

Analysis of Fulfillment of the Principles of Justice and the Principle of Equality in Administrative Fines Provisions and Interest Rewards in the Tax Dispute Process

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Abstract

Taxes are one source of state revenue derived from public participation. In Indonesia, the government in conducting tax collection will be in direct contact with the interests of the community. Implementation of tax collection in the middle of the community that is not in accordance with the balance of rights and obligations as well as tax laws will occur injustice for the taxpayer community, so that it can cause tax disputes between the taxpayer and the Director General of Taxes or the tax apparatus (tax authorities). Tax disputes between taxpayers and the Director General of Taxes or tax officials (tax authorities) are caused by differences in understanding of taxation provisions, differences in interpretation of taxation provisions, differences in viewpoints in evaluating facts, and may also be due to disagreements in the evidentiary process. This study aims to analyze the fulfillment of the principles of justice and equality in terms of administrative fines and interest rewards in the tax dispute process. This type of research is normative with a post positivism approach. The results of this study reveal that the rules regarding administrative sanctions in tax disputes as regulated in the 2007 KUP Law are unfair because taxpayers feel afraid to exercise or maintain their constitutional rights, so that the taxpayer's constitutional rights have been impaired when attempts to maintain their rights. Not fully the rules regarding administrative sanctions in tax disputes in accordance with the principle of equality or fairplay can be seen from Equality achieved only at the technical level and Equality not achieved at the substantive level.

Keywords: Taxes, tax disputes, justice and equality, administrative fines, interest payments.

INTRODUCTION

In Indonesia, taxation is a source of state revenue derived from community participation. In Indonesia, the taxation system is developed from the results of the democratic decision process. The tax collected by the state must involve the people in the process of drafting it. To be able to collect taxes, the state must obtain the consent of the people represented by the people's representatives in parliament [1].

Tax revenue is the right alternative choice as a source of state revenue from the non-oil and gas sector, because taxes are more stable against changes in world economic conditions, in addition taxes are a real public participation in increasing development, so as to increase public responsibility and awareness, to increase independence in national development [2].

The state forces its citizens to pay taxes and aspects of contribution which as part of a community the citizens share expenses [3]. The tax collection process is an embodiment of the service and obligation of the Indonesian people to pay

taxes as a civic duty and together all taxpayers to finance the sources of state funds and our country's development. Tax collection in the community needs to be encouraged properly, to increase the awareness of citizens to pay their obligations to taxes and increase the number of taxpayers committed by citizens.

Tax collection by the Director General of Taxes or the tax apparatus will be in direct contact with the interests of the community. The implementation of tax collection in the middle of the community that is not in accordance with the tax laws will result in arbitrary acts or actions and cause injustice for the taxpayer community, so that it can lead to a tax dispute between the taxpayer and the Director General of Tax or the tax apparatus (tax authorities).

In the event of a tax dispute, the taxpayer has the right to file legal remedies in the form of internal objections, and file an appeal and lawsuit to the Tax Court and it is even possible to submit extraordinary remedies to the Supreme Court.

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Granting the right to file an objection and appeal against the tax assessment letter issued by the taxing authority to the taxpayer is one form of implementing a good taxation system. In a good taxation system there is a certainty principle, in which tax rules must provide certainty when, how and how much tax is the taxpayer's obligation. In practice, there are often differences in perceptions between tax authorities and taxpayers. This can occur due to lack of understanding of taxpayers or taxpayers on existing taxation rules or because indeed existing taxation rules cannot provide legal certainty.

Therefore, to better provide services and legal protection to citizens as taxpayers, it is necessary to have a balance of imposition of fines in the field of taxation that can guarantee the rights and obligations of taxpayers, and can provide legal certainty over tax disputes, in accordance with the principle of justice embraced in the justice system in Indonesia.

When an appeal is rejected or partially granted, the Taxpayer will be subject to administrative sanctions in the form of a fine of 100% (one hundred percent) of the tax amount based on the Appeal Decision and in the event that the taxpayer's objection is rejected or partially granted, the taxpayer will be subject to administrative sanctions in the form of a fine of 50% (fifty percent), while interest compensation received if the taxpayer wins a maximum of 48%. Based on the background of the problem outlined above. Therefore, the main issues related to this research are formulated in the form of the question "How is the fulfillment of the principles of justice and equality in the provisions of administrative fines and interest compensation in the tax dispute process?"

