



Juridical Review Of Absolute Competency Of Tax Disputes Regarding Tax Assessment Letters (SKP) Issued By Officers Of The Directorate General Of Taxes (Case Study On Decision No. 290/B/2019/PT.TUN.SBY)

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Abstract. One way to increase and test the level of taxpayer compliance is by conducting a tax audit. The result of a tax audit is a Tax Assessment Letter (SKP). If you are not satisfied with the Tax Assessment Letter issued, the legal remedy that can be taken according to the Law on General Provisions and Tax Procedures is an objection and then an appeal to the Tax Court. In fact, some Taxpayers are suing the SKP to the State Administrative Court (PTUN) because the Tax Assessment Letter (SKP) fulfills the elements of a State Administrative Decision (KTUN) in accordance with the Government Administration Law so that it can be the object of a State Administrative Dispute (TUN).). The purpose of this research is to add discourse or input to related parties if the Tax Assessment Letter (SKP) meets the requirements as KTUN and vice versa if the Tax Assessment Letter (SKP) cannot/is not the object of a lawsuit at the PTUN. However, the Tax Court is a special court from the TUN court. Apart from that, before a lawsuit is filed at the Administrative Court, the aggrieved party must first carry out administrative efforts in the form of objections and appeals in accordance with the Government Administration Law.

Keywords: *Tax Assessment Letter, Tax Court, Administrative Court*

INTRODUCTION

The tax system in Indonesia adheres to the self-assessment mechanism, where the government gives trust and responsibility to taxpayers in calculating, paying and reporting their own tax obligations by declaring their tax obligations through a Tax Return (SPT) to the DGT. Taxes according to the type of tax. and the time period has been determined in accordance with the applicable laws and regulations. (Wirawan Ilyas and Richard Burton, 2012)

Taxes are one of the sources of income for the state treasury which is used for national development which is carried out continuously, with the aim of improving the welfare of the people in accordance with the objectives of the state as formulated in the Preamble to the 1945 Constitution. The government's effort to realize the state's goals in financing development is to explore sources of funds from within the country through taxes. State income from its people through tax levies, and/or from the natural wealth within the country. These two sources are the most important sources that provide income to the country. This income finances public interests which ultimately also include individual personal interests such as people's health, education, welfare, and so on.

According to Rochmat Soemitro, tax is a transfer of wealth from the people to the State Treasury to finance routine expenditure and the surplus is used for public savings which is the main source for financing public investment (Sumarsan, 2009). The important role of the taxation sector in administering government can be seen in the State Revenue and Expenditure

Budget (APBN) which the government submits every year, namely the increase in the percentage of tax revenues from year to year.

In the implementation of taxation, it should refer to the principles of fair imposition, legal certainty, timely collection, economical and remitted correctly and responsibly. From an economic perspective, taxpayers want the tax burden they bear to be truly based on objective truth in accordance with statutory regulations. On the other hand, tax officials basically want taxpayers to be able to fulfill their tax obligations properly, namely to be able to pay off the tax owed correctly. Along with the taxpayer's obligations, the taxpayer's rights must also be respected by the tax authorities.

The second amendment to the Judicial Power Law, namely Law Number 48 of 2009 in the explanation of article 27 paragraph 1 (one) has explained the status of the Tax Court. What is meant by special courts in this provision, among other things, are children's courts, commercial courts, human rights courts, corruption criminal courts, industrial relations courts within the general justice environment, and tax courts within the state administrative court environment.

Then this is further emphasized by the State Administrative Court Law Number 51 of 2009 in the explanation of article 9A that: "What is meant by "specialization" is differentiation or specialization in the state administrative court environment, for example the tax court.

The presence of the TUN Court is reflected in the purpose of establishing the TUN Court, namely in the consideration of "considering" letter c of Law no. 5 of 1986 concerning the State Administrative Court, namely a means of upholding justice, truth, order and legal certainty, so that it can provide guidance to the community, especially the relationship between state administrative bodies or officials and the community.

In the period from 1991 to now, there have been many developments in administrative law in government life, one of which was after the passing of Law Number 30 of 2014 concerning Government Administration (Government Administration Law). The existence of the Government Administration Law has become a new paradigm in proceedings at the State Administrative Court. Not all legal actions carried out by bureaucratic officials or State Administrative Bodies are the object of dispute in this Court.

Only State Administration legal actions that are external, public, unilateral, individual and concrete can be the object of dispute. (Suyanto & Suherman, 2017) In accordance with the Taxation Law, legal remedies that can be taken include objections and appeals, including cases of taxpayers filing a lawsuit to the State Administrative Court (PTUN), on the basis that the Tax Assessment Letter is an Administrative Decision. State Enterprise (KTUN), this can be seen from the decision of the Surabaya State Administrative Court Number: 290/B/2019/PT.TUN.SBY.

