

Indonesian Tax Dispute Resolution in Cooperative Paradigm Compared to United Kingdom and Australia

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Abstract. Since 2012, the statistical data of the tax court shows the increasing number of tax dispute. The procedure of Indonesian tax dispute resolution needs more than 36 months to get legal assurance. It is important to solve the problem immediately. The model of cooperation between taxpayer and fiscal is a new trend adopted by many countries. More than two decades, the recent government has changed the tax system through cooperation and encouraged entrepreneurship. OECD has given a notion on the importance of cooperation between taxpayer and tax administration. United Kingdom and Australia, for instance, have been enhancing their relationship with the taxpayer. It has been implemented by those two countries by giving quick tax dispute resolution service through Alternative Dispute Resolution such as mediation. ADR is expected to be able to create a good relationship right after the dispute ended. Indonesia can make the transformation to cooperative paradigm. Indonesia is able to make a legal breakthrough on the tax dispute resolution using ADR. ADR has the chance to control tax dispute resolution in Indonesia through administrative effort, in form of objection. Discussion with the taxpayer, concerning the objection, is expected to provide win-win solution in reaching an agreement regarding the obligation of tax payment.

Keyword: tax dispute, alternative dispute resolution, Indonesian tax dispute resolution, tax administration

1. Introduction

Increasing number of taxpayers and their awareness to pay taxes lead to the increasing number of tax dispute cases in tax court each year. Dispute is unavoidable in tax system (Mills, 2015). Based on statistical data of court tax secretary in 2012-2016, there were 49,257 cases. 44,659 cases have been solved, but 4,598 cases remain unsolved (2017). The number is not equal with the total judges in tax court, which is only 55. In average, each judge has 291 cases each year. If the number of judges is divided with the number of panel of judges, which is 18 panels, then each panel will have 889 cases each year. It is undoubtedly an awful situation.

The unequal number of tax dispute cases and judges leads to the length of case settlement. Sometimes it takes more than 36 months [1]. The problem becomes a difficult homework for the government, dealing with justice and legal certainty for taxpayers. The time consuming settlement will bring a great loss not only for taxpayers but also for the government. It may interrupt the income of national budget. The accumulation of tax case number in tax court starts from the disagreement in the level of tax audit. It leads to the issuance of Tax Notice which often leads to tax dispute.

The main problem of taxpayers is their objections often being refused so they lodge an appeal to the tax court. However, in the process of the appeal, the taxpayers tend to win the case. The fact is supported with the data of tax court decision in 2016 which shows that the taxpayers often win in the tax court (2017). It is crucial to find a solution for the case accumulation in Tax court since it consumes taxpayers' time and energy in searching for justice and legal assurance. To them, it is better to spend their time to increase the economic growth rather than to deal with problem in searching for justice [2].



Previous studies on tax dispute settlement include comparative study on tax dispute settlement evaluation between United Kingdom and Australia [3], tax dispute settlement mediation in Netherland [4], tax dispute settlement mediation in Canada [5], and the reformulation of tax dispute settlement regulation in Indonesia which mainly focuses on the legal implication of dispute settlement which fail to be simple, quick and cheap and recommends mediation during the process in tax court [6]. In Indonesia, the settlement of tax dispute using cooperative paradigm in its administrative legal effort as done in Australia and United Kingdom is never done before. The study aims to find out the form of tax dispute settlement using cooperative paradigm in the process of administrative legal effort.

2. Methodology

The study employs a juridical normative research using statute, conceptual, and comparative approach. The statute approach of the study examines the effort of tax dispute settlement in Indonesia as stated in Law of Tax Administration and Law of tax Court. The conceptual approach examines the concept of tax dispute settlement using cooperative paradigm recommended by OECD. Meanwhile, the comparative approach compares the dispute settlement model employed by UK and Australia. In the discussion, the researcher first describes the management and regulation of tax dispute resolution using cooperative paradigm in UK and Australia. Then, the researcher conducts identification and analysis using juridical qualitative method. To find related laws, the researcher employs legal fiction method.

3. Cooperative Paradigm In Relating Taxpayers And Tax Authority

Recent global economic crisis leads many companies to save their budget including taxes. MNC (Multi National Company) as a profit oriented company takes similar step in reducing its tax by conducting aggressive tax planning. However, the fact brings a negative impact for the country in which it will lose its tax income. On the other hand, it is important to note that MNC plays an important role in supporting the economic growth, particularly that of developing countries.

