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Writing of rights to provision of interest reward after the judgment of the tax court associated in tax disputes in customs

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Abstract. The largest source of income for the Indonesian state to date is from taxes and other levies, because it's coercive and for the purposes of the state it must be regulated by law, which is authorized for implementation by officials of the Directorate General of Taxes and officials of the Directorate General of Customs and Excise, but in its application it can there is a dispute. For this reason, dispute resolution through the Tax Court is needed which is expected to create justice and legal certainty. There are 2 (two) problems, namely 1) The executorial power of the decision of the Judge of the Tax Court Council, 2) The provision of interest compensation for excess payments after the decision of the Panel Judge at the Tax Court in the Customs sector. This research is a juridical normative, which uses a statutory approach, a conceptual approach, a case approach, a historical approach, a comparative approach and a philosophical approach. Regarding the decision of the Tax Court which has executorial power, a system of payment and return that is fast and impartial should be needed, namely a place for depositing deposits of funds managed by a third party. Regarding the legal vacuum due to the nonregulation of interest compensation for overpayments in the Customs Law, the Tax Court judges should be able to find the law.

Keywords. Tax Court, Invention of Law, Legal Vacuum

Preliminary

As a rule of law that also has legal objectives, it's inseparable from the problems of both the implementation and application of the law.(Suswanto et al., 2018) So that it takes institutions that have a special function, task, power or authority. The 1945 Constitution of the Indonesian state has stated that the power of Justice is exercised by a Supreme Court and the judiciary body under it. The Judicial Power Act also states that a special court can only be established in one of the judicial environments regulated by law; according to the Law on State Administrative Courts within the State Administrative Court, specializations can be made which are regulated by law which in the explanation is called the Tax Court.(Rumadan, 2017) Therefore, the decision of the Tax Court may not be intervened, either in making decisions or regulations. In accordance with the legal principle of *lex specialis derogat legi generalis*, this was confirmed again based on the Constitutional Court Decision on cases Number 004 / PUU-11/2004 and Number 011 / PUU-IV / 2006.

This study uses the originality of the research, which is viewed from the existence of justice felt by the taxpayer community will be able to determine the success of tax collection.(-, 2018) The second originality is the purification of the tax court. This is related psychologically

in order to create an independent element.(Sutanto, 2018) In this research, the formulation of the problem in the form of the executorial power of the decision of the Judge of the Tax Court Council in the tax dispute and the abolition of the right to give interest compensation to the payer for the overpayment of tax is based on the decision of the Judge of the Tax Court Council in the Customs sector.

Research Method

The use of normative juridical research methods, which require a statutory approach with legal review of positive law, which is linked to legal considerations used by judges to arrive at their decisions.(Laksono, 2018)

Research Results and Discussion

Whereas in the principles of taxation(Anggraini, 2016) also applies an adage (adagium) which reads *Presumptio Iustae Causa*, which means the principle of presumption is correct according to law (*Vermoeden Van Rechtmatigheid*) or in other terms that a decision of a State Administration agency / official such as the Director General of Taxes and the Director General of Customs and Excise, must always be considered correct in accordance with the law, so that there tends to be arbitrariness that can be done by officials as an executive body and as long as this has not been proven otherwise (*omkering van de bewijslast*) by the appellate agency or by the Court's decision. The decision of the Sole Judge and the Panel of Judges at the Tax Court in Indonesia is the final decision and has permanent legal force (*In kracht Van Gewijsde*). Because as a judicial institution, the panel judges at the tax tribunal have the duty and authority to examine and decide tax disputes. Decisions of the Tax Court can be directly implemented without requiring a decision of the competent official, unless the statutory regulations provide otherwise. The application for reconsideration does not postpone or stop the implementation of the decision of the tax tribunal so that it provides executive power for the decision of the tax tribunal. Regarding executorial power, all parties should be able to obey or obey the decision of the Panel Judge at the Tax Court and immediately implement it without being forced, besides that to ensure the implementation of a payment system and return quickly and impartially a joint account is required to ensure the implementation of the payment system and the return of overpayment of quickly taxes and impartially.(Tjandra, 2020)

Gustav Radbruch(Spaak, 2009) with his theory, namely the principle of priority that prioritizes justice rather than benefit and legal certainty in legal objectives that can be used as a guide. Especially with the condition of the Indonesian people who come from various backgrounds and answer the problem of diversity in Indonesia.

One approach to the case is the *ratio decidendi*, namely the legal reasons used by the judge to arrive at the decision.(Laszlo & Riley, 2020) There are 2 (two) copies of the decision of the Judge of the Tax Court Council, the first number PUT-54004 / PP / M.VIB / 99/2014 regarding the answer to the application for Interest Compensation, the amendment of which "Grants" the petition for a lawsuit for the provision of interest compensation for the excess tax payment, Taxation. Then the second number is PUT-010771.98 / 2018 / PP / M.XVIA Year 2019 which the amendment is "Unacceptable", where the reason for the Tax Court Panel Judge is that the Law on Customs does not regulate. So that the petition for a lawsuit against the right to pay interest on the overpayment of tax after the decision of the Tax Court Council Judge on tax disputes is given if the dispute is in the taxation field, except for disputes in the Customs field. Whereas in the Law on Tax Courts it has been clearly regulated in accordance with Article 87 which reads "If the decision of the Tax Court approves part or all of the appeal, the overpayment of Taxes is returned with an interest compensation of 2% (two percent) a month

for a maximum of 24 (two percent) forty-four months, in accordance with the provisions of the applicable tax laws and regulations ", with an explanation that reads: " quite clear ".

