

Conference Paper

Alternatif Dispute Resolution to Reduce Costs, Energy, And Time Issued by DJP Taxpayer or Dispute Settlement in Taxation

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ORCIDMuhammad Ghifari: <https://orcid.org/0009-0001-0445-8794>**Abstract.**

The tax revenue target which entailed by the Directorate General of Taxation (DJP) every year is always increasing. However, in the last 5 years tax revenues are not always achieved. One solution is to increase tax revenues by way of aggressive action against the taxpayer, which measures the tax collection by the law is carried out both persuasive and repressive. Tax collection action occurred because his existing differences in interpretation between the DJP as the agency authorized to issue Tax Assessment Letter (SKP) with taxpayer, as an individual or entity that receives SKP. If this happens, taxpayer can make legal effort to appeal to the tax court related to decisions made by the DJP. Taxpayer objection filed by the above decree issued by the DJP SKP is called the tax dispute. If the action taken by the DJP is very aggressive in terms of collecting tax revenue, it is thus a tax dispute that occurred in Indonesia will increase. Increasing cases of tax disputes would be costly, time, and effort both issued by the DJP or by taxpayer. One of the alternative solutions that may be made by both parties to get a Win-win Solution is to Alternative Dispute Resolution.

Keywords: Tax; Tax Dispute; Alternative Dispute Resolution

1. INTRODUCTION

Taxes are a cash contribution to the people of the state under the Act (which can be imposed) by not receive reciprocal services (cons achievement) directly demonstrated and used to pay for general expenses. [1] Taxes contributed greatly to the development of the country, because the tax has Budgetair function then becomes very important for tax revenue. [1] This can be seen in the details of the State Budget (APBN) in 2019, where the budget has been set at IDR. 2165.1 trillion, about 82.5% of them, equivalent to IDR. 1786.4 trillion comes from tax revenue. The figure would have a much larger portion than revenues from other sources, such as grants and NonTax Revenue (non-tax) contributed by themselves are IDR. 0.4 trillion and IDR. 378.3 trillion. With the state budget figures set at it's definitely not an easy task for the Ministry of Finance.

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Ministry of Finance through the Vertical Unit Echelon I under it namely the Directorate General of Taxation (DJP) have a duty to the state revenue '. With the magnitude of the target carried, certainly not easy for the DJP to collect tax revenue. Various efforts have been made by the DJP in order to realize the tax revenue of the target, but over the last 5 years revenue target always misses the target. Over the last 5 years, acceptance of tax target is always below 90%. Only in 2018 the realization of the target of tax receipts reached 92%. [2]

To overcome this problem, one solution by the DJP is doing Tax Reform. Starting in 1983, which is done by changing the Tax Reform Act of Official Assessment system becomes Self-Assessment System. In 1991-2000 conducted Tax Reform, namely simplification of taxes. Reforms in 2000-2001 by setting a vision, mission, and blue print. Tax Reform Volume I conducted in 2002-2008, namely the modernization of tax administration and the amendments to the Law on Taxation. In the years 2009-2014 Tax Reform, Volume II conducted by an increase in internal control. In 2016 enacted the Tax Amnesty Act. Years 2017-2020 Volume III conducted Tax Reform, namely consolidation, acceleration, and Continuity Tax Reform.

This is in accordance with the Decree of the Minister of Finance as stipulated in the KMK No. 885 / KMK.03 / 2016 on Tax Reform Team. One of the pillars of Tax Reform, Volume III of this is by way of reforming legislation. Legislation Reform conducted with the aim to make tax policy broadening the base of taxation, provide legal certainty, reduce compliance costs, and increase tax revenues.

In his duty to collect revenues, the tax authorities in all countries will be always in contact with the tax dispute. This is because the activities of collecting tax revenue has a significant relationship with the incidence of the tax dispute in which the more aggressive tax authorities to collect taxes, the more likely the number of disputes multiply.

Indonesia, the Directorate General of Taxation (DJP) in particular, should begin to give special attention to the settlement of tax disputes. The larger and continually rising revenue target from year to year make the DJP must use a variety of ways to collect revenues from the taxation sector for the achievement of revenue targets imposed. Demands to meet these targets make DJP also must agaresif perform tax collection, where this aggressiveness could potentially increase the number of tax disputes, the DJP should make every effort to avoid the addition of a significant number of Tax Disputes.

