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Opportunities for Implementing Alternative Dispute Resolution (ADR) in Settlement of Tax Disputes in Indonesia

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Abstract: The emergence of tax disputes as a consequence of differences in interests between tax authorities and taxpayers is a normal thing to happen. However, if an excessive number of tax disputes occur, this has the potential to create legal uncertainty, both for taxpayers and tax authorities. In theory and practice, a dispute resolution mechanism has developed as an implementation of law enforcement outside of court (non-litigation), namely a form of dispute resolution using the services of a neutral third party without going through a court process agreed upon by the parties. Indonesia already has provisions regarding dispute resolution outside of court, as stated in Law Number 30 of 1999, concerning Arbitration and Alternative Dispute Resolution, but this is only limited to civil and business cases or disputes. However, there is an opportunity to apply ADR in resolving public disputes, especially tax disputes, provided that ADR is limited to administrative efforts and does not conflict with legislation, as well as legal updates at the level of the Act regarding the implementation of ADR. The opportunity to apply ADR to tax (administrative) disputes can be carried out during the discussion of audit results by the Quality Assurance (QA) team when there is no common ground between the tax auditor and the Taxpayer. The QA team can act as an independent and impartial mediator whose decisions are binding. The decision of the QA team as a mediator is also a preventive effort to prevent tax disputes from arising.

Keyword: Alternative Dispute Resolution, Implementation Opportunities, Tax Disputes, Quality Assurance.

INTRODUCTION

Tax disputes are an inevitability in a country's tax system. In general, tax disputes occur when there are differences in interests between taxpayers and the tax authorities. However, it turns out that some countries face the problem of piling up tax disputes in tax courts at a higher level than other countries (International Monetary Fund (IMF), 2023). The causes include the large number of tax assessment letters submitted for further legal action in the form of appeals to the tax court, delays in resolving cases, and the lack of tax court capacity in deciding disputes. Lack of capacity, in this case, includes a lack of human resources for judges in tax courts or a

lack of required expertise, which can then result in the trial process being delayed and affecting the quality of decisions (Darussalam et al., 2023).

The tax dispute resolution system is one of the important factors in a taxation system to resolve tax disputes that occur. In this context, tax dispute resolution that is less effective and efficient has the potential to harm taxpayers' trust in the entire taxation system in a country. Apart from that, effective and efficient tax dispute resolution also functions to balance efforts to increase revenue and efforts to attract and retain foreign investment (United Nations, 2021). An excessive number of tax disputes has the potential to create legal uncertainty, both for taxpayers and tax authorities. Apart from this, the accumulation of disputes that continue to occur can create a risk that the justice system will be ineffective, access to justice will be greatly reduced, and ultimately have the potential to weaken the supremacy of law (Richard Susskind, 2020).

In Law No.14/2002 concerning the Tax Court (Tax Court Law), it is stated that the resolution of tax disputes must be carried out fairly through procedures and processes that are fast, simple, and low-cost. In reality, the number of tax disputes in the last 7 years has tended to increase, which has an impact on the length of time for dispute resolution and the decline in decision quality standards. Tax dispute resolution that takes too long and occurs continuously has the potential to create legal uncertainty and prevent taxpayers from obtaining justice. In Indonesia, the resolution of a tax dispute to a permanently binding legal decision (from objection to reconsideration) generally takes around 36 (thirty-six) months (Hidayah, 2018).

Table 1: Number of Dispute Files According to Appellees/Defendants 2017-2023

No	Source of Dispute	2017	2018	2019	2020	2021	2022	2023
1	Tax Authority	5.553	7.813	12.882	14.660	12.317	11.602	10.038
2	Custom Authority	3.994	3.574	2.152	1.830	2.804	2.889	2.615
3	Local Government	32	49	24	144	67	218	61
	Total	9.579	11.436	15.058	16.634	15.188	14.709	12.714

Source: processed from the Tax Court Secretariat

Based on the data in Table 1, it can be seen that the number of tax disputes since 2021 has decreased. However, the number of dispute files submitted to the tax court is more than 12,000. The Directorate General of Taxes (as Tax Authority) makes the largest contribution to tax dispute files.

