



Maintaining the Integrity of Tax Court Judges to Make Equitable Decisions

Doni Budiono¹; Basuki Rekso Wibowo²; Slamet Suhartono²

¹ Student of Doctor of Law Study Program Faculty of Law Universitas 17 Agustus 1945 Surabaya, Indonesia

² Lecturer Study Program Faculty of Law Universitas 17 Agustus 1945 Surabaya, Indonesia

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Abstract

The Tax Court is a judicial body authorized to examine and decide tax disputes. As part of judicial authority, the Tax Court has the independence to execute its authority based on applicable legal provisions. However in reality, the dualism of coaching in the Tax Court resulted in the emergence of several debates related to the recruitment, control and coaching of judges, and the realization of the principle of transparency in the Tax Court's decision. These problems lead to responses of public mistrust and inflicts questions about the competence of the Tax Judge to provide fair decisions. Beside to the issue of the independence of the Tax Court, what will be studied is the issue of the integrity of the Tax Court Judge. This is based on the fact that judges who have integrity in themselves, in the form of good competence and character will also produce a fair decisions. This study examines in deepen the philosophical foundation of law enforcement in the Tax Court in relation to the integrity of judges. This research is a normative legal research. The problem approach used in this research is statute approach and conceptual approach. The results of this research indicated that to maintain the integrity of the Tax Court Judge an independent Tax Court institution was needed, besides that the Tax Court Judge needed to have quality legal competence, as well as good character.

Keywords: *Judge; Tax Court; Integrity*

Introduction

Law enforcement practices in Indonesia are still faced by various unresolved issues. This problem also occurs in the Indonesian tax justice system. Various changes in tax dispute settlement institutions that have been made, starting from forming the Tax Advisory Council in 1959, continued by forming the Tax Dispute Resolution Board in 1997, until in 2002 formed a Tax Court (PP) does not mean that tax law enforcement problems in Indonesia have resolved.

Recorded entry disputes at the Tax Court from 2013 to 2018 amounted to 63,066 cases.¹ The high number of cases examined by the Tax Court has become a challenge for the Tax Court to make improvements, especially in producing a good decision. In fact, despite faced with various problems, Law

¹ Sekretariat Pengadilan Pajak Kementerian Keuangan, Statistik Penyelesaian Sengketa Pajak Tahun 2013-2018, <http://www.setpp.kemenkeu.go.id/statistik>, accessed February 20, (2020).

Number 14 of 2002 concerning Tax Courts (hereinafter referred to as Tax Court Law) has never been amended in the last 18 (eighteen) years.

The focus of the problem at the Tax Court is the problem of lack of independence. This problem is caused by the effectiveness of the provisions of Article 5 paragraph (1) and paragraph (2) of the Tax Court Law which regulates guidance in the Tax Court, in which court technical guidance is carried out by the Supreme Court and in the case of administrative, organizational, and financial guidance for the tax court conducted by the Ministry of Finance. The dualism of coaching resulted a problem in the recruitment and control of judges.

Dualism in the Tax Court inflicts the potential for conflict of interest. In general, the Tax Court Judge is a former official from the Directorate General of Taxation and does not come from a career judge who is chosen based on the career guidance system in general.² These problems lead to responses of public mistrust to the Tax Court due to issues of independence and impartiality of the Tax Court judges.

Another problem faced by the Tax Court is if the positive legal provisions that are made as material law in the Court are problematic. As it is known that not all laws produced by the Government together with the House of Representatives are qualified as good regulations. One indicator to show this is the number of laws from 2003 to early 2020 which were tested material to the Constitutional Court a number of 668 laws.³

Basically, these various things affect the integrity of the judge in the Tax Court to produce a fair decision. Based on this background of the problem, it is necessary to conduct an in-depth study of the philosophical foundation of law enforcement in the Tax Court in relation to the integrity of judges.

Methodology

The methodology in this study uses the normative legal research method, with a statute approach and conceptual approach.⁴

Result and Discussion

1. Independence of the Tax Court

As a country that executes a justice system, Indonesia also acknowledges the rule of law. The acknowledgment in writing is regulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia). Furthermore, Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia stipulates that “Judicial power is independent to hold courts in Indonesia”. An independent judicial power arrangement aims to create a guarantee of justice for the parties to the dispute that the judge in deciding the dispute does not have interference from other parties.⁵

² Binsar Sitorus, “Independensi Hakim dalam Sistem Peradilan Pajak Di Indonesia”, *Yuridika*, Vol. 28, No. 1, (2013), p. 39.

³ Mahkamah Konstitusi Republik Indonesia, Rekapitulasi Perkara Pengujian Undang-Undang, <https://m.kri.id/index.php?page=web.RekapPUU>, accessed January 9, (2020).

⁴ Tomy Michael, ‘Memaknai Frasa “Dengan Rahmat Tuhan Yang Maha Esa ” Dalam Undang-Undang Republik Indonesia Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan’, 12, (2011), 1–10.