To face economic crisis and the increasing number of tax violence and aggressive tax planning by MNC, it is important to run a model initiative regarding the relation between taxpayer and the tax authority. To increase tax compliance among MNC, a new model called cooperative compliance model has been offered to increase the compliance using cooperative relation. The new model of cooperative relation between taxpayers and the tax authority is a new trend adopted by many countries. More than two decades, some governments start to change their tax systems through friendly cooperative relation and support to encourage entrepreneurship [7]. OECD (Organizational for Economic Cooperation and Development) and UN have supported their members to establish an international tax system, to avoid tax dispute among them and to solve the dispute, if it occurs, as soon as possible. In order to reduce conflict escalation, to improve their relationships with taxpayers and consequently to enhance voluntary compliance, there has been a recent trend by revenue authorities internationally in employing different initiatives, including alternative dispute resolution process without litigation [8]. Two countries which have adopted cooperative paradigm to enhance the relationship are Australia and UK.

Cooperative compliance is able to solve tax administration problems in developing countries. It is also able to create a compliance among taxpayers effectively and efficiently. In 2013, OECD issued the idea completed with its background on the importance of the relation between taxpayer and tax administration using cooperative relation. The tax administration made by the country is expected not only through law empowerment but also through taxpayer service improvement [9]. Recently, HM Revenue and Customs (HMRC) in the United Kingdom (UK) and the Australian Taxation Office (ATO) in Australia become two revenue authorities which have adopted various forms of in-house facilitation processes following the conduction of pilot trials [3].

4. United Kingdom

Tax institution in UK, Her Majesty's Revenue and Customs (HMRC), in 2011 tried to make a dispute settlement program using Alternative Dispute Resolution [10]. The first program is to provide ADR for big scale companies and taxpayers with complex tax problems. ADR process involves independent third party called mediator (accredited mediator). The second program is intended to provide ADR for Small and Medium-Sized Enterprises and individual taxpayers (SMEi). On the process of ADR, particularly SMEi, HMRC offers trained facilitators to resolve disputes (without involving mediators). In the mediation and facilitation programs of the tax dispute resolution, HMRC involves the neutral third parties such as mediators and facilitators. Recently, the program has been considered successful and numerous used to overcome the cases of individual taxpayers and small and medium-sized enterprises. However, HMRC is more careful to employ the mediation in several big and more complex cases.

In accordance with the evaluation conducted by HMRC, through investigation and several observations, the dispute resolution by mediation is evidently an effective strategy to cope with the impasses of the tax dispute in the UK [10]. Furthermore, the mediation is proven to be able to reduce the time and cost required to overcome the tax dispute (especially for small and medium-sized individual taxpayers). Mediation is able to shorten the period of dispute resolution from normally 8-23 months to 61 days or 2 months faster. Mediation can also cut down the cost and time required to resolve tax disputes on the big and complex cases [5].

The observation has shown appropriate and expected results. Subsequently, HMRC commits to permanently make ADR as a part of tax dispute resolution processes [11]. According to HMRC, the resolution using ADR is able to achieve the settlement through efficient cost, quickly (resolving disputes by agreement). The way in which tax disputes are managed and resolved can have a significant impact on the overall experience that taxpayers may have in interacting with revenue authorities. This, in turn, can impact on taxpayer voluntary compliance [3].

5. Australia

Following the UK, to implement HMRC as endeavors to resolve disputes through a cooperative paradigm, Australia commenced to use ADR by Australian Taxation Office (ATO) in 2013 to overcome tax disputes (involving mediation, negotiation, case discussion, conciliation, evaluation by neutral parties). ATO has developed strategies and big changes on the culture of tax dispute resolution in Australia [12]. This was conducted after the presence of recommendation from OECD to improve the relationship with taxpayers. After the recommendation, ATO subsequently issued Practice Statement Law Administration PS LA 2013/3, Alternative Dispute Resolution (ADR) in ATO disputes. The regulation contains guidance and principals to apply ADR. The regulation has provided ease for the taxpayers to cope with tax disputes easily, cost-effectively and quickly.

The regulation of ADR set up by Australia has shown efforts to improve better relationship with taxpayers. This is seen from the provision explaining that the relationship between ATO and taxpayers may not end due to conflicts or disputes, as described as follows:

Most taxpayer interactions with the ATO do not end up in dispute. When disputes occur, the ATO prefers to resolve them as soon as possible at minimal cost to the parties. Most disputes are resolved quickly and informally through direct ways [13].