RESEARCH METHOD

This study uses a post positive approach. Post Positive Approach according to [4] is a study starting from the theory by collecting data to either support or refute the theory. The theory comes from many concepts that show the relationship with each other [5]. According to the post positivism view, truth is not only one but more complex, so it cannot be bound by one particular theory. The main characteristic of the post positivism paradigm is the search for meaning behind the data. In a qualitative study using a post positivist approach, taking a scientific approach that has a elemental, logic, emphasis on empirical data collection, causal oriented and theory-based deterministic.

Research with the theme of analyzing the implementation of interest rewards in tax disputes uses the following types of research [6]: 1) descriptive research (based on research objectives), 2) pure research that is research carried out in an academic framework to meet the appropriate criteria needed by researchers, so that researchers can determine their own problems to be studied (based on the benefits of research), 3) cross-sectional research conducted in a certain time so that no other research is carried out at different times as a comparison (based on the time dimension). Data collection techniques carried out with literature study and field studies.

Analysis of the data used is Post Positivism Data Analysis which is working with data, organizing data, categorizing units that can be managed, synthesizing them, getting patterns, finding important and what can be learned, and deciding what to tell others [7]. After collecting data from several interviews and data sources, the researcher will study it, categorize it and use it to complete the post positivism analysis.

RESULTS AND DISCUSSION

1. Justice Administrative Sanctions for Tax Disputes

In the taxation provisions, there are two kinds of sanctions in taxation, namely, administrative sanctions and criminal sanctions. Administrative sanctions are usually in the form of fines (in the Law on General Provisions and Tax Procedures referred to as interest, penalties or increases), with amounts ranging from 2%, 48%, 50%, to 100% of the underpaid tax or Basic Tax Imposition (DPP)) [8]. Penalty sanctions are imposed in the event that the Taxpayer submits an objection, but is rejected or partially granted. The objection of the Taxpayers being rejected or granted in part caused an administrative sanction in the form of a fine. This sanction is calculated from the amount of tax based on the objection decision minus the tax paid before filing an objection.

In determining the amount of tax owed, taxpayers and tax officers often experience disputes. The facts on the ground that occur that there are taxpayers who do not agree on the results of the tax assessment in the form of Tax Assessment Underpayment (SKPKB) or on the Tax Collection Letter (STP). There is a penalty of 50% (fifty percent) if the taxpayer submits an objection and the objection decision is partially rejected or granted. If the taxpayer submits an appeal, the taxpayer's appeal is subject to administrative sanctions in the form of a fine of 100% (one hundred percent) if the

decision is rejected or partially accepted. In fact, there are administrative sanctions in the form of a 200% penalty if the taxpayer who receives the tax amnesty intentionally or accidentally does not report the assets of his wealth.

The problem that becomes crucial from the facts on the ground is that there are many taxpayers, both personal taxpayers, corporate taxpayers, who are subjected to administrative sanctions in the form of fines due to taxpayers not reporting and being completely late in reporting their tax returns, and the taxpayer filed an objection on SKPKB (Underpayment Tax Certificate) is subject to administrative sanctions in the form of a fine of 50%. There are obstacles for taxpayers to submit objections due to lack of understanding in the process of filing an objection that results from the filing of the file cannot be processed by the Tax Service Office. Pursuant to the Law on General Provisions and Tax Procedures, it is explained that the Taxpayer has the right to submit an objection to a tax assessment by submitting an objection in writing to the Director General of Tax no later than 3 months from the date of the decree, and on the objection the Director General of Tax will give a decision no later than 12 (twelve) months after the objection letter was received from the filing Taxpayer.

Article 25 paragraphs (9) and (10) of the KUP Law explained that: In the event that a Taxpayer's objection is rejected or partially granted, the Taxpayer is subject to administrative sanctions in the form of a fine of 50% (fifty percent) of the tax amount based on the objection decision reduced by tax paid before filing an objection. In the event that a Taxpayer submits an appeal, administrative sanctions in the form of a fine of 50% (fifty percent) as referred to in paragraph (9) are not imposed. If it is seen in Article 27 paragraph 5 (d) of the KUP Law, it is explained: In the case of an appeal being rejected or partially granted, the Taxpayer is subject to administrative sanctions in the form of a fine of 100% (one hundred percent) of the amount of tax based on the Decision of Appeal less the payment of tax has been paid before raising an objection.