⁵ Slamet Surhatono dan Mokhammad Khoirul Huda, “The Existence of Tax Court in Indonesia Judicial System”, *Asers*, Vol. X, Issue 1, (2019), p. 364.

In the Preamble to the 1945 Constitution of the Republic of Indonesia, the meaning of justice is explained in the use of social ethics and law.⁶ Injustice arises because the values of justice itself have not been accommodated in a good law. This is in accordance with Endang Sutrisno's opinion, namely that: "The embodiment of moral values, especially the value of justice which is held in high esteem by the public should be the basis of positive law."⁷

The Tax Court law does not indicate an independence at the Tax Court as a form of guarantee of justice for the disputing party. This can be seen from the "two-roof system" that is still applied in Article 5 of the Tax Court Law which opens space for executive power to interfere in the authority of the Tax Court as a judicial institution. The dualism of coaching at the Tax Court resulted in the emergence of several issues relating to the recruitment, supervision and coaching of judges, as well as the embodiment of the principle of openness/transparency in the Tax Court's decision. These problems will certainly be a question about the competence of the Tax Court Judge to be able to provide fair decisions.

Independence which is applied to the court as a judicial power is a form of separation of power. This is based on the purpose of separating state power, one of which is intended to provide a guarantee of independence in law enforcement institution.⁸ The relationship between the concept of the rule of law with the separation of powers lies in the arrangement of the separation of state power in regulated in a constitution.⁹ Furthermore, in the state constitution it also regulates the checks and balances relationship between these power institutions.

The concept of separation of powers explains that state power must not be exercised only on one power, but must be separated in different state institutions with the aim of preventing abuse of power by the ruling party.¹⁰ The separation of powers will maintain harmonization between state institutions, such as freedom of law formation by parliament, the implementation of governmental work by the executive, and law enforcement by the judiciary.

An example of a conflict of interest in a case hearing is an objection process at the Directorate General of Tax (DGT) that is not going well. It was proven from 2013-2018 the number of Tax Court decisions that won taxpayers totaled 34,746, with details being granted totaling 26,971 cases and partially granted 7,775. While the decisions that won the DGT amounted to only 14,593 cases.¹¹ The fact that DGT often experienced defeat in disputes at the Tax Court shows the weakness of the process of mitigating disputes at the objection stage at the DGT that was indicated because of a conflict of interest in the DGT.

The occurrence of a conflict of interest in the DGT is undeniable because the DGT is an executive institution, and is positioned as a litigation party and at the same time as an examiner. Unlike the DGT as an executive institution, the Tax Court as part of an institution of judicial power should stand independently. As the opinion of Philipus M. Hadjon, stated that the enforcement of judicial power that is independent in reality depends on structural components, such as the organizational structure of the judiciary, the judicial staffing status, and the judge's selection system.¹² In addition to the structural component, other components are functional components such as, free in carrying out the function of

⁶ Endang Prasetyowati, "Peraturan Perundang-Undangan Dan Kontrak Pembiayaan Konsumen Dalam Perspektif Keadilan", DIH, Vol. 13, No. 25, (2017), p. 94.

⁷ Endang Sutrisno, *Bunga Rampai Hukum dan Globalisasi*, Genta Press, Yogyakarta, (2007), p. 28.

⁸ Melvin A. Arquilo, "A Case Survey of the 1970 Supreme Court Decision on Political Law, University of Santo Thomas law Review", (1971), p. 22.

⁹ A. Muhammad Asran, *Krisis Peradilan Mahkamah Agung di bawah Soeharto*, ELSAM, Jakarta, (2004), p. 39.

¹⁰ Miriam Budiardjo, *Dasar-Dasar Ilmu Politik*, Gramedia Pustaka Utama, Jakarta, (2005), p. 52.

¹¹ Sekretariat Pengadilan Pajak Kementerian Keuangan, *Loc. Cit.*

¹² Philipus M, Hadjon, *Lembaga Tertinggi dan Lembaga-Lembaga Tinggi Negara Menurut Undang-Undang Dasar 1945 Suatu Analisa Hukum dan Kenegaraan*, Bina Ilmu, Surabaya, (1987), p. 77.

justice, free from intervention, and respect for the principle of immunity of judges (no reprisal for decisions).¹³

Referring to the opinion above, the influence of the "two roof" system in the Tax Court results in the realization of the principle of independence not being realized. Furthermore, the provisions in the Tax Court Law that are contrary to the principle of independence for the judiciary are not in accordance with the provisions of Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Therefore, to establish an independent and free Tax Court, it is necessary to make changes to the Tax Court Law.

2. Integrity of Tax Court Judges

The integrity of a judge influences the decisions that will be produced. This is absolutely owned by a judge as a tool to provide justice for the community as written in the 1945 Constitution of the Republic of Indonesia. A judge is a personification of a judicial body, so that the integrity of a judge will determine the integrity of the judicial body in which the judge works.

