

Feasibility Analysis of Implementing Alternative Dispute Resolution in Tax Dispute Settlement in Indonesia

Nabitatus Sa'adah ^{a✉}, Budi Ispriyarso^b, Kadek Cahya Susila Wibawa^c,
Lery Kristofer Panjaitan^d, Muhammad Ikhwanurrohiim Septenta^e

^{a,b,c,d,e} Faculty of Law, Universitas Diponegoro, Jalan Dr. Antonius
Suroyo, Tembalang, Semarang, Jawa Tengah, Indonesia, 50275

✉Corresponding email: nabitatus@gmail.com

Abstract

The number of cases and the backlog of tax disputes in Indonesia underline the need to reform the dispute resolution system. To avoid prolonged dispute resolution and minimize the backlog, other dispute resolution areas, particularly civil disputes, recognize the non-litigation route known as Alternative Dispute Resolution (ADR). What are the opportunities for ADR in resolving tax disputes? ADR is less suitable for resolving tax disputes. This is due to the nature of tax disputes, which fall under public law, where the state's tax collection is based on norms established by law. If ADR is implemented, it may create opportunities for discretion on the part of tax officials, leading to the potential for abuse of authority.

KEYWORDS *ADR, Tax, Dispute Settlement*

I. Introduction

Realizing prosperity is a goal of a country. This is as stated in the Preamble to the 1945 Constitution of the Republic of Indonesia. To realize this goal, the Government is carrying out development in various



Copyrights © Author(s). This work is licensed under a [Creative Commons Attribution-ShareAlike 4.0 International License](https://creativecommons.org/licenses/by-sa/4.0/). (CC BY-SA 4.0). All writings published in this journal are personal views of the author and do not represent the views of this journal and the author's affiliated institutions.

sectors. The implementation of this development has the consequence of requiring large funding. One of the sectors that the state relies on as a source of funding is the tax sector.

Taxes, which are used as a source of state funding to realize welfare, are the basis for the reason the state is given the authority to collect taxes from its citizens. In Indonesia, the authority for tax collection is given legal legitimacy through Article 23A of the 1945 Constitution of the Republic of Indonesia. The article explicitly states that taxes for the interest of the state can be collected if based on law. The constitutional mandate that tax collection by the state must be based on law implies that, first, the state must have legal legitimacy in exercising its authority. This is crucial for assessing the validity of government actions. Second, the reason tax collection must be based on law rather than other regulations is that when the state imposes compulsory levies on its citizens, such levies must receive approval from the people. This approval is manifested through legislation enacted by the People's Representative Council, which serves as the representative body of the people. The legislative products created by the People's Representative Council are laws.

The necessity for public approval of all levies by the state, including taxes, can be understood because any levy not based on public consent can be equated to robbery. This aligns with what an English parliamentarian, Camden, stated in 1737 in response to the tax collection policy at that time, "Taxes and the consent of the people are inseparable." Furthermore, it was stated that ownership is an absolute right of the owner; if something is taken, there must be consent from the owner or their representative. If something is taken without consent, it is akin to robbery.¹

Related to the case, several laws are enacted to underpin the collection of various types of taxes by the state, including the Income Tax Law, the Value Added Tax (VAT) Law, the Sales Tax on Luxury Goods (PPnBM) Law, and the Stamp Duty Tax Law. These types of taxes fall under the authority of the central government. Besides these central taxes, there are also excise duties and various types of local taxes imposed by provinces as well as municipalities/districts.

¹ J.L.Bell, "No Taxation Without Representation (Part 2)," *Journal of the American Revolution*, 2013.

The government, in exercising its authority to levy taxes on taxpayers, sometimes encounters disputes. Disputes arise due to differences of opinion or perception between taxpayers and the tax authorities regarding the determination of the tax payable.² Tax disputes can also arise from the issuance of tax collection letters and third-party deductions or collections.³ Such disputes arise when taxpayers believe there are losses, incorrect tax amounts, or third-party deductions/collections that are not as they should be. The emergence of a dispute in the context of a legal state must be provided access to resolution. Based on the law, efforts to resolve tax disputes can be made through objection, appeal, lawsuit, and Judicial Review (PK).

Objection is filed if the taxpayer disagrees with the issuance of a Tax Assessment Letter (SKP) or with third-party deductions. Therefore, the taxpayer can lodge an objection with the Director General of Tax if the dispute concerns central taxes. If the dispute involves local taxes, the objection is submitted to the respective Regional Head, whether it be the Governor for provinces or the Mayor/Regent for municipalities/districts, depending on the type of tax. If the taxpayer is not satisfied with the decision on the objection, they can appeal to the Tax Court.

Lawsuit can be filed by the taxpayer against actions related to tax collection or the issuance of tax assessment letters or objection decision letters that do not comply with procedures. The taxpayer can file a lawsuit with the Tax Court.

The last legal recourse available to taxpayers is a judicial review to the Supreme Court. This legal remedy is an extraordinary measure that can be pursued by taxpayers and can only be filed if based on specific reasons as outlined in Article 91 of Law No. 14 of 2002 concerning Tax Courts.

The number of tax disputes in Indonesia can be considered quite significant. Based on data released by the Tax Court Secretariat, which is calculated based on the number of cases filed from 2016 to 2022. It can be seen in the table below:

² Meiti Asmorowati, "Sengketa Keberatan Dibandingkan Dengan Sengketa Pengadilan Pajak Berdasarkan Peraturan Yang Berlaku," *Jurnal Wawasan Hukum* 25, No. 02 (2011): 370.