From the cost aspect, there are three things of concern, namely, tax payment requirements as one of the formal requirements, administrative sanctions in the form of fines for objection and appeal decisions, and the location of the tax court. Based on Article 25, paragraph (3a) of the General Provisions and Tax Procedures Law, one of the conditions to be able to submit an objection is to pay the minimum tax amount agreed by the Taxpayer in the final discussion of the audit. Based on Article 25 paragraph (9) of the General Provisions and Tax Procedures Law, administrative sanctions are in the form of a fine of 30% of the tax still to be paid based on the objection decision, while based on Article 27 paragraph (5d) of the KUP Law, the administrative sanction is in the form of a fine of 60% of the tax still to be paid based on the appeal decision. For tax court hearings, locations are currently only in Jakarta, Yogyakarta, and Surabaya. These three things are cost factors for taxpayers in seeking justice in tax disputes (Redaksi DDTCNews, 2024).

Based on the problems that arise in resolving tax disputes through the litigation process, in theory, and practice, a dispute resolution system has been developed as an implementation of law enforcement outside of court (non-litigation), namely a form of dispute resolution using the services of a neutral third party without going through a court process agreed upon by the parties. Settlement of tax disputes outside of court has become an issue in member countries of the OECD (Organization for Economic Cooperation and Development).

Indonesia already has provisions regarding dispute resolution outside of court, as stated in Law Number 30 of 1999, concerning Arbitration and Alternative Dispute Resolution, but this is only limited to civil and business cases or disputes. In its development, the process of resolving disputes outside the court has also been applied to environmental disputes, industrial relations disputes, consumer disputes, and so on.

However, Indonesia still does not have an alternative scheme for resolving tax disputes. In the Tax Court Law, there are no explicit or implicit rules regarding the implementation of tax dispute resolution outside of court. In other words, Indonesia still does not have a legal basis for implementing alternative dispute resolution outside of court.

The use of Alternative Dispute Resolution in resolving tax disputes has been implemented by several countries, including the United States, Australia, and the United Kingdom. The main benefit of implementing ADR is that there is no winner or loser because it is the method of resolution desired by the parties. The implementation of ADR can create a more effective and efficient dispute resolution process and can reduce or even prevent the filing of appeals and lawsuits in the Tax Court, as also in Law no. 14 of 2002, which states that tax dispute resolution must be carried out fairly through procedures and processes that are fast, simple and low cost.

Based on these problems, it is necessary to conduct studies or research to determine opportunities for using ADR in resolving public disputes, especially tax disputes.

METHOD

Soerjono Soekanto said that legal research is a scientific activity that is based on certain methods, systematics, and thinking that aims to study one or several particular legal phenomena by analyzing them (Soekanto, 1986). The legal research used by the author is normative juridical. The approaches used are the statutory approach and the comparative approach. The legal approach is carried out by examining all laws and regulations related to the legal issue being discussed in this research, the tax courts, tax disputes, and ADR (Marzuki, 2005). The comparative approach is carried out by comparing the laws of one country with the laws of one or more other countries regarding the same matter. The data collection method is by means of library research on law and interviews with the aim of obtaining information related to the research (Soekanto, 2007). Conclusions are drawn by analyzing secondary data qualitatively from a legal science perspective and then analyzing it descriptively analytically so that a conclusion can be drawn.

RESULTS AND DISCUSSION

Tax Disputes and Tax Dispute Resolution

According to the Big Indonesian Dictionary, a dispute is anything that causes differences of opinion, disputes, or disputes (IDP Nasional, 2008). Disputes generally originate from conditions where there are parties who feel disadvantaged because of differences in interests. The party who feels aggrieved will express their disagreement to the second party; if the second party can respond and make the first party agree, then the problem is resolved. On the other hand, if the second party's reaction shows conflicting opinions or has different values, a dispute will arise. Normatively, a tax dispute is a dispute that arises in the field of taxation between the Taxpayer, the tax bearer, and the authorized official as a result of the issuance of a decision that can be appealed or sued to the Tax Court based on tax laws and regulations, including lawsuits or the implementation of collection based on the Law on Tax Collection with Distress Warrant.

Disputes in the field of taxation generally arise due to differences in tax calculations or differences in the interpretation of rules between taxpayers and tax authorities. On the one hand, taxpayers want small tax payments, while on the other hand, the tax authorities want tax calculations to be in accordance with the provisions, so for this purpose, taxpayers often strive for efficient tax payments by utilizing existing provisions (tax planning) and even tend to violate

provisions (tax evasion), both administrative and criminal in nature. In this research, the focus is administrative tax disputes. Tax dispute resolution is regulated in Law Number 6 of 1983 concerning General Provisions and Tax Procedures (General Provisions and Tax Procedures Law) as most recently amended by Law Number 7 of 2021 concerning Harmonization of Tax Regulations (Harmonization of Tax Regulations Law). In the event that the tax dispute is administrative in nature, dispute resolution is carried out through administrative efforts by the Taxpayer submitting an objection to the authorized official. If they are not satisfied with the objection decision, the Taxpayer can submit an appeal to the Tax Court and can then submit a judicial review to the Supreme Court.