Where the tax dispute takes the form of a lawsuit from the plaintiff, in this case the Taxpayer asks the Surabaya State Administrative Court to cancel or revoke the Underpayment Tax Assessment Letter and/or Tax Collection Letter (STP) which has been issued by the Director General of Taxes (KPP Pratama). That the Taxpayer's lawsuit is apparently acceptable and meets the qualifications as regulated in Article 1 Number 9 of the State Administrative Court Law or Law Number 51 of 2009.

However, there is a fairly basic problem in resolving the current dispute between the Director General of Taxes or tax authorities and the Taxpayers, where according to the Director General of Taxes or tax authorities considers that the Tax Assessment Letter for Underpayment (SKPKB) and/or Tax Collection Letter (STP)) is not a State Administrative Decree, but this SKPKB and STP are issued because it is the authority of the Director General of Taxes to test compliance with tax obligations and/or for other purposes in order to implement the provisions of tax laws and regulations. Meanwhile, on the other hand, Taxpayers and legal practitioners consider that the Tax Assessment Letter is a State Administrative Decision because it has the characteristics of a State Administrative Decision as stated in Law Number 51 of 2009,

concerning the second amendment to Law Number 5 of 1986 concerning State Administrative Courts (PTUN) and Law Number 30 of 2014 concerning Government Administration. (Didik Hery Sanstosa, 2020).

LITERATURE REVIEW

Didik Hery Santoso the result research National Symposium on State Finance 2020 title: "Juridical Review of Lawsuit in the Administrative Court (PTUN) Against Tax Assessment Letter" To enhance compliance and assess taxpayers' compliance level, one way is by conducting tax audits. The outcome of a tax audit is a Tax Assessment Letter (SKP). Taxpayers or tax payers may not always be satisfied with the SKP. If dissatisfied, according to the General Provisions and Taxation Procedures Law, they have the legal recourse of filing an objection and subsequently appealing to the Tax Court. However, some taxpayers, as per the provisions of administrative law, perceive SKP as an administrative decision, thus subject to administrative law."

METHODS

"The author will conduct normative legal research and Court Decision Study. Normative legal research involves studying legal principles, legal systematics, the level of legal synchronization, legal history, and legal comparisons. To address the issues above, the author will examine legal principles and legal systematics. Research on legal principles focuses on specific fields (legal systems) by first identifying the legal principles that have been formulated. Research on legal systematics can be conducted on specific legislation or recorded law. The main objective is to identify the fundamental concepts or standards in law, namely legal society, legal subjects, rights and obligations, legal events, legal relationships, and legal subjects. Normative legal research aims to understand and identify whether and how positive law addresses a particular legal issue. The author will conduct research using the normative legal research method by analyzing materials taken from the library that are relevant to the topic and formulating conclusions and writing a report based on the literature analysis."

RESULTS AND DISCUSSION

Absolute Competence of State Administrative Courts

The definition of State Administration and State Administration Agencies or Officials is contained in Law no. 51 of 2009 concerning the Second Amendment to Law no. 5 of 1986 concerning the State Administrative Court (hereinafter referred to as the State Administrative Court Law) in Article 1 number 7 "State Administration is state administration which carries out the function of carrying out government affairs both at the center and in the regions". Meanwhile, Article 1 number 8 "State Administrative Agency or Official is an agency or official that carries out government affairs based on applicable laws and regulations."

Meanwhile, the object of dispute contained in the State Administrative Court Law in Article 1 point 9 "State Administrative Decision is a written determination issued by a state administrative body or official containing state administrative legal actions based on applicable statutory regulations, which are concrete in nature, individual, and final, which gives rise to legal consequences for a person or civil legal entity". Based on these provisions, this means that the absolute authority or competence of the PTUN is limited to written and individual State Administrative Decisions, the implication being that the KTUN which is generally applicable (not individualized) and actual actions taken by government officials are not objects of dispute which fall under the authority of the PTUN. (Hukumonline.com, 2023).

With the enactment of Law No. 30 of 2014 concerning Government Administration, the PTUN's Absolute Competency naturally became broader, this can be seen from several provisions contained in Law No. 30 of 2014 on Government Administration. The existence of the legal principle of *Lex Posterior derogat Legi Priori*, which means that under equal regulations,

new regulations override old regulations means Law No. 30 of 2014 concerning Government Administration in Article 1 number 7 which reads "Government Administration Decisions which are also called Administrative Decisions State or State Administrative Decrees, hereinafter referred to as Decrees, are written decrees issued by Government Agencies and/or Officials in the administration of government," expanding the meaning of KTUN in the Administrative Court Law.