Trends in tax disputes in Indonesia, generally tends to increase from year to year. Even in the future, this number is predicted to continue to rise due to current issues

in the world of taxation, such as law enforcement Tax Forgiveness program after the adoption of the OECD Transfer Pricing Guideliness 2017 in Indonesia.

Tax dispute resolution requires a long time. If we look from the UU No 28 Tahun 2007 concerning Third Amendment to Law No. 6 of 1983 on General Provisions and Tax Procedures procedure that can be performed taxpayers to settle tax disputes there are two scopes, namely objections and appeals. [3] After the objection and appeal process, taxpayer can make efforts lawsuit. [3] The last attempt or extraordinary effort to do taxpayer is by way of judicial review. Disputes over taxation that exists, can only apply for a judicial review of 1 (one) time during the legal process is done. The total time required for this process is more or less 3 (three) years. If this is happen, then the DJP and taxpayer equally as disadvantaged in many ways, such as the loss of cost, energy, and time. One alternative that can be used as a solution to overcome this problem is by means of Alternative Dispute Resolution (ADR). ADR include negotiation, mediation, and arbitration. [4] ADR already known in some countries to resolve their tax disputes, such as in the United States of America (USA) and Europe. The use of ADR in dispute resolution model in a non-litigation does not preclude the case is in litigation settlement. Litigation dispute resolution remain employed when non-litigation settlement did not produce results. Thus, the use of ADR is one of the mechanisms of dispute resolution. [5] Based on the above, I am interested to explain whether ALTERNATIVE DISPUTE RESOLUTION REDUCE COSTS, ENERGY, AND TIME ISSUED BY DJP TAXPAYER OR IN TAX DISPUTE SETTLEMENT

2. METHODOLOGY/ MATERIALS

This research is a study design in various activities to find out if that is the proper law to be applied inkonkrito to accomplish certain things. [6] This study was supported by research methods comparative study, comparing similarities and differences as a phenomenon to look for factors / situations how that can cause a particular event.

3. RESULTS AND DISCUSSIONS

Indonesia's tax disputes handled by the Tax Court found in three locations across Indonesia, including Jakarta, Yogyakarta and Surabaya. The tax dispute is handled by the Tax Court dispute cases include income tax and value added tax (within the scope of DJP), customs and excise (within the scope DJBC) and property tax (DJP and Local Government). Number of files a tax dispute have an upward trend in the last 5

years. Tax disputes originating from the DJP dominate the number of tax disputes in the Tax Court with an average of more than 65% in the last year. Having risen consistently in the four previous years, in 2016 there was a decline file a dispute that goes to both the Tax Court of DJP, DJBC and local governments, amounting to 19%. Specialty of the DJP, one of the causes of this decline is the Tax Forgiveness program initiated by the government in mid-2016 so many taxpayer revoke its tax dispute cases. In harmony with the increasing number of incoming files, settlement of tax disputes also increased the number of incoming files, settlement of tax disputes also increased from year to year. In fact, the completion in 2016 recorded the biggest growth in the last 5 years by 42%. settlement of tax disputes also increased from year to year. In fact, the completion in 2016 recorded the biggest growth in the last 5 years by 42%. settlement of tax disputes also increased from year to year. In fact, the completion in 2016 recorded the biggest growth in the last 5 years by 42%.

The increasing number of incoming files and the amount of tax dispute resolution in the Tax Court can not be separated from the increased value of SKP is the source of tax disputes. In fact, as of December 31, 2016, there were IDR 122 Trillion reception in dispute and the country is still stuck because there is no decision or verdict. The increase in nominal shows that the number of tax disputes increased more than the number of completion.

Of the upward trend of the tax dispute, one that can be the solution to their settlement is Disupute Alternative Resolutions. Discussion of the ADR at this time is limited to the application of ADR Systems of the United States (USA) given a same of Dispute Resolution System of International Taxation and Best Practice that has been applied by the USA.