Based on Article 2 paragraph (1), Regulation of the Minister of Finance Number 202 / PMK.03 / 2015 Regarding Procedures for Filing and Resolving Objection, it is explained that: Taxpayers can submit objections only to the Director General of Taxes on an: An Underpaid Tax Assessment Letter (SKPKB), Additional Underpayment Tax Assessment Letter (SKPKBT), Overpayment Tax Assessment Letter (SKPLB), Zero Tax Assessment Letter (SKPN), as well as deductions or collection by third parties in

accordance with statutory provisions in the taxation sector.

Based on the description, it is quite fair if a taxpayer who has submitted an objection either in the form of objection to the tax underpayment letter (SKPKB) or Tax Collection Letter (STP), both the taxpayer's objection is rejected or granted partly subject to administrative sanctions in the form of a fine of 50%, and if the Taxpayer appeals a 50% objection to the objection is abolished, but the Taxpayer will be subject to administrative sanctions in the form of a 100% fine in the case of an appeal being rejected or partially granted.

As a basis, it should be upheld the principle of justice in order to achieve a good taxation system. But the principle of justice is something that is very abstract and subjective. Nevertheless in the Tax Law, justice is stated as follows: "The principle of justice explains that the tax must be fair and equitable".

Follow-up after the Taxpayer's objection file is examined by the Objection Research Unit (Directorate General of Taxes) in accordance with the provisions of Article 26 paragraph (3) of the KUP Law, there are four possible decisions that the Directorate General of Taxes can issue within 12 months after the objection letter is received, the decision can be in the form of: rejected, partially accepted, entirely accepted, increasing the amount of tax owed. If the objection decision is rejected, or partially accepted, then the taxpayer is subject to administrative sanctions in the form of a fine of 50% of the amount of tax due for the objection, less the tax paid before submitting the objection. If the taxpayer feels dissatisfied with the decision, the taxpayer can submit an appeal to the Tax Court, then if the decision states that the objection submitted by the taxpayer is rejected or partially accepted, the taxpayer is subject to a 100% penalty. The regulation of the rights and authority of the state to collect taxes in the constitution is a logical consequence of the efforts that can be forced by the state to transfer the wealth of citizens to the state so that the state can carry out its functions. The tax collection philosophy contained in the Basic Law turns out to be the same as the adopted tax philosophy that reads "No taxation without representation" and other tax philosophies that read "Taxation without representation is robbery" [9].

As explained previously, the Director General of Taxation has the authority to issue tax assessment letters. In the event that the Taxpayer does not agree with the tax assessments that have been issued, the Taxpayer may submit several

efforts to obtain justice, namely rectification of tax assessments to the Director General of Taxes, Reduction or elimination of administrative sanctions on tax assessments to the Director General of Taxes, Reduction or cancellation of tax assessments to the Director General of Taxes, Objection of tax assessments to the Director General of Taxes, Appeals on objections to the Tax Court and Review of the decision of the appeal to the Supreme Court.

Based on the description above, it can be believed that the KUP Law has expressly stipulated (*expresiss verbis*) regarding the taxpayer's right to obtain justice and the widest possible equality both through the Directorate General of Taxes and through the judiciary. This proves that the KUP Act has clearly regulated broadly the efforts of taxpayers to obtain justice and equality and obtain legal protection which is an embodiment of universal legal principles or principles, namely point d'interet point d'action (all parties who feel their interests have been violated can take legal action). Contextually, the provisions of the regulations aim to guarantee legal certainty, guarantee equality, and guarantee justice. The imposition of taxation cannot violate legal certainty, it must not be *unrechtszekerheid*, and equality and justice (*gelijkheid en rechtvaardigheid*). Article 28D paragraph (1) of the 1945 Constitution says, "Every person has the right to recognition, has the right to guarantee fair protection and legal certainty, and equal treatment in the legal field." Article 28H paragraph (2) of the 1945 Constitution said, "Every person has the right to get special facilities and treatment to obtain equal opportunities and benefits in order to achieve equality and justice."

However Article 25 paragraph (9) juncto Article 27 paragraph (5d) [10] concerning General Provisions and Tax Procedures can be analyzed as violating the right of equality and justice, violating / *gerechtigheid* (justice), violating (*gerechtigheid*), and does not guarantee legal certainty (*rechtsonzekerheid*). Article 25 paragraph (9) of Law Number 28 Year 2007 concerning the Third Amendment to Law Number 6 of 1983 states, "In the event that a taxpayer's objection is rejected or partially granted, the taxpayer is subject to administrative sanctions in the form of a fine of 50% of the total tax based on the objection reduced by the tax paid before submitting an objection. "And, Article 27 paragraph (5d) of Law Number 28 Year 2007 concerning the Third Amendment to Law Number 6 of 1983 said, "In the case of an appeal being rejected or partially granted, taxpayers are subject to administrative sanctions in the form of a

fine of 100% of the amount of tax based on an appeal decision less tax payments that have been paid before submitting an appeal."