Thus, the object of an administrative dispute with the provisions regarding the object of dispute in the State Administrative Decree as referred to in the Administrative Court Law must be interpreted in accordance with the transitional provisions in Law No. 30 of 2014 concerning Government Administration in article 87, namely "With the enactment of the Law -This Law, the State Administrative Decree as referred to in Law Number 5 of 1986 concerning State Administrative Courts as amended by Law Number 9 of 2004 and Law Number 51 of 2009 must be interpreted as:

- a. written determination that also includes factual actions;
- b. Decisions of State Administrative Bodies and/or Officials in the executive, legislative, judicial and other state administration environments;
- c. based on statutory provisions and General Principles of Good Government (AUPB);
- d. is final in a broader sense;
- e. Decisions that have the potential to give rise to legal consequences; and/or
- f. Decisions that apply to Community Citizens.

Based on article 1 number 9 in the State Administrative Court Law, important points can be highlighted for assessing the object of the dispute. First, in the form of a written determination, which is intended to facilitate the evidentiary aspect but is not limited to the formal form of a decision. Apart from the need for written form, the "determination" clause refers to the content of the legal relationship stipulated in the relevant TUN decision which can be in the form of: obligations to do or not do something or to allow something, granting a subsidy or assistance, granting a permit and granting a status.

Second, it is issued by a state administrative agency or official, to measure a state administrative agency or official in terms of the implementation of its functions at the time the state administrative action is carried out. Apart from that, it is not limited to official agencies within the government, but includes institutions outside the executive branch and even the private sector.

Third, state administrative legal actions are based on applicable laws and regulations, that a legal action by a state administrative agency or official is carried out based on the regulations in force at the time the decision is issued. Apart from that, the state administrative legal action is a decision that creates, or determines binding or eliminating, an existing TUN legal relationship. The TUN legal action clause implemented based on statutory regulations is in conformity with one of the principles in government administration, namely the principle of legality (*wetmatigheid van bestuur* principle).

Fourth, it is concrete, individual and final, that a decision must be tangible and can be determined. The individual meaning can be interpreted as meaning that the decision is directed at a person or civil legal entity with an interest and is not aimed at the general public. The final meaning is that it must no longer be followed by another decision and the legal consequences that arise and are intended by issuing a written decision must actually constitute certain legal consequences.

Fifth, the legal consequences for individuals and civil legal entities, which cause a change in the atmosphere of existing legal relations. Understanding State Administrative Decisions in Law no. 30 of 2014 concerning Government Administration Article 1 point 7 is "Government Administration Decisions which are also called State Administrative Decisions or State

Administration Decisions, hereinafter referred to as Decisions, are written decisions issued by Government Agencies and/or Officials in the administration of government."

State Administration in a modern country is a small part of State Administration, because when viewed from the perspective of legal science, state administration has 3 (three) meanings, namely: (Prajudi Atmosudirdjo, 1966)

1. As a State apparatus, government apparatus, or political institution (state)
2. As a function or activity in the dynamic or functional sense of serving or as an operational government activity; And
3. As a technical process for implementing laws which include "administration".

The three points mentioned above are realized through the activities of state apparatus officials who carry out administrative duties through making administrative decisions that are individual, casual, factual, technical in implementation, and administrative actions, which are organizational, managerial, informational or operational in nature. If a bureaucratic official's action decision deviates from the applicable provisions, it can be challenged through various forms of state administrative justice, in this case the State Administrative Court. Only State Administration legal actions that are external, public, unilateral, individual and concrete can be the object of dispute. Meanwhile, material actions and other legal actions, if disputed, will fall within the authority of the General Court body.

The formal definition of what is meant by a State Administration dispute according to article 1 number 10 (four) of Law Number 51 of 2009 is as follows: "State Administration Dispute is a dispute that arises in the field of State Administration between a person or civil legal entity and State Administrative Bodies or Officials, both at the central and regional levels, as a result of the issuance of State Administrative Decrees, including employment disputes based on applicable laws and regulations. (M. Faruq S, 2022)

Article 70 paragraphs (1) and (2) of Law No.30 of 2014 concerning Government Administration is

- 1) Decisions and/or Actions are invalid if:
 - a. made by unauthorized Government Agencies and/or Officials;
 - b. made by Government Agencies and/or Officials who exceed their authority; and/or
 - c. made by Government Agencies and/or Officials acting arbitrarily.
- 2) The legal consequences of decisions and/or actions as intended in paragraph (1) are:
 - a. not binding since the Decision and/or Action is stipulated; And
 - b. any resulting legal consequences are deemed to have never existed.

The main problem or related to the main problem in the discussion of the PTUN's absolute competence is regarding disputes over attribution, delegation and mandate in accordance with the meaning in the Government Administration Law, where the Directorate General of Taxes through the Pratama Tax Service Office (KPP Pratama Gresik Utara) issues Underpayment Tax Assessment Letter (SKPKB) and Tax Collection Letter (STP), each signed by the Head of KPP Pratama Gresik Utara. Where according to the Plaintiff, the signature of the Head of KPP Pratama on the SKPKB is in the form of mandate authority, not delegation of authority by delegation, which is regulated in the Decree of the Director General of Taxes Number Kep-297/PJ./2002 concerning Delegation of Authority of the Director General of Taxes to Officials within the Directorate General of Taxes (Attachment I numbers 26 and 27 Kep-297/PJ./2002).