3.1. Various Forms of Developing Alternative Dispute Resolution.

DJP with taxpayer can be seeked out of court tax by following the steps of ADR. This path can be taken to reduce the risk of settlement of tax dispute costly, energy, and time-consuming. Several alternative methods that can be used to get the DJP and taxpayer Win-win Solutions is with some of the following ways:

1. Negotiations. Negotiation is a two-way communication designed to reach an agreement when both parties have different interests the same or different. [7]
Negotiation techniques there are four, namely: [7]

2. Competitive Negotiation Techniques. Competitive negotiation technique termed the negotiations is a lot.
3. Cooperative Negotiation Techniques. Assume the negotiator opponent not as an enemy but as a partner seeking common ground.
4. Negotiation Techniques Soft and Hard. Negotiations Soft puts the importance of good relations between the parties. This technique emphasizes the style of negotiation risky deal that is false birth and to produce a pattern of "win-lose". Hard negotiations to yield and using threats. Her aim is to look for the victory.
5. Interest Based Negotiation Techniques. This technique is used as a middle way offer from Soft-Hard technique. These techniques have been selected for election of one of the potentially hard techniques found deadlock in the negotiations, especially if a hard negotiator will meet with same style tough negotiator who also is soft while negotiating potential as a loser.

Negotiation techniques already exist in the stage of the initial examination conducted between functional tax inspectors (Officers Tax which has been granted the ability and special education to conduct tax audits with a given ID) with taxpayer when taxpayer came to the Tax Office to be asked right clarification on data / findings in tax audits. Taxpayer for exacting SKP rebuttal published, as well as additional data or information, written or unwritten can be used as a negotiating tool to see whether SKP published by the DJP is correct or not. If functional tax inspectors found indications preliminary evidence, that crime in the area of taxation will be followed up with a tax investigation. Proof Starters are circumstances, actions, and / or evidence in the form of information, text, or objects that can give indication of a strong presumption that is or has been a criminal offense in the area of taxation undertaken anyone who may cause harm to the state revenue. [8]

1. Mediations

The definition of mediation by Haley Nolan a short term structured task oriented, participatory invention process. Disputing parties work with a neutral third party, the mediator, to reach a mutually acceptable agreement. [9] Another definition is Facilitated negotiation according to Kovach. It process by the which a neutral third party, the mediator. Assists disputing parties in reaching a mutually satisfaction solution ". [10]

7 Functions Mediator by Fuller in (Riskon and Westbrook) [11] 7 mentions the mediator functions as a catalyst, educator, translator, resource person, bearer of bad news, the agent of reality, and scapegoat.

- (a) As a catalyst that the presence of a mediator in the negotiations proeses able to encourage the birth of a constructive atmosphere for discussions.
- (b) As educators means someone trying to understand the aspirations, proesdur work, limited political and business constraints of the parties. Therefore, he must try to get involved in the dynamics of the differences between the parties.
- (c) As a translator, it means that the mediator should strive to convey and formulate proposals which one party to the other party through language or catchy phrase by the other party, without prejudice to the objectives achieved by the proposer
- (d) As a speaker, means a mediator must utilize the resources available information.
- (e) For people with bad news, it means that a mediator should be aware, that the parties in the negotiations can be emotional proeses, the mediator must hold separate meetings with the parties to accommodate various proposals.
- (f) As an agent of reality means that mediator must try to give meaning unambiguously to one party that the target is impossible / unreasonable to be achieved through negotiations
- (g) As a scapegoat, it means that a mediator must be prepared to blame for instance in making a deal negotiation results.

The mediator functions could be taken over by a third party, that from reviewers objected. Reviewers objections are employees of the DJP has the task to conduct a review of the objection, the reduction or elimination of administrative sanction, and the reduction or cancellation of improper tax assessments filed by taxpayer. Reviewers objection is little judge to decide the dispute between the Tax Audit and Taxpayer.

