is very necessary to resolve tax disputes between tax officers and taxpayers. The tax court from colonial times until the reform underwent several changes in name and policy. The name change of the tax court is the Tax Consideration Institute (IPP), the Tax Consideration Council (MPP), the Tax Dispute Resolution Agency. The tax court is currently equipped with a legal representative who has an IKH permit number (Izin Kuasa Hukum) registered with the tax court. Based on Supreme Court Decision Number 26/PUU-XXI/2023 concerning the Tax Court, the organizational, administrative, and financial development of the tax court shifted to the Supreme Court (MA) gradually. The transfer of organizational, administrative, and financial development authority to the Supreme Court (MA) certainly gives hope to taxpayers that the tax court not only functions to meet state revenues, but becomes a place of justice for taxpayers who seek justice in dealing with tax disputes.

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