The administrative tax penalty referred to is not only imposed in the event that the appeal objection is withheld, but also when the taxpayer's application is partially granted. Administrative fines are not based on the provisions of material legal sanctions, not based on material recht. Administrative fines are not material legal sanctions, but only relate to procedural efforts in legal proceedings. When they as seekers of justice are recognized the right to submit legal remedies at the same time is subject to administrative fines.

The hardest demand in tax collection is that taxes are fair because they repeat Augustine's words, tax collection without justice makes the state unconstitutional, making the tax authorities as "No taxation without representation". However, taxpayers are subject to severe administrative sanctions in the form of a fine of 50% in the procedural filing of an objection and / or a fine of 100% in the appeal procedure, even when taxpayers submit legal remedies as seekers of justice, as *justiciabel*. On the contrary, the tax authorities are given the authority to act in wrongdoing, given the authority to apply normatively to taxpayers who when they submit legal remedies according to procedural law (*formeel recht*).

2. Equality for Interest Rewards

Imposing administrative sanctions in the form of a fine of 100% (one hundred percent) of the amount of tax based on the Decision of Appeal and in the event that the taxpayer's objection is rejected or partially granted, the taxpayer is subject to administrative sanctions in the form of a fine of 50% (fifty percent), while interest compensation received if the taxpayer wins a maximum of 48%. KUP Law is considered to be contrary to the principle of equality. It is undeniable that the tax reforms undertaken by the government, which include tax policy reform and administration, have so far succeeded in driving the tax increase significantly. Nevertheless there are still many obstacles faced, both in the field of administration of tax collection, tax audits, tax objections, tax justice, and tax compliance, as an implication of the tax administration and policy itself.

Juridical aspect in the discussion of the imposition of interest based on this KUP is the Juridical - Fiscal Aspect as the historical background of the emergence of the provisions of Article 25 paragraph (9) and Article 27 paragraph (5d) of the

KUP Law is an embodiment of the provisions of Article 19 paragraph (1) of the Law Invite KUP regarding billing interest of 2% per month indefinitely.

In full Article 19 paragraph 1 reads:

If the Underpayment Tax Assessment Letter or the Additional Underpayment Tax Assessment Letter, as well as the Correction Decree, Objection Letter, Appeal Decision or Judgment Decision, which causes the amount of tax accrued to increase, when the due date is not paid or underpaid, The tax amount not paid or underpaid is subject to administrative sanctions in the form of interest of 2% (two percent) per month for the entire period, which is calculated from the due date until the date of payment or the date on which the Tax Bill is issued, and part of month is calculated in full 1 (one) month.

The community must be seated as a development partner, not just a tax subject, so that an interaction occurs between the tax apparatus (tax authorities) and taxpayers who support each other (mutualistic symbiosis).

As a formal tax law, however the 1945 Constitution must be a very important normative reference in the preparation of General Provisions and Tax Procedures (KUP), as in the following articles:

- Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia: "The State of Indonesia is a State of Law".
- Article 27 Paragraph (1) of the 1945 Constitution of the Republic of Indonesia: "All citizens are at the same position in law and government and are obliged to uphold the law and government without exception".
- Article 28D Paragraphs (1) of the 1945 Constitution of the Republic of Indonesia: "Everyone has the right to recognition, guarantees, protection, and certainty of law that is fair and equal treatment before the law".

Every consideration taken to provide the content of tax justice in formal tax law should pay attention to these legal guidelines as a reflection of democratic law enforcement for all people in general;

1. The evidence that underlies Article 25 paragraph (9) of KUP Law No. 28 of 2007 is very detrimental to the taxpayer's constitutional rights, because there are very burdensome sanctions imposed in advance

in an imperative manner, without going through "the legal process in the process of seeking legal certainty, justice and legal equality".