In general, resolving disputes in court as the implementation of law enforcement requires a long and lengthy period of time, including violations in the tax sector. Enforcement of administrative law in the tax sector through administrative efforts, the Tax Court, and then judicial review at the Supreme Court certainly takes a long time. There is no stipulated time limit for the resolution of law enforcement in the field of taxation through the courts that must be completed, while (certainty) tax payments will relate to the State Budget, which applies every year. Therefore, tax dispute resolution should ideally be more oriented towards saving tax revenues as a state right. Protracted dispute resolution will certainly disrupt budget receipts and realization, which will impact national development plans.

Alternative Dispute Resolution

Based on the history of its development, the concept of dispute resolution outside the court (Alternative Dispute Resolution, hereinafter abbreviated to ADR) originated in America in 1976 when Chief Justice Warren Burger questioned the effectiveness of court administration. (R Usman, 2003). According to Thomas J. Harron, American society is tired of seeking dispute resolution through litigation (judicial bodies) and is dissatisfied with the existing justice system, which is because dispute resolution in the justice system is very protracted and detrimental. Based on this idea, ADR was created as an option or alternative. Dispute resolution in judicial institutions is designated as the last resort, and ADR is given a place as the first resort. The shift in the court's position in resolving the above disputes is due to weaknesses in the court process, which, according to Yahya Harahap, include:

1. Dispute resolution takes a long time.
2. The cost of things is high.
3. The judiciary is generally unresponsive.
4. The judge's abilities are generalist.

Apart from the weaknesses above, according to Candra Irawan, it is added because the court adheres to procedural formalities rather than substance, and the court always positions the parties as opponents (rivals), not friends (partners) (Candra Irawan, 2010).

Basically, in ADR practice in several countries, including Indonesia, dispute resolution through ADR is only used in civil cases or disputes, not for public disputes such as administrative and criminal law. In Indonesia, we can see this in Law No. 30 of 1999 concerning Arbitration and alternative dispute resolution.

In general, the types of ADR are as follows (RI, 2000) :

1. Negotiation: a form of dispute resolution carried out by disputing parties without the help of other parties. This is done through negotiations to find a solution that is considered fair by the parties. What is expected from negotiations is a compromise solution.
2. Mediation: a form of dispute resolution using a third party as a mediator. The third party, as a mediator, only plays a helping role and does not have the authority to decide.
3. Conciliation: a form of dispute resolution using a third party whose role is to formulate and formulate dispute resolution solutions.
4. Arbitration: a form of dispute resolution using a third party who acts as a judge, which means having the authority to decide the dispute.

5. CDR (Court Dispute Resolution): a method that integrates ADR into court proceedings.

In Law No. 30 of 1999, it is stated that ADR is the resolution of disputes outside the court by means of consultation, negotiation, mediation, conciliation or expert assessment.

Opportunities and forms of ADR in tax dispute resolution

Tax Law in the Legal System in Indonesia, including public law, in this case, administrative law, considers that tax law discusses the implementation of government authority in collecting taxes on the public (Muhasan, 2017). As part of State Administrative law, tax law enforcement should use administrative legal instruments in accordance with the principle that every problem is resolved in accordance with the law that regulates it. Violations of civil law norms/rules are resolved through civil law instruments, and violations of administrative law norms/rules are resolved with administrative law instruments (Quaestiones Solvuntur Legibus Gubernare).

Administrative legal instruments used in law enforcement in the field of taxation, which then have the potential to give rise to administrative disputes, are administrative sanctions in the form of fines, interest, increases, and collection with forced letters. The Taxation Law, in this case, General Provisions and Tax Procedures Law, as most recently amended by Harmonization of Tax Regulations Law, provides a way to resolve administrative disputes in the field of taxation through administrative efforts in the form of objections.