The understanding of attribution, delegation and mandate is contained in Law no. 30 of 2014 concerning Government Administration, the meaning of each is as follows:

- a. Attribution is contained in Article 12 of Law no. 30 of 2014 concerning Government Administration, namely:
 - 1) Government Agencies and/or Officials obtain Authority through Attribution if:
 - a) regulated in the 1945 Constitution of the Republic of Indonesia and/or laws;
 - b) is a new authority or did not previously exist; And
 - c) Attribution is given to Government Agencies and/or Officials.

- 2) Agencies and/or Government Officials who obtain Authority through Attribution, the responsibility for the Authority lies with the Agency and/or Government Official concerned.
- 3) Attribution authority cannot be delegated, unless regulated in the 1945 Constitution of the Republic of Indonesia and/or law.
- b. Delegation, contained in Article 13 of Law no. 30 of 2014 concerning Government Administration, namely:
 - 1) Delegation of Authority is determined based on the provisions of statutory regulations.
 - 2) Government Agencies and/or Officials obtain Authority through Delegation if:
 - a) given by Government Agencies/Officials to other Government Agencies and/or Officials;
 - b) stipulated in Government Regulations, Presidential Regulations, and/or Regional Regulations; And
 - c) is a delegated authority or previously existed.
 - 3) Authority delegated to Government Agencies and/or Officials cannot be delegated further, unless otherwise specified in statutory regulations.
 - 4) In the event that the provisions of statutory regulations stipulate otherwise as intended in paragraph (3), the Agency and/or Government Official who obtains Authority through Delegation as intended in paragraph (2) may sub-delegate Actions to other Agencies and/or Government Officials with the following provisions:
 - a) stated in the form of regulations before the Authority is exercised;
 - b) carried out within the government itself; And
 - c) at most it is given to Government Agencies and/or Officials 1 (one) level below.
 - 5) The Government Agency and/or Official who provides the Delegation may use the Authority granted through the Delegation themselves, unless otherwise specified in the provisions of the laws and regulations.
 - 6) In the event that the implementation of Authority based on Delegation results in the ineffectiveness of government administration, the Agency and/or Government Official who delegated the Authority may withdraw the Authority that has been delegated.
 - 7) For Government Agencies and/or Officials who obtain Authority through Delegation, responsibility for the Authority lies with the recipient of the Delegation.
- c. The mandate is contained in Article 14 of Law no. 30 of 2014 concerning Government Administration, namely:
 - 1) Government Agencies and/or Officials obtain a Mandate if:
 - a. assigned by the Agency and/or Government Officials above it; And
 - b. is a routine task.
 - 2) Officials who carry out routine duties as intended in paragraph (1) letter b consist of:
 - a. daily executors who carry out routine duties of definitive officials who are temporarily absent; And
 - b. executors who carry out routine duties of definitive officials who are permanently unable to do so.
 - 3) Government agencies and/or officials can give mandates to other agencies and/or government officials who are their subordinates, unless otherwise specified in the provisions of statutory regulations.
 - 4) The Agency and/or Government Official who receives the Mandate must state the name of the Agency and/or Government Official who gave the Mandate.
 - 5) The Government Agency and/or Official that grants the Mandate may use the Authority granted through the Mandate themselves, unless otherwise specified in the provisions of the laws and regulations.

- 6) In the event that the implementation of Authority based on the Mandate results in ineffective government administration, the Government Agency and/or Official who gave the Mandate may withdraw the Authority that has been mandated.
- 7) Government agencies and/or officials who obtain authority through mandates are not authorized to take strategic decisions and/or actions that impact changes in legal status in aspects of organization, personnel and budget allocation.
- 8) Government agencies and/or officials who obtain authority through a mandate, responsibility for authority remains with the person giving the mandate.

Absolute Competency of the Tax Court

The competence of the Tax Court over tax disputes is absolute, this can be seen from the formulation of Article 2 of Law Number 14 of 2002 concerning the Tax Court (Tax Court Law), "The Tax Court is a judicial body that exercises judicial power for taxpayers or tax bearers. who seeks justice in tax disputes". The explanation of article 27 paragraph 1 (one) of the second amendment to the Judicial Power Law, namely Law Number 48 of 2009, states that what is meant by "special court" in this provision, among other things, is a children's court, a commercial court, a human rights court. , corruption criminal courts, industrial relations courts and fisheries courts within the general court, and tax courts within the state administrative court."

Then this is further emphasized by the State Administrative Court Law Number 51 of 2009 in the explanation of article 9A that: "What is meant by "specialization" is differentiation or specialization in the state administrative court environment, for example the tax court."