The integrity of a judge is also influenced by the independence of the judiciary. The recruitment of a Tax Court Judge by an executive agency based on Article 8 paragraph (1) and paragraph (2) of the Tax Court Law raises the possibility of the judge's partiality in resolving disputes later. The possibility of impartiality of judges as a result of the composition of Tax Court Judges, which is mostly filled by the Directorate General of Taxes and the Directorate General of Customs and Excise is a form of deviation from the principle of independence of judges and has a negative effect on the integrity of Tax Court Judges.

Tax Court Judges before being appointed as judges must have knowledge, skill legal technic capacity, and integrity. Being a professional judge, reliable, authoritative and with integrity is not easy. Before becoming a judge, a prospective judge needs to get a higher legal education. According to Satjipto Rahardjo, higher education in law is a long-term investment for a judge who is the most meaningful and valuable in the context of law enforcement from time to time.¹⁴ To create this, the model of recruitment of judges by the Ministry of Finance needs to be abandoned, and to start a career judge model in the Tax Court. With the career judge model, of course the judge will have good knowledge of law, so the resulting decision is also indicated as a good and fair decision.

In the civil law system, the main task of a judge is to examine and decide on a case. Judges are not given the authority to create new rules, so the law used to decide cases in a court of law is a law that has been formed by the legislative.¹⁵ In its development, not all laws produced by legislative bodies are a good laws. On the contrary, the formation of laws often takes a quick path so that they will be enacted immediately without regard to the principles of establishing good laws.

Faced with these problems, the Tax Court Judge is demanded to be able to produce quality and fair decisions for most people. Not only does it need to have the ability to understand the substance and meaning of the law, but also good faith and courage are needed in the judge. Good faith is inspired by a conscience based on the value of God as a corrective that animates every judge's decision.

¹³ *Ibid.*

¹⁴ Awaludin Marwan, *Satjipto Rahardjo Sebuah Biografi Intelektual & Pertarungan Tafsir Terhadap Filsafauk Hukum Progresif*, Thafa Media, Yogyakarta, (2013), p. 318.

¹⁵ Slamet Surhatono, *Hukum Positif Problematik Penerapan Dan Solusi Teoritiknya*, DIH, Vol. 15 No. 2, (2020), p. 203.

Required character and moral character of the judge in carrying out his profession. This is in line with the opinion of Bernardus Maria Taverne, who said that even without a law, justice can be upheld by a good judge.¹⁶ Tax Court Judges in deciding tax disputes can provide fair decisions must have responsibility so that decisions that have been decided by the Tax Court Judge will be able to act as a common sense that is useful as a reference for the judge in deciding the same dispute.

For example the problem of expiration in tax collection. It is stated in Article 18 paragraph (2) letter b of Law Number 11 Year 2016 concerning Tax Amnesty (hereinafter referred to as Tax Amnesty) that tax collection efforts can be carried out by the Directorate General of Taxes (DGT) of taxpayer assets that have not been reported since January 1 1985 to December 31, 2015. This provision is in addition contrary to Article 13 jo. Article 15 of the Law on General Provisions on Taxation (UUKUP) which provides a billing limit of no more than 5 years, unless taxation is discovered, also contradicts the principle of non-retroactivity, thereby injuring a sense of justice in the community.

Facing issues such as the example above, a judge must have a full understanding of the substance of the law, in addition to that the judge is also required to have skills in carrying out the law. Based on quality legal considerations to be brave to make legal discoveries. Thus, it is understood that obtaining a quality decision and in line with the value of justice requires an independent judicial structure, judges' knowledge competence, and a good judge's character.

Conclusion

The Tax Court in Indonesia is currently not ideal because it does not reflect the proposed independence principle which is not important in a judicial institution. The influence of the Ministry of Finance in organizational, administrative and financial guidance on the Tax Court has a negative impact on the independence, accountability of judges, and public confidence in the Tax Court. Another problem is the integrity of the Tax Court judge who needs to be improved by improving the structure of the Tax Court which is only under the Supreme Court and recruiting a career judge model who has good legal and taxation knowledge. Even though the law applied at the Tax Court is not in accordance with the principle of justice, but if the judge who conducts the examination, hears, and decides the case is good and has integrity, then from the law that is not appropriate the judge will explore the values of justice in society through legal discovery (*rechtsvinding*) to produce a good decision. This is in line with the expression of Bernardus Maria Taverne, who said that without a law even justice can be upheld by a good judge. Lastly, changes are needed to the Tax Court Law which is considered to have many weaknesses.

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¹⁶ Bernardus Maria Taverne dalam Hukumonline.com, Bismar Siregar, Hakim Kontroversial yang Berhati Nurani, [http://www.hukumonline.com/berita/baca/lt559d06730db6c/bismarsiregar--hakim-kontrove rsial-yang-berhati-nurani](http://www.hukumonline.com/berita/baca/lt559d06730db6c/bismarsiregar--hakim-kontrove-rsial-yang-berhati-nurani), accessed August 15, (2019).

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