An objection is defined as a letter of application from a taxpayer containing objections to the amount used as the basis for tax imposition determined by the tax authorities. Objections are submitted to the official/fiscus who determines/issues the Notice of Tax Assessment and are decided by the official who issued the Notice of Tax Assessment. In this way, the official's position in the objection is to act as a party to the dispute and, at the same time, decide the dispute. Dispute resolution through administrative efforts is not a court institution, even though in the literature, it is called quasi-administrative justice (quasi rechtspraak) (Rochmat, 1965). Therefore, in the ADR concept, such dispute resolution can be categorized as out-of-court dispute resolution. However, from the aspect of the position of the parties, in this case, the tax administration officials and taxpayers are not equal because the administration officials, as the parties to the dispute, have a stronger position, considering that they are given the authority to decide. Therefore, it is not surprising that when resolving tax disputes through administrative efforts, the Taxpayer is defeated, or the Taxpayer's objection is always rejected. Tax law enforcement in Indonesia continues to move dynamically and produces new mechanisms and approaches, such as the application of the alternative dispute resolution (ADR) concept or alternative dispute resolution.

The concept of ADR is contained in Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, which in Article 1 point 10 states that Alternative Dispute Resolution is an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely settlement outside the court by means of consultation, negotiation, mediation, conciliation or expert assessment. However, there are several limitations, such as Article 1 number 2, that "subjects of law include civil and public matters," so this article directs that the government can also be a subject (Ridwan, 2006) with the concept of Arbitration and ADR. If we look again at Article 1 point 5 of Law no. 14/2002 concerning the tax court, we see that "Tax Disputes are disputes that arise in the field of taxation between Taxpayers or Tax Insurers and authorized officials as a result of the issuance of decisions that can be submitted for Appeals or Lawsuits to the Tax Court based on tax laws and regulations, including Lawsuits regarding the implementation of collection based on the Law on Tax Collection with Forced Letters", meaning that the dispute involves the subject of public law and can basically be categorized according to the concept of article 1 point 2 of Law no. 30/1999. Apart from that, based on the dispute in Article 5, this Arbitration concept cannot be used.

From the perspective of state administrative law, the ADR concept in resolving tax disputes is more appropriately used within the scope of administrative efforts (Sa'adah et al., 2024). Administrative efforts prioritize the principles of harmony, mutual cooperation, and deliberation, even though the principles of deliberation in tax disputes are not the same as deliberation in civil disputes. For private debts, which are civil law, negotiations can be carried out, whereas for tax debts, which are public law and concern the livelihoods of many people, negotiations cannot be carried out. Deliberation in administrative efforts is used as a guide for taxpayers' improvements and as a means for tax authorities to correct their mistakes (Marbun, 2011). This is in line with the opinion of Terry Dipawinangun as a tax court judge. In the interview, he stated that it was impossible to resolve tax disputes through a negotiation process due to the nature of the tax, which is a public law related to the livelihoods of many people. Taxes are regulated in law, so if tax dispute resolution uses the concept of mutual agreement, then in principle, there is a violation of the law, and it will be detrimental to state finances.

The use of ADR in resolving tax disputes has been carried out by several countries, including Australia and the UK. There are three forms of ADR applied in resolving tax disputes in Australia: first, internal facilitation in the form of mediation, where independent facilitators from The Australian Tax Office (ATO) are trained to assist in dispute negotiations; secondly, in large and complex cases, the ATO may engage external practitioners for ADR; thirdly, ADR can also be initiated by the court in cases that are currently before the court (Kunci et al., 2022).

Her Majesty's Revenue and Customs (HMRC), the British tax authority, stated that traditionally, tax disputes are resolved through litigation or, in the majority of cases, through agreements outside the litigation process based on negotiations between the parties. The essence of ADR is the presence of a third party who is present as a mediator who has been agreed upon by both parties to decide the dispute (Arbitration) or to facilitate bilateral agreements (as an expert or through mediation) (HMRC, 2017).

One form of ADR that can be used in the tax dispute resolution process is updated in Quality Assurance (QA). QA is a stage in the process after the inspection that aims to test the results of the inspection before the Notice of Tax Assessment is issued as regulated in Minister of Finance Regulation Number 17/PMK.03/2013 as most recently amended by Minister of Finance Regulation Number 18/PMK.03/2021.

The QA Team is a team formed by the Director General of Taxes as the tax authority in order to discuss audit results which are limited to the legal basis for corrections that have not been agreed upon between the tax auditor and the Taxpayer in the Final Discussion of Audit Results in order to produce a quality audit.

The QA team consists of 1 (one) chairman, 1 (one) secretary and 3 (three) members. The QA Team's opinion is the final opinion before the Tax Assessment Letter is issued as intended in Article 13, paragraph (1) of the General Provisions and Tax Procedures Law.