2. Provisions contained in Article 27 Paragraph (5d) of KUP Law No. 28 of 2007 clearly contradict Article 1 Paragraph (3), Article 27 Paragraph (1) and Article 28D Paragraphs (1) of the 1945 Constitution.
3. Implementation of Article 25 paragraph (9) of KUP Law No. 28 of 2007 which accumulates the imposition of tax interest penalties, causing the tax burden to multiply due to the imposition of sanctions for ex sanctions. Article 13 paragraphs (2) of the KUP of Law.
4. If the taxpayer's objection is rejected in whole or in part, then after receiving the Decree of the Director General of Taxes on the Objection of the taxpayer, the next recommended action, as stated in Article 27 of the KUP Law No. 28 of 2007, taxpayers can take legal action by submitting an appeal to the Tax Court.

Table 1. Comparison of Article 25

Law Number 16 of 2000	Law Number 28 Year 2007
(1). Taxpayers can submit objections only to the Director General of Tax on a: <ol style="list-style-type: none"> a. Underpaid Tax Assessment Letter; b. Additional Underpayment Tax Assessment Letter; c. Overdue Tax Assessment Letter; d. Zero Tax Assessment Letter; e. Withholding or collecting by third parties based on the provisions of tax legislation. 	(1). Taxpayers can submit objections only to the Director General of Tax on a: <ol style="list-style-type: none"> a. Underpaid Tax Assessment Letter; b. Additional Underpayment Tax Assessment Letter; c. Zero Tax Assessment Letter; Overdue Tax Assessment Letter, or d. Withholding tax or collection by third parties based on the provisions of tax legislation.
(2). Objection is submitted in writing in Indonesian language by stating the amount of tax owed or the amount of tax withheld or collected or the amount of loss according to the calculation of the Taxpayer accompanied by	(2). Objections are submitted in writing in the Indonesian language by stating the amount of tax owed, the amount of tax withheld or collected, or the amount of loss according to the calculation of the Taxpayer accompanied by the reasons on which the calculation is

Law Number 16 of 2000	Law Number 28 Year 2007
clear reasons.	based.
(3). Objections must be submitted within a period of 3 (three) months from the date of the letter, the date of deduction or collection as referred to in paragraph (1), except if the Taxpayer can show that the period cannot be fulfilled due to circumstances beyond his control.	(3). Objections must be submitted within 3 (three) months from the date the tax assessment letter was sent or from the date of withholding or tax collection as referred to in paragraph (1) unless the Taxpayer can show that the period cannot be fulfilled due to circumstances beyond his control.
unregulated	(3a) In the event that a Taxpayer submits an objection to a tax assessment letter, the Taxpayer must pay the tax that must be paid at least the amount that has been approved by the Taxpayer in the final discussion of the examination results, before the objection letter is submitted.
(4). Objections that do not meet the requirements referred to in paragraph (1), paragraph (2), and paragraph (3) are not considered as objection letters, so they are not considered.	(4). Objections that do not meet the requirements referred to in paragraph (1), paragraph (2), paragraph (3), or paragraph (3a) are not objection letters so they are not considered.
(5). The receipt of the objection letter provided by the Directorate General of Tax designated by the official or the receipt of the objection letter by registered mail becomes proof of receipt of the objection letter.	(5). The receipt of the objection letter given by the Directorate General of Taxation staff appointed to receive the objection letter or the receipt of the objection letter by post with proof of sending the letter, or through other means regulated by or based on the Minister of Finance Regulation becomes proof of receipt of the objection letter.
(6). If requested by the Taxpayer for the purpose of filing an objection, the Director General of Taxes is obliged to provide a written	(6). If requested by the Taxpayer for the purpose of filing an objection, the Director General of Taxes is obliged to provide a written statement of

Law Number 16 of 2000	Law Number 28 Year 2007
statement of matters which are the basis of taxation, calculation of loss, deduction or tax collection.	matters which are the basis for taxation, calculation of loss, or withholding or collecting tax.
(7). Filing an objection does not delay the obligation to pay taxes and carry out tax collection.	(7). In the event that a Taxpayer submits an objection, the period of tax payment as referred to in Article 9 paragraph (3) or paragraph (3a) of the amount of tax that has not been paid at the time of filing an objection, is suspended up to 1 (one) month from the date of issuance of the Objection Decree.
unregulated	(8). The amount of tax that has not been paid at the time of filing an objection as referred to in paragraph (7) is not included as a tax debt as referred to in Article 11 paragraph (1) and paragraph (1a).
unregulated	(9). <i>In the event that the Taxpayer's objection is rejected or partially granted, the Taxpayer is subject to administrative sanctions in the form of a fine of 50% (fifty percent) of the tax amount based on the objection decision less the tax paid before submitting the objection.</i>

What is italicized is a verse that has changed.