The existence of provisions in Law Number 6 of 1983 concerning General Provisions and Tax Procedures up to Law Number 7 of 2021 (hereinafter referred to as the KUP Law) which regulates Taxpayer legal remedies must be interpreted as lex specialist, so it must be interpreted as legal remedies Taxpayers can submit legal products in the field of taxation that must comply with the provisions of the KUP Law, namely through the Objection procedure as intended in Article 25 paragraph (1) of the KUP Law, namely that Taxpayers can submit objections only to the Director General of Taxes regarding:

- a. Underpayment Tax Assessment Letter;
- b. Additional Tax Underpayment Assessment Letter;
- c. Nil Tax Assessment Letter;
- d. Tax Overpayment Assessment Letter; or
- e. withholding or collection of tax by a third party based on the provisions of tax laws and regulations.

then the appeal as intended in Article 27 paragraph (1) of the KUP Law is: "Taxpayers can submit an appeal only to the tax judiciary regarding the Objection Decree as intended in Article 26 paragraph (1)."

and a lawsuit to the Tax Court Agency as intended in Article 23 paragraph (2) of the KUP Law, namely: Taxpayer or Tax Insurer lawsuit against:

- a. execution of a Compulsory Letter, Warrant to Execute Confiscation, or Auction Announcement;
- b. preventive decisions in the context of tax collection;
- c. decisions relating to the implementation of taxation decisions, other than those stipulated in Article 25 paragraph (1) and Article 26; or
- d. Issuance of a tax assessment letter or Objection Decree whose issuance is not in accordance with the procedures or procedures that have been regulated in the provisions of tax laws and regulations can only be submitted to the tax court.

The powers of the Tax Court according to the Tax Court Law in Chapter III article 31, states:

1. The Tax Court has the duty and authority to examine and decide Tax Disputes.

2. The Tax Court in the case of an appeal only examines and decides disputes based on the objection decision, unless otherwise determined by the applicable laws and regulations.
3. The Tax Court, in the case of a lawsuit, examines and decides on disputes regarding the implementation of Tax collection or corrective decisions or other decisions as intended in Article 23 paragraph (2) of Law Number 6 of 1983 concerning General Provisions and Procedures for Taxation as has been amended several times, most recently with Law Number 16 of 2000 and applicable tax laws and regulations. (Djarmiko, 2016)

Meanwhile, what is meant by tax disputes, appeals and lawsuits according to the Tax Court Law are:

- a. Tax Disputes (Article 1 point 5) 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 Appeal or Lawsuit to the Tax Court based on tax laws and regulations, including Lawsuits regarding implementation collection based on the Law on Tax Collection by Forced Letter.
- b. Appeal (Article 1 number 6) is a legal remedy that can be taken by a Taxpayer or Tax Insurer against a decision that can be appealed, based on the applicable tax laws and regulations.
- c. A lawsuit (Article 1 number 7) is a legal action that can be taken by a Taxpayer or Tax Insurer regarding the implementation of Tax collection or against a decision that can be filed a lawsuit based on the applicable tax laws and regulations.

Whereas the State Administrative Court regarding a tax dispute regarding the signature of a tax official, in this case the Head of the North Gresik KPP Pratama Office, in its decision the Surabaya TUN Court granted the plaintiff, namely that the signature of the Head of the North Gresik KPP Pratama Office was a mandate of authority, not a delegated delegation of authority. which has been regulated in the Decree of the Director General of Taxes Number Kep-297/PJ./2002 concerning the Delegation of Authority of the Director General of Taxes to Officials within the Directorate General of Taxes (Appendix I numbers 26 and 27 Kep-297/PJ./2002), meaning the Court's decision TUN canceled the Tax Assessment Letter (SKP) and Tax Collection Letter (STP) issued by the Head of the North Gresik KPP Pratama Office, whereupon the Directorate General of Taxes filed an appeal and finally the TUN High Court in its decision canceled the TUN Court's decision.

Based on the description and explanation of the applicable provisions and rules regarding the Absolute Competency of the Tax Court, it can be concluded that the Tax Court is a Special Court or *Lex Spialis* which means that the authority of the Tax Court is absolute or absolute regarding tax disputes.

This is emphasized again that the Tax Court is a special one. from the State Administrative Court in the explanation of article 27 paragraph (1) of the Judicial Power Law. Whereas based on these provisions and in accordance with the principle of *lex specialis derogat legi generali*, it is very clear that the Objections and Appeals and Lawsuits that can be submitted by Taxpayers are Objection and Appeals and Lawsuits as intended in Article 23 paragraph (2), Article 25 paragraph (1) and Article 27 paragraph (1) of the KUP Law is not based on the Government Administration Law.

Juridical Analysis of Decision Number 290/B/2019/PT.TUN.SBY

That the main subject of the lawsuit is the issuance of an Underpayment Tax Assessment Letter and a Tax Collection Letter which according to the Plaintiff was signed by a party who had no rights or was invalid.