The tax calculation stated in the QA team's final opinion will be the amount of tax contained in the Notice of Tax Assessment, in accordance with the QA team's duties, namely:

1. Discuss differences in legal basis of opinion, corrections between taxpayers and tax auditors during the final discussion of audit results.
2. Provide conclusions and decisions regarding differences of opinion between taxpayers and tax auditors.
3. Prepare examination minutes containing conclusions and decisions resulting from discussions that are binding.

Seeing the important relationship between audits and Notice of Tax Assessment as the object of tax disputes, the (results of) tax audits are the beginning or seeds of tax disputes. From another aspect, the results of tax audits involving tax authorities (tax inspectors) and taxpayers that have been mutually agreed upon will be a preventive measure to prevent the emergence of tax disputes that will end up in court.

Therefore, in the ADR concept, the position and role of the QA Team can be constructed as a mediator that bridges the tax authorities and taxpayers. However, to maintain and maintain the neutrality of mediators and expand the benefits of the law, it is necessary to make changes to the existing conditions as follows:

First, the membership of the QA team does not only come from Ministry of Finance employees appointed by the Director General of Taxes but a combination of non-DGT internal Ministry of Finance members and those from outside the government whose positions are independent, primarily having expertise in the field of taxation (law).

Second, the scope of discussion is expanded beyond just differences of legal opinion (legal issues or juridical disputes). In tax disputes, separating cases that are only related to facts and cases that only have legal issues is not only difficult to do but also inappropriate to implement. This is because legal issues and proof of facts are often related to each other in tax disputes. With this expansion, all types of tax disputes can be handled through QA channels.

Third, with the existence of an ADR mechanism through QA, objection efforts as regulated in Article 25 of the General Provisions and Tax Procedures Law do not need to be implemented because the ADR mechanism involves the Taxpayer and Tax Authority.

If, in the QA discussion, there is no common ground, and the QA discussion team does not find a solution agreed upon by the Taxpayer and the tax authority, then the tax authority will still issue an Notice of Tax Assessment based on the results of the tax officer's audit. In such circumstances, the next stage of the tax dispute resolution mechanism is to use a lawsuit through the Tax Court as regulated in Law 14/2002.

This renewal can be carried out only by updating existing laws. This is in line with the theory of development law put forward by Mochtar Kusumaatmadja, that law as a means of development means that the positive law that applies in Indonesia, which is a means of renewing society itself, still requires renewal and guidance (M Kusumaatmadja, 2002).

The legal reforms required are changes at the statutory level, namely as follows:

1. If you look at the definition of tax dispute according to Law No. 14 of 2002, tax disputes arise in a position in the Tax Court. The change in the definition of tax dispute provides legal certainty for the application of ADR, where, according to the author, tax disputes can be said to begin during the final discussion before the tax assessment is issued.
2. The scope of ADR in Law No. 30 of 1999 is stated in civil cases. Increasing the scope of not only civil disputes but also public disputes, especially tax disputes, and their boundaries, is needed as a legal basis for the use of ADR in resolving tax disputes.
3. The legal basis for QA to date is at the level of Minister of Finance Regulations. There is a need to lay the legal basis for QA in the form of a law to legitimize the QA business process as ADR in resolving tax disputes.
4. Eliminate the objection process contained in the KUP Law as a step to simplify the tax dispute resolution process if ADR has been implemented.

In closing, it is hoped that the application of ADR in tax dispute resolution can create a more effective and efficient tax dispute resolution process. However, the implementation of ADR must also be accompanied by a quality inspection process. In addition, even though ADR already exists, the mechanism for resolving tax disputes through the Tax Court remains an important element that must continue to be improved.

CONCLUSION

Out-of-court (non-litigation) dispute resolution mechanisms are necessary for resolving tax disputes in Indonesia, which experiences obstacles in realizing simple, fast, and low-cost dispute resolution.

Administrative efforts in resolving tax disputes, even if they do not go to court, cannot be categorized as implementation of the ADR concept, considering that the dispute resolution process is carried out by tax officials who are not neutral and coercive. In the ADR concept,

dispute resolution by a third party is neutral and impartial. From the research results, there is an opportunity in the Tax Law to use ADR without going through court, which takes a long time. From the aspect of state revenue, ADR is more profitable because it provides more certainty of payment from taxpayers.

Settlement of tax disputes through ADR must be accompanied by increasing the quality of audits and improving the mechanism for resolving tax disputes through the Tax Court.

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