Table 2. Comparison of Article 27

Law Number 16 of 2000	Law Number 28 Year 2007
(1). The taxpayer may submit an appeal only to the tax court body against the decision regarding the objection determined by the Director General of Taxes.	(1). Taxpayers can submit applications for appeal only to the tax court body on the Decision of Objection as referred to in Article 26 paragraph (1).
(2). The decision of the tax court body is not a state administration decision.	(2). The Tax Court Decision is a special court decision within the state administration court.
(3). Application as referred	(3). Application as

Law Number 16 of 2000	Law Number 28 Year 2007
to in paragraph (1) must be submitted in writing in the Indonesian language, with clear reasons within 3 (three) months of receipt of the decision, attached with a copy of the decree.	referred to in paragraph (1) shall be submitted in writing in the Indonesian language for clear reasons no later than 3 (three) months after the Objection Decision is received and attached with a copy of the Objection Decree.
(4). deleted.	(4). deleted
unregulated	(4a). If requested by the Taxpayer for the purpose of filing an appeal, the Director General of Taxes is obliged to provide written information on the matters that form the basis of the Objection Decision issued.
(5). Submitting an appeal does not delay the obligation to pay taxes and carry out tax collection.	(5). deleted
Unregulated	(5a) In the event that the Taxpayer submits an appeal, the period of tax payment as referred to in Article 9 paragraph (3), paragraph (3a), or Article 25 paragraph (7), for the amount of tax that has not been paid at the time of filing an objection, is suspended up to 1 (one) month from the date of issuance of the Decision on Appeal.
Unregulated	(5b) The amount of tax that has not been paid at the time of filing an objection as referred to in paragraph (5a) is not included as a tax debt as referred to in Article 11 paragraph (1) and paragraph (1a).
Unregulated	(5c) The amount of tax that has not been paid at the time of filing an appeal has not been

Law Number 16 of 2000	Law Number 28 Year 2007
	taxed until the Decision of Appeal is issued.
<i>unregulated</i>	(5d) <i>In the event that an appeal is rejected or partially granted, the Taxpayer is subject to administrative sanctions in the form of a fine of 100% (one hundred percent) of the total tax based on the Decision of Appeal less the payment of tax paid before filing an objection.</i>
(6). The tax court body as referred to in paragraph (1) and Article 23 paragraph (2) shall be regulated by law.	(6). The tax court body as referred to in paragraph (1) and in Article 23 paragraph (2) shall be regulated by law.

What is italicized is a verse that has changed.

Based on the table above, it can be seen that in 2007 DGT made fundamental changes to the imposition of administrative sanctions, which were not previously regulated, so in 2007 they were regulated by large administrative sanctions. This is detrimental to the taxpayer in the form of a potential obligation to pay a sum of money as administrative sanctions, apart from the tax obligation that should be paid, or fear in taking legal action in the form of filing an objection and appeal because of the potential threat of sanctions. Fear of exercising the right to obtain legal certainty, justice and legal equality, especially the right to obtain equality before the law; the right of the threat of fear of doing something not doing something; and the right to have access to equality before the law.

The tax objection and appeal process is very precise, fair, and the provisions are in accordance with the presumption of innocence and the principle of equality before the law. The concept of equality in the field of taxation is the pulse of a good taxation system. Indonesia as a modern law state that adheres to the conception of the welfare state (welfare state), has the aim to achieve the welfare of the people by guaranteeing legal protection from government administrators. The concept of welfare state, the government is given the obligation to realize public welfare (bestuurzorg), for that the government is given the authority to intervene in all fields of public life. On the basis of the shift in the conception of nachtwakerstaat to the conception of

welfare state, then since then the employment of the government has become increasingly broad [11].

Bearing in mind that this authority was granted for the sake of legal certainty, fairness and equality (paying attention to the principle of equity) when WP was denied an objection and appeal because it did not meet formal requirements. So in fact there is a dispute between WP and the tax authorities but the right of the Taxpayer to submit an objection has passed. Even at the level of appeal, the complainant (WP) in the tax court is sometimes even complicated by the tax authorities (the government) considering the tax collection system in Indonesia is a self-assessment. Given the considerations made in tax collection in principle must pay attention to legal certainty, justice and equality in its implementation. To meet the demands of legal certainty, justice and equality, the principle of tax collection needs to be considered, namely the principle of equality which emphasizes the importance of the balance of each tax subject.