The main principal of ATO for dispute resolution is to settle the dispute through dispute policies and to plan the dispute resolution periodically. ATO has a commitment to taxpayers to try avoiding the conflict, overcoming the conflict fast, in low-cost, simply, and effectively as well as implementing it courteously and fairly. In 2015, Australian Centre for Justice Innovation: Civil Justice Research Online by Tania Sourdin and Alan L. Shanks has carried out evaluation on ADR at Australian Taxation Office. The result of evaluation showed that ADR were able to save time and cost

effectively to resolve disputes and the responses of taxpayers were positive. The dispute resolution was conducted impartially and ADR could provide the legal assurance faster. ADR had been able to bring trust from the taxpayers. ADR could also reduce the cost which should be paid by taxpayers to resolve the dispute, which is approximately \$70.000 [14].

6. Indonesian Tax Dispute Resolution In Cooperative Paradigm

The regulation of tax dispute resolution by administration legal efforts (Acts of General Provision and Tax Procedures/KUP) and tax court (Acts of Tax court) in Indonesia has not shown the existence of cooperative paradigm approaches. In accordance with experience of tax dispute resolution in the tax court and in order to enhance better relationship post disputes, Indonesia can apply the dispute settlement using ADR. To overcome the legal issues, which the law has not been able to answer the more increasing problems in tax disputes and the presence of requirements for taxpayers to get the dispute resolution quickly, it is necessary to have a legal discovery [15]. Legal fiction [16], by the existence of phenomena on the implementation of tax dispute resolution using cooperative paradigms in several countries, can be used by Indonesia as an alternative form of legal discovery to establish legal changes. In the study of dispute resolution, the focus will be on the dispute settlement by administration legal efforts only and not litigation efforts.

According to the review of Acts of General Guidelines and Tax Procedures, the opportunity to implement ADR as mediation is the time when one tries to raise objection. Objection is an action taken by taxpayers if they are not/less satisfied with the tax stipulation charged on them or for the reduction/collection by third parties, by a means to submit an objection letter to the Director General of Taxes. The Letter of Objection Decision is an objection letter to complaint (issued by the Director General of Taxes/DJP) about the objection decision letter or the reduction/collection by the third parties proposed by taxpayers. The effort to raise objection is regulated in Article 25 paragraph (5) and Article 26A UU KUP, paragraph 30 (5) of the Government Regulation Number 74 of 2011 concerning the Implementation Procedures of Rights and Fulfillment of Tax Obligation, Regulation of the Minister of Finance of the Republic of Indonesia Number 9/PMK.03/2013 on Procedures of objection Proposal and it has been amended by PMK RI No. 202/PMK.03/2015.

The employment of mediation as a form of ADR using administrative legal efforts can establish communication by disclosure principals and friendly manners. Mediation will provide a win-win solution, and the third parties will help negotiation to make the behalf of both parties satisfied as well [17]. The third parties are independent and trusted to give consideration of decision to assist settling the dispute in a courteous manner [18]. Mandatory mediation will make together to achieve a quick settlement and transformative process by mediator [19]. ADR by mediation will provide the parties with some freedom to engage from an early stage before the litigation process [20]. Mediation is voluntary because it is related to taxpayers' rights [21]. Balancing the interests of taxpayers and government must be made in a new system that is legislative limitations which must be overcome [22]. A collaborative relationship between taxpayers and revenue bodies may open an opportunity of tax disputes settlement using mediation. If it is formed, then the settlement can be done in a courteous manner. ADR is expected to cut down the number of tax disputes in the tax court, and reduce the loss of taxpayers on both cost and time in the process of seeking justice. Mediation regulation can be made by amending KUP in future.

7. Conclusion

In order to cope with the increasing problem in the number of tax disputes in Indonesia, it is necessary to make tax dispute settlement using a cooperative paradigm. The tax dispute resolution using ADR as a mediation recommended by OECD and the UK and Australia experience can be used as endeavors to decrease the number of tax disputes in tax courts and be able to develop better relationship in post disputes. In accordance with the regulation of tax dispute resolution in Indonesia, there are opportunities on the process of administration efforts including objection efforts. Mediation

is expected to actualize proportional justice. Disclosure principals to resolve tax disputes can improve voluntary compliance. In order to improve the administration services to taxpayers and to make dispute settlement using a cooperative paradigm, it is required to have the amendment of Law on General Provision and Procedures of Taxes.

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