Litigating Parties

CV. MITRA ABADI LOGISTICS is located at Jl. Dr. Wahidin SHD 1- RT.01 RW.005, Kebomas, Gresik based on Article 5 of Deed of Farah Nurani Tjinong, SH Deed Number 37,

dated 28 October 2009, represented by Gabril Kurniawan Santoso in the position of Director of CV. Mitra Abadi Logistik, Indonesian citizen, address: Jl. Dr. Wahidin SHD 1- RT.01 RW.005, Kebomas, Gresik.

Object of the Lawsuit

Whereas based on the Decision at the Administrative Court number 290/B/2019/PT.TUN.SBY that in accordance with Law 5 of 1986 concerning State Administrative Courts as amended several times, the latest being Law no. 51 of 2009 concerning the Second Amendment to Law no. 5 of 1986 concerning State Administrative Courts (hereinafter referred to as the PTUN Law) as well as Law 30 of 2014 concerning Government Administration, the a quo lawsuit is: DECISION issued by

Defendant KPP Gresik as a government administrator in the form of a Decision regarding Tax Bills dated 11 September 2019 and a Decision regarding Underpayment of Tax Assessment dated 12 September 2019, namely:

1. Income Tax Collection Letter Article 21 Number: 00002/101/11/612/16
2. Tax Assessment Letter for Underpayment of PPh Article 21 Number: 00002/201/11/612/16
3. PPh Tax Bill Number: 00003/106/11/612/16
4. Tax Assessment Letter for Underpayment of Income Tax Number: 00003/206/11/612/16
5. PPh Tax Bill Number: 00004/106/11/612/16
6. VAT Tax Bill Number: 00010/107/11/612/16
7. Tax Assessment Letter for Underpayment of VAT Number: 00016/207/11/612/16
8. Tax Assessment Letter for Underpayment of VAT Number: 00017/207/11/612/16
9. Tax Assessment Letter for Underpayment of VAT Number: 00018/207/11/612/16
10. Tax Assessment Letter for Underpayment of VAT Number: 00019/207/11/612/16
11. Tax Assessment Letter for Underpayment of VAT Number: 00020/207/11/612/16
12. Tax Assessment Letter for Underpayment of VAT Number: 00021/207/11/612/16
13. Tax Assessment Letter for Underpayment of VAT Number: 00022/207/11/612/16
14. Tax Assessment Letter for Underpayment of VAT Number: 00023/207/11/612/16
15. Tax Assessment Letter for Underpayment of VAT Number: 00024/207/11/612/16
16. Tax Assessment Letter for Underpayment of VAT Number: 00025/207/11/612/16
17. Tax Assessment Letter for Underpayment of VAT Number: 00026/207/11/612/16
18. Tax Assessment Letter for Underpayment of VAT Number: 00027/207/11/612/16

Interests of the Plaintiff/Legal Standing Who Are Damaged

Referring to the provisions of Article 53 paragraph (1) of Law Number 9 of 2004 concerning Amendments to Law Number 5 of 1986 concerning TUN Judiciary, it states:(1) A person or civil legal entity who feels that their interests have been harmed by a State Administrative Decree may submit a written lawsuit to the competent Court containing a demand that the disputed State Administrative Decree be declared null or invalid, with or without a claim for compensation and /or rehabilitation.

With the publication of the objects of the lawsuit, losses arise for the Plaintiff, namely the emergence of suffering in the form of tax debt obligations as confirmed in the provisions of Article 18 of Law Number 6 of 1983 concerning General Provisions and Procedures for Taxation as last amended by Law Number 16 of 2009 (UU KUP), which reads:

Article 18

Tax Invoice Letter, Underpayment Tax Assessment Letter, and Additional Underpayment Tax Assessment Letter, and Rectification Decision Letter, Objection Decision Letter, Appeal Decision, and Judicial Review Decision, which causes the amount of tax to be still to be paid increases, is the basis for tax collection. Based on the provisions of Article 18 of the KUP Law,

the STP-STP and SKPKB SKPKB issued by the DEFENDANT are the basis for collecting tax from the PLAINTIFF.

In fact, these STPs and SKPKBs should not be used as a basis for collecting tax from the Plaintiff because they were issued by unauthorized officials. Furthermore, according to the provisions of Article 19 paragraph (1) of the KUP Law, which reads:

Article 19

If an Underpayment Tax Assessment Letter or Additional Underpayment Tax Assessment Letter, as well as a Rectification Decision Letter, Objection Decision Letter, Appeal Decision or Judicial Review Decision, which causes the amount of tax still to be paid increases, when the payment due date is not or underpaid, the amount of tax that is not or underpaid is subject to administrative sanctions in the form of interest of 2% (two percent) per month for the entire period, calculated from the due date until the date of settlement or the date the Tax Bill is issued, and part of the month is calculated as the full 1 (one) month.