The taxation system adopted by Indonesia and which has been enacted is a self-assessment system, meaning a tax collection system that gives WP full confidence in calculating, calculating and paying the tax owed in accordance with the provisions of tax legislation. Thus the determination of the amount of tax owed is on the WP itself. While the task of taxation apparatus is to carry out task control, guidance, research, supervision, and determination of sanctions. Even though tax officials only provide guidance to taxpayers to fulfill obligations and carry out their rights, if violations occur in fulfilling obligations and rights, tax officials are authorized to impose legal sanctions based on the level of legal violations committed by taxpayers. The tax official is not involved in determining the amount of tax owed as a burden borne by the taxpayer, but only directs the way how the taxpayer fulfills his obligations and exercises his rights so that there is no violation of the law.

[12] states that the self-assessment system is generally applied to the type of tax that views the taxpayer capable of being entrusted with the responsibility to calculate and determine his own tax debt. In the context of state revenue through taxes, of course the self assessment system must be monitored so that WP calculates and / or reports the tax owed correctly and in accordance with applicable laws and regulations. For this reason, there is an instrument in the form of a file that is used to calculate and determine the tax. The instrument referred to is the SPT (notification letter) is a letter by the taxpayer used to report tax

calculations and / or payments, tax objects and / or not tax objects and / or assets and liabilities, according to the provisions of tax legislation [12].

Facts in the field if related to the principle of equality whether it is in accordance with the principle of equality as with the principle of self-assessment system. Every taxation system can run well if there is positive interaction and participation between the taxpayer community and the tax authorities in implementing tax legislation.

The legal relationship between Fiscus and the Taxpayer is forced and one-sided, not reciprocal. This is in accordance with the notion of tax based on existing theories as according to Adriani [13] which mentions the existence of an element of coercion without any counterparts that can be directly appointed. However, the procedure for tax collection must still consider equality based on human rights and there must be equality.

In its implementation, the tax collection process by Fiscus does not always take place a smoothly, sometimes the collection process is turbulent, causing a dispute between Fiscus and the Taxpayer. As regulated in Article 31 [14] concerning Tax Courts (Tax Court Law), the Tax Court has the duty and authority to examine and decide tax disputes [15].

The decision of the Tax Court is based on the results of the evidentiary assessment, and based on the relevant tax legislation, and based on the judge's conviction. If one party can provide complete information and evidence in accordance with what is stipulated in the taxation law, the Tax Court Judge Panel will certainly receive and win the case, and vice versa if the information and evidence submitted by one of the parties is weak or not in accordance with the taxation law, the case will lose. Good tax law according to [16],

"Both substantive and procedural tax laws should always be directed toward improving taxpayer compliance. It is generally agreed that improving taxpayer compliance has many aspects to it, including making the law fair and equitable, easy to comply with, and difficult to evade. Another important aspect of improving compliance is the provision of effective sanctions for failure to comply. Typically, sanctions can be of a civil or a criminal nature, and most jurisdictions provide for both, although in some jurisdictions criminal sanctions would be included in a separate criminal code."

Fair and equal laws can indirectly affect voluntary compliance and WP compliance. WP compliance will voluntarily come by itself if the law

is considered fair and in accordance with equality based on human rights. Current facts show how equality, including equality in the taxation sector, must still be patient to achieve its supremacy. The strength of the community is actually a moral force that drives all life energy to carry out a revolution, especially in the field of law to realize the highest equality (the ultimate fair play) in society.

Based on interviews by the author of 7 (seven) informants who are competent in the field of taxation, the analysis of the fulfillment of the principle of justice and equality in the provisions of administrative fines and interest compensation in the tax dispute process can be described as follows: In the theory of the rule of law, one element is equality before the law, meaning that everyone must be treated equally before the law. It is very ironic that in the same Law, in Article 25 paragraph (1) and Article 27 paragraph (1), the objection and appeal rights are recognized but in Article 25 paragraph (9) and 27 paragraph (5d) that right hasn't been recognized yet. Both Articles are clear that the taxpayer to object, as stipulated in Article 25 paragraph (1), which is imposed by the tax authorities on taxpayers with the threat of administrative sanction of 50% of the amount of tax based on the objection decision after deducting the tax paid, and compulsory rights a tax for an appeal recognized by Article 27 paragraph (1) has been held hostage by the provision that a taxpayer will be subject to an administrative fine of 100% if the appeal is rejected or partially granted.