- (a) Conciliation. According to the 2002 UNCITRAL Model Law on International Commercial Conciliation defines Conciliation “a process, whether referred to by the expression conciliation, mediation or an expression of similar import, whereby parties request a third person or persons (—the conciliator) to assist them in their attempt to reach an amicable settlement of their dispute arising out of or relating to a contractual or other legal relationship. The conciliator

does not have the authority to impose upon the parties a solution to the dispute". [12] Conciliation is the early stages of the mediation process with reference to the application; if someone filed against the mediation process, and demands proposed claimant may receive in his capacity as the respondent, then at the stage of such means has been obtained without continuing settlement talks, because the respondent with goodwill / goodwill are willing to accept what is proposed party claimant. [13] Judging from the above understanding, Conciliation is a process that allows it to be applied early, because the DJP and taxpayer can come to terms regarding the tax dispute without the need to proceed to the next stage.

(b) Minitrial

Minitrial is a new form of ADR and very popular in the American business community. This form is considered as the most effective option and efficiently resolve business disputes. Minitrial process consists of five stages items, namely

- (a) minitrial agreement (agreement is use minitrial), meaning tha the parties agree to submit a dispute settlement through minitrial institution. This gift can be orally and can be written (in writing), in the which Formulated way and the deadline of completion phasing.
- (b) case preparation, in the which case the parties are given the opportunity to collect the various documents deemed important to be submitted in connection whit the dispute. The time period is usually limited to between one and two weeks.
- (c) Hearning information (inforation learning), for the which it opens and begins the minitrial process in a closed-door meeting between the parties faced by top managers and executives of the parties, and delivered in front of Reviews their designated advisors, advisors'position and functions, not as law, who are authorized to take verdict, but only act as a neutral third party, guiding the course of the conveyed information in a confidential minitrial.
- (d) advisor given opinions, to executives of both parties, should not be Attended by top managers and lawyers.the Contain opinions given an explanation of the strenghts, ugliness, and weaknesses of each side and how the judhe should resolve the dispute should the case be brought to justice.
- (e) Discussing the settlement, the executives of both parties hold a meting without the presence of an advisor, since he has given since his role and function has ended his role by meeting itself.the Discussed the dispute resolution

based on the information submitted by each party in relation to the opinions Expressed by the advisor.whether or not a dispute settlement agreement is Reached is entirely left to the will and will of the executives concerned. [13]

Thus Spake the role of advisor in the minitrial process is similar to the role of mediator and conciliator. For the succes of a minitrial is strongly influenced by the abylityof the advisor to establish a legal opinion from the statements of the parties, so as to arouse the feelings of the partie towards a compromise solution.

2. Summary Jury Trial

Summary jury trial includes the disputing parties appoint and collect a few people in a group that will act as the jury. Lawyers representing both parties submit disputes. After that, the lawyers instructed the jury to make a decision, and the decision was taken based on the reasons stated in the case of delivery problems.[?] Some judges may be appointed from independent parties of government to help make decisions on taxation sengekata between DJP with taxpayer. These parties may consist of layers of society also understands the legal background, such as the police, the Indonesian National Armed Forces, etc. Upon the decision of the jury, the DJP and taxpayer can think about whether to accept / do not. If there is no agreement as well, the last effort that can be taken legal way that is in the Tax Court.

4. CONCLUSION AND RECOMMENDATION

Indonesia is a country that has a high tax targets. Conditions dispute settlement system of taxation in Indonesia very similar to those applied in the United States. Application of ADR has been done there, and is effective in resolving disputes and taxation. Taxation dispute settlement there are 5 stages: negotiation, mediation, concilitaion, mini-trial, and summary jury trial. Before finalizing the tax dispute to the tax court, it helps the application of ADR is performed by a modified according to the needs and the legal system of Indonesia.

Application of ADR in Indonesia may not be applied at this time. However, to do a literature review, comparative studies, and a direct survey of the application of ADR in the United States or in the neighboring countries that have a tax dispute settlement system are similar to those in Indonesia, this may be the best solution. It should be possible given the existing dispute resolution taxation now costs, effort, and a lot of time. Moreover, the condition of the current globalization era, the President of the Republic of

Indonesia, Joko Widodo said that would be done for regulatory simplification in one big rule in legal protection in the form of the Omnibus Law. Existing law in the realm of the Omnibus Law also targeting the Tax Legislation. With the existence of legal certainty and the ease of dispute resolution in Indonesia, this can be a special attraction for Investors to invest in Indonesia. Therefore, with the existence of ADRs, investment growth and economic development in Indonesia are expected to increase

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