In addition, it's also based on the legal principles of *Generalia Sunt Praeponenda Singularibus* (*General things are to precede particular things general laws are to precede particular laws*), which means that laws that are general in nature can be adopted and applied to laws that are specific in nature if in Law The special law is not regulated separately. So that if the Law on Customs doesn't regulate separately as a *lex specialis*, then the Law on General Taxation Provisions that are general in nature as *Legi Generalists* can be applied to issues that have not been explicitly regulated in the Law on Customs.(Vranes, 2006)

The reform of the National tax law system since 1983 has placed the General Provisions of Taxation Law as the only formal tax law in the national tax law system which is supported by 2 (two) principles, namely the separation of formal tax law arrangements and material tax law in different law; and the incorporation of formal tax law into one law, namely the General Tax Provisions Law.

The position of the Tax Court is as a judicial body that exercises judicial power for taxpayers or tax bearers to seek justice for tax disputes.(Setjoatmadja, 2015) Therefore, a Tax Court as a Special Court is a court that has the authority to examine, try and decide certain cases which can only be established in one of the jurisdictions of a judicial body that is under the Supreme Court which is regulated by law. So according to the mandate in the statutory regulations, namely the Law on Judicial Powers which reads "Judges and constitutional judges are obliged to explore, follow and understand the values of law and a sense of justice that live in society" with an explanation so that the decisions of judges and constitutional judges are in accordance with law and a sense of community justice. The decision of the Panel Judge at the Tax Court isn't only a final decision and has permanent legal force, namely to fulfill the principle of legal certainty it must also fulfill the principle of justice.(Roihanah, 2015) Because of the authority to determine right or wrong, the fairness of the law can be interpreted and confirmed by the judge as a judicial body.(Ott, 2014) Moreover, the judiciary has absolute authority in interpreting the contents of the rule of law, and all people, including state officials, must submit to the judge's decision.

The power of Judges(Adonara, 2015) whose authority is protected by law including Judges at the Tax Court should try to find the law (*recht vinding*) if there is a legal vacuum (*recht vacuum*)(Sugianto et al., 2020) which if the trial examination is submitted to him. And the verdict of the Panel of Judges should also not be based solely on the provisions of statutory regulations, but can be because the Judge's knowledge is what he knows and believes to be true, so that court decisions are endeavored to conform to the purpose of the law itself, namely the existence of the principle of justice. The principle of justice in question can be interpreted in accordance with the head of the decision which reads "FOR JUSTICE BASED ON ONE ALMIGHTY GOD".(Michael, 2011) And as another effort, people who feel that there is injustice in the laws and regulations can immediately conduct a *judicial review*, especially the Law on Customs to the Constitutional Court and the Regulation of the Minister of Finance to the Supreme Court. Likewise, the disobedience of the community towards the rule of law that has been made by the legislative body should have considered the principle of its usefulness, so that if it's carried out by the executive body it can be upheld seriously in order to achieve legal objectives other than benefit, legal certainty, namely for justice.

Conclusion

As a Judge at the Tax Court has the duty and authority to examine and decide tax disputes, because the Tax Court is the first and last level court. Even though the disputing parties

can submit a reconsideration of the decision of the Tax Court to the Supreme Court, the decision of the Tax Court can be directly implemented without requiring the decision of the competent official, unless the statutory regulations stipulate otherwise. The application for reconsideration does not suspend or stop the implementation of the decision of the tax tribunal, thus giving executorial powers to the decisions of the tax tribunal. This executorial power should give absolute authority to be implemented voluntarily.

The granting of interest benefits for overpayment of taxes is not regulated in the Law on Customs, as already regulated in the Law on General Provisions and Tax Procedures in Article 27A and which has also been regulated in the Law on Tax Courts in Article 87.

Regarding litigation legal resistance efforts through the judiciary and to produce a copy of the decision of the Panel Judge, especially the Tax Court which is the final decision and has permanent legal force (*in kracht van gewijsde*), the decision already has executive power, and the parties in dispute are able to comply or obey it to immediately carry out without coercion. However, in practice it cannot be as expected, so a third party is needed as a joint account to guarantee the implementation of a payment system and return of tax overpayments quickly and impartially.

Regarding the Judge's Decision at the Tax Court, the judge shouldn't necessarily be based solely on provisions or regulations, but in accordance with the head of the decision which reads: "FOR JUSTICE BASED ON ONE ALMIGHTY GOD". This means for Judges to try to find the law (*recht vinding*) if there is a legal vacuum (*recht vacuum*) especially in Article 5 paragraph (1) of the Law on Judicial Powers which reads "Judges and constitutional judges are obliged to explore, follow and understand the values the value of law and a sense of justice that lives in society "so that it's obtained in addition to legal certainty as well as to fulfill a sense of justice. The contents of this article are very much in accordance with Gustav Radbruch's theory, namely the principle of priority that prioritizes justice rather than benefit and legal certainty in legal purposes. Moreover, based on the legal principles of *Generalia Sunt Praeponenda Singularibus* (*General things are to precede particular things general laws are to precede particular laws*), which means that laws that are general in nature can be adopted and applied to laws of a special nature if the laws are special characteristics aren't regulated separately. So that if the Law on Customs does not regulate separately as a *lex specialis*, the Law on General Taxation Provisions that are general in nature as *Legi Generalists* can be applied to issues that haven't been explicitly regulated in the Law on Customs. In general, people who feel that there is an injustice in the laws and regulations can also apply for a *judicial review*.

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