Shows that if the STP-STP and SKPKB-SKPKB are not paid when the payment is due, the Plaintiff will be subject to an administrative interest penalty of 2% per month and if the STP-STP and SKPKB-SKPKB are not paid, the Plaintiff will be forced to pay and then the Plaintiff's property will be confiscated.

Judge's considerations

Considering, that the decision of the Surabaya State Administrative Court Number: 60/B/2019/PT.TUN.SBY, was pronounced in a trial which was open to the public on Thursday, 24 October 2019, attended by the Plaintiff's Attorney and the Defendant's Attorney, Considering, that regarding the decision the Appellant/Defendant has submitted an appeal request on November 5 2019 as stated in the Deed of Appeal Number: 60/G/2019/PTUN.SBY, then the appeal request is still within the 14 (fourteen) day grace period as determined in Article 123 paragraph (1) of Law Number: 5 of 1986 concerning State Administrative Courts, so that therefore the appeal request can be formally accepted; Considering, that the Panel of Judges of the Surabaya State Administrative High Court, hereinafter referred to as the Panel of Appeal Judges, after carefully examining and examining the case file Number: 60/G/2019/PTUN.SBY which is contained in Bundle A and Bundle B as well as other documents including it includes the decision of the Surabaya State Administrative Court Number: 60/G/2019/PTUN.SBY, dated 24 October 2019, Minutes of Preparatory Examination, Minutes of Trial, Evidence from the parties.

Expert testimony from the Appellee/Plaintiff, Memorandum of Appeal from the Appellant/Defendant and Counter-Memories from the Appellee/Plaintiff, in its deliberations the Panel of Appeal Judges unanimously held the opinion as described below: Considering, the decision of the Surabaya State Administrative Court Number: 60/G/2019/PTUN, SBY.

On October 24 2019, in principle, they decided to reject the Appellant/Defendant's objection and granted the Appellee/Plaintiff's claim in its entirety, and declared the decision on the object of the dispute invalid (exhibits P.1 to evidence P.18 are the same as evidence T.9 to/d T.26) issued by the Appellant/Defendant, and states that the State Administrative Court has the authority to examine, decide and resolve the a quo dispute, with the consideration that in the signature section of the object of the a quo dispute.

The delegation is in the nature of a "mandate" which is a delegation of authority to subordinates, this delegation of "mandate" intends to give authority to subordinates (as a matter of routine in intimate hierarchical relationships in government organizations) to make decisions on behalf of the Director General of Taxes who gave the mandate, so that accountability remains with the mandate giver/Director General of Taxes;

Considering, that regarding the considerations and decisions of the State Administrative Court, the Panel of Appeals Judges as *Yudex Factie* does not agree with the considerations and decisions, and will consider the following below; Considering, that in the provisions of Law Number: 6 of 1983 concerning General Provisions and Procedures for Taxation as amended several times, most recently by Law Number: 16 of 2009 in Article 23 paragraph (2) it is stated, Lawsuits from taxpayers or insurers tax on: in letter d. stated: "Issuance of a Tax Assessment Letter or Objection Decree which in its issuance does not comply with the procedures or procedures stipulated in the provisions of Northern tax laws and regulations, namely the 2016 VAT Underpayment Tax Assessment Letter and the 2016 VAT Tax Invoice Letter;

An *a quo* dispute is a dispute that can be submitted to an appeal or lawsuit to the Tax Court, as specified in Article 23 paragraph (2) letter d, Law Number: 6 of 1983, as amended several times, most recently by Law Number: 16 of 1983. 2009, concerning General Provisions and Tax Procedures; Considering, that based on the description of the considerations as mentioned above, the Panel of Appeals Judges concluded that the *aquo* dispute was a dispute arising in the field of taxation due to actions taken by the Appellant/Defendant in *casu* Head of the North Gresik Pratama Tax Service Office, therefore it was the authority to investigate , adjudicating and deciding this dispute falls under the authority of the Tax Court;

Considering, that because this dispute is within the absolute competence of the Tax Court, the State Administrative Court must declare that it has no authority to examine, hear and decide this case; Considering, that because the State Administrative Court does not have the authority to examine, hear and decide this case, the Appellant/Defendant's Exception regarding Absolute Authority to adjudicate this dispute must be declared acceptable; Considering, that because the exception regarding the Absolute Authority to adjudicate this dispute from the Appellant/Defendant can be accepted, then the subject matter of this case does not need to be considered further and the Appellee/Plaintiff's claim must be declared unacceptable, and further the decision of the Surabaya State Administrative Court Number: 60/G/2019/PTUN.SBY dated 24 October 2019 can no longer be maintained and must be annulled, and the Appeals Panel of Judges will judge it themselves as stated in this decision;

Considering, that because the Appellee/Plaintiff's claim cannot be accepted, the Appellee/Plaintiff is subject to Article 110 Law Number: 5 of 1986 must be charged to pay case costs at two judicial levels, which for the appeal level will be determined in this ruling;