In addition, according to John Rawls, which states the principle of equality in equality means getting the widest possible opportunity and differences can only be made in terms of benefiting the weak or disadvantaged. It is precisely the difference in treatment of taxpayers so that it is given something beneficial, not those who have the ability to burden the weak party.

The application of Article 27A paragraph (1) of the KUP Law which is contrary to the application of the self-assessment principle in Article 12 of the KUP Law has legal implications both for the Taxpayer and the Government in an effort to achieve the tax revenue target. Hans Kelsen said "all the norm in a given system are bound by a single and continuous chain of validity or creation. Consequently if two norms are in contradiction, this is can only mean things: that one of them is invalid. "Hans Kelsen also points out *"conflict of norms are not limited to strict and automatic conflicts, a conflict occur whenever obedience with one norm necessary or possibly involves the violation of the other."*

Conflict of norms in the KUP Law mentioned above is caused by disharmony of the provisions in the KUP Law itself. If the taxpayer does not agrees with the contents of the tax assessment letter. Taxpayers can submit objections, appeals or reconsiderations. If the objection, appeal, or reconsideration decision states that the Taxpayer's application is granted in part or in full, then the results of the tax audit are incorrect. Therefore, the tax assessment letter must be null and void by law and the taxpayer's right to delay in returning the tax overpayment by the Government must be restored, because the examination and judicial process is a government matter.

Incorrect tax assessment letters result in taxpayers becoming victims. Taxpayers suffer economic losses due to delayed payment of excess tax payments. Therefore, the victims' rights (taxpayers) must be restored by returning the tax overpayment and compensating for the delay in returning the overpayment in the form of interest compensation.

As described above, the author believes the legal construction of the provisions and procedures for administering administrative sanctions in Indonesian tax legislations is not in accordance with the principle of equality. In the relationship between taxpayers to the government (Fiscus) must be built based on equality before the law (equality before the law) which is equal (fair play). The similarity and equality between taxpayers and tax authorities before the tax law aims to create a balance of position for taxpayers in fulfilling their tax obligations.

In the KUP Law which regulates the administrative fine treatment of tax disputes with a "threat" in advance by the tax authorities is not in line with Article 28G of the 1945 Constitution, because taxpayers will be burdened with fear in making objections and appeals in tax disputes. Taxpayer's right to overpayment must be guaranteed and protected by law. Tax excess money is the property of taxpayers not to be taken arbitrarily and may not be added to large administrative sanctions by anyone, including by the government (tax authorities). Therefore, if the Government (fiscal authorities) is late returning to the Taxpayer according to the time limit stipulated in the law, the Taxpayer must be given interest compensation to reduce his tax burden (cost of taxation).

This raises the tax burden (cost of taxation) in the form of time cost and psychological cost in filing objections and / or appeals for taxpayers. The term cost of taxation is used to indicate the entire burden

borne by the taxpayer to carry out his taxation rights and obligations. Thus, the cost of taxation is not only an expense that can be valued in money (material / tangible) but also that cannot be valued in money (immaterial / intangible). High cost of taxation will narrow the space for business actors (taxpayers) to produce thereby reducing supply.

CONCLUSION

The rules regarding administrative sanctions in tax disputes as stipulated in the 2007 KUP Law are: taxpayers are subject to heavy administrative sanctions in the form of a fine of 50% in the procedural filing of an objection and / or a fine of 100% in the appeal procedure, precisely when taxpayers file an effort legal efforts as justice seekers and as justicable. On the contrary, Fiscus was given the authority to act in wrongdoing, given the authority to apply normatively to the taxpayers when they file legal remedies according to procedural law (*formeel recht*). This provision becomes unfair because the taxpayer feels to be afraid to implement or maintain his constitutional rights, so that the taxpayer's constitutional rights have been impaired when he attempts to defend his rights.

Not fully the rules regarding administrative sanctions in tax disputes in accordance with the principle of equality or fair play can be seen from Equality achieved only at the technical level, that is, after examining the Taxpayer, there is a final discussion and SKP notification; and Equality is not achieved at the substantive level, in Law No. 28 of 2007 discriminating against taxpayers in tax disputes results in discriminatory treatment of legalized administrative sanctions and places the parties in an unequal position.

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