Announcement of Decision

Bearing in mind, Law Number: 5 of 1986 as most recently amended by Law Number: 51 of 2009 concerning the Second Amendment to Law Number: 5 of 1986 concerning State Administrative Courts, as well as other related laws and regulations; Receive an appeal request from the Appellant/Defendant; Cancel the decision of the Surabaya State Administrative Court Number: 60/G/2019/PTUN.SBY dated 24 October 2019, which is being appealed;

CONCLUSION

1. Given the subject matter of the dispute, the responsibility of the administrative officer, and the scope of the law, tax disputes have similar characteristics to administrative disputes. The difference is that tax disputes are not only against a tax decision, but also calculate the amount of tax in dispute. Its resolution requires a special court, for which the Financial Court was established, which is a specialization of the State Administrative Court. There is often a jurisdictional gap between the two courts, even though each court has its own absolute jurisdiction. The limitation of the authority of the Tax Court and the Administrative Court in matters of taxation opinions can be seen, when it comes to the amount of SKP losses and procedural errors in the disputed case, the supervisory authority is with the Tax Court. While cases concerning the validity of power, alleged abuse of office, and unlawful acts, the PTUN has the right to examine them.

2. Consideration of the Supreme Court judges through Decision Number: 290/B/2019/PT.TUN.SBY That based on Article 1 point 5 of Law Number 14 of 2002 concerning the Tax Court, the definition of a tax dispute is a dispute arising in the field of taxation between a taxpayer or taxpayer and an authorized official as a result of the issuance of a decision that can be appealed or sued to the Tax Court based on tax legislation, including a lawsuit over the implementation of collection based on the Tax Collection Law with a Forced Letter. Article 1 point 7 of Law No. 14 of 2002 on the Tax Court stipulates that a lawsuit is a legal action that can be taken by a taxpayer or taxpayer against the implementation of tax collection or against a decision that can be filed a lawsuit based on applicable tax legislation. That the legal remedy against the Tax Collection Letter (STP) and Tax Underpayment Assessment Letter (SKPKB) whose issuance is not in accordance with the procedures or procedures that have been regulated in the provisions of tax legislation is to file a lawsuit only with the Tax Court.

LIMITATION:

1. Enhancing Synergy between Tax Court and Administrative Court, To address the jurisdictional gap between the Tax Court and the Administrative Court, there is a need for better coordination and collaboration mechanisms. Establishing clear guidelines or protocols for the referral of cases between the two courts could help streamline the resolution process. Additionally, providing training and capacity-building programs for judges and court staff on cross-jurisdictional matters can improve understanding and facilitate smoother proceedings.
2. Clarity in Legal Remedies for Tax Disputes There is a necessity for clarity in legal remedies available to taxpayers in tax disputes. Legislative amendments or policy revisions may be warranted to ensure that taxpayers are well-informed about their rights and options for recourse. Furthermore, enhancing public awareness through educational campaigns or informational materials could empower taxpayers to navigate the legal system more effectively and assert their rights when faced with tax-related issues.

REFERENCES

- Didik Hery Sanstosa. (2020). Tinjauan Yuridis Gugatan di PTUN Terhadap Surat Ketetapan Pajak. In Simposium Nasional Keuangan Negara (pp. 502–521). <https://jurnal.bppk.kemenkeu.go.id/snkn/article/view/567>
- Djarmiko, D. H. M. H. (2016). Problematik Sengketa Pajak dalam Mekanisme Peradilan Pajak di Indonesia. In Biro Hukum dan Humas Badan Urusan Administrasi Mahkamah Agung Republik Indonesia. <http://www.komisiyudisial.go.id/assets/uploads/files/bunga-rampai-2013-putih-hitam-pengadilan-khusus.pdf>
- hukumonline.com. (2023). Tugas dan Fungsi Peradilan Tata Usaha Negara. Hukumonline.Com. <https://www.hukumonline.com/berita/a/peradilan-tata-usaha-negara-1t62a29cca9f65d/?page=1>
- M. Faruq S. (2022). Hukum Acara Peradilan Pajak (1st ed.). Kencana.
- Prajudi Atmosudirdjo. (1966). Hukum Administrasi Negara. Grialia Indonesia.
- Sumarsan, T. (2009). Perpajakan Indonesia Aplikasi dan Kasus Pembahasan Berdasarkan Undang-Undang Terbaru SERI KUP dan PPh (Pertama).
- Suyanto, H., & Suherman, S. (2017). Sengketa Perpajakan dalam Perspektif Kekuasaan Kehakiman. *Jurnal Yuridis*, 2(1), 95–110. <https://ejournal.upnvj.ac.id/index.php/Yuridis/article/view/163%0Ahttps://ejournal.upnvj.ac.id/index.php/Yuridis/article/download/163/135>
- Wirawan Ilyan and Richard Burton. (2012). Manajemen Sengketa Dalam Pungutan Pajak. Mitra Wacana Media.