³ Wahyu Kartika Aji, et.al "Penyelesaian Sengketa Pajak Atas Gugatan Dan Sanggahan : Suatu Perspektif Keadilan," *Jurnal Pajak Indonesia* 06, no. 01 (2022): 82.

Figure 1. Table: Number of Tax Disputes

Number Of Dispute Files According To The Appellee/Defendant									
No.	Appellee/Defendant	Year							Total
		2016	2017	2018	2019	2020	2021	2022	
1.	Directorate General of Taxation	7.109	5.553	7.813	12.882	14.660	12.317	11.602	71.936
2.	Directorate general of Customs and Excise	3.024	3.994	3.574	2.142	1.830	2.804	2.889	20.257
3.	Local Government	21	32	49	24	144	67	218	555
	Total	10.154	9.579	11.436	15.048	16.634	15.188	14.709	92.748

Source: Tax Court Secretariat

According to the table above, it can be seen that the number of cases in the Tax Court is relatively high. The data shows that the total number of disputes from 2016 to 2022 was 92,748, with details as follows: disputes against the Director General of Tax amounting to 71,936, disputes against the Director General of Customs and Excise totaling 20,257, and disputes against Regional Government Heads totaling 555.⁴ Meanwhile, the total amount of tax dispute settlements as of December 31, 2022, is 26,000.⁵

The substantial number of tax dispute cases is certainly a cause for concern. Ideally, the resolution of disputes should be expedited, as it is related to the fulfillment of rights and achieving justice. Moreover, the prolonged resolution of tax disputes will impede the inflow of tax revenue to the state treasury.

The efforts to avoid prolonged dispute resolution and to minimize the backlog of dispute settlements, in other dispute resolutions, especially civil disputes, recognize the resolution of disputes through non-litigation paths known as Alternative Dispute Resolution (ADR) or also known as Alternative Dispute Resolution Mechanisms (ADRM). It raises the question of whether ADR can be used in resolving tax disputes, which notably fall under the category of disputes within the realm of public law? What is the feasibility of its application in tax dispute resolution in Indonesia?

⁴ "Number of Tax Dispute," accessed June 1, 2024, <https://setpp.kemenkeu.go.id/statistik>.

⁵ Halima & Festy, "CHA Triyono Martanto: Tunggakan Perkara Peradilan Pajak Dapat Diatasi Dengan Penerapan Sengketa Sederhana," 2023, https://komisiyudisial.go.id/frontend/news_detail/15265/cha-triyono-martanto-tunggakan-perkara-peradilan-pajak-dapat-diatasi-dengan-penerapan-sengketa-sederhana#:~:text=Berdasarkan data yang calon paparkan,menggerus tunggakan sebanyak 821 perkara.

This research is qualitative legal research. Qualitative research emphasizes the social construction of reality, the close relationship between the research object and the researcher, and the situations that shape the research. This legal research uses doctrinal legal research. This is reflected in the approach used in this research, namely the statutory regulatory approach and the conceptual approach.

Based on this, the research focuses on the analysis of legal materials or secondary data collected through literature study. Several statutory regulations are used as references for analyzing and answering the problems of this research, such as: the Indonesian Civil Procedure Code (HIR); Law No. 14 of 2002 concerning Tax Court; Law No. 27 of 2008 concerning the Third Amendment to Law No. 6 of 1983 concerning General Provisions and Tax Procedures; Law No. 51 of 2009 concerning the Second Amendment to Law No. 5 of 1986 concerning the State Administrative Court; Law No. 48 of 2009 concerning the Judiciary; and Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Apart from that, concepts related to ADR are also the basis for analyzing the problems in this research.

II. The Characteristic of Tax Disputes

As previously explained, a tax dispute can occur if the taxpayer or tax guarantor does not accept the amount of tax debt determined by the tax authority as stated in the Tax Assessment Letter. The Tax Assessment Letter in the self-assessment system is issued as a result of a tax audit, which is inherently the authority of the tax authority in supervising the implementation of the self-assessment system. Although the self-assessment system gives full trust to taxpayers to calculate the amount of tax they must pay to the state, there is a possibility that this full trust granted by law is not correctly exercised by the taxpayers. Therefore, the government has the right to conduct audits in accordance with legal provisions.⁶ The purpose of examination as stipulated in Article 1 number 25 of the Taxation Law is:

1. To test taxpayers' compliance in fulfilling their tax obligations.

⁶ Wirawan B Ilyas and Richard Burton, *Manajemen Sengketa Pajak Dalam Pemungutan Pajak (Analisis Yuridis Terhadap Teori Dan Kasus)* (Jakarta: Mitra Wacana Media, 2012).

2. For other purposes following tax legislation provisions.

After the tax authority conducts an examination, it will issue legal products in the form of:⁷

1. Tax Assessment Letter in the form of SKPKB, SKPKBT, SKPN, SKPLB
2. A Tax Bill is usually a product that arises from an audit for the purpose of testing taxpayer compliance. A Tax Bill can also be issued from the results of research conducted by the Account Representative officer, if there are tax obligations that the taxpayer has not fulfilled.
3. Recommendations for investigative action if there are indications that the taxpayer has committed a tax crime.

The issuance of a Tax Assessment Letter can become one of the objects of tax disputes if the taxpayer disagrees with what is stated in the Tax Assessment Letter (SKP) and feels aggrieved by it.

Besides arising from disagreement with the Tax Assessment Letter (SKP), tax disputes can also occur when taxpayers feel aggrieved by tax deductions and collections by third parties. As it is known, one of the tax collection systems we use is the withholding system. In the withholding tax system, the state utilizes third parties (withholders) to carry out tax deductions and collections.⁸ Tax disputes arise in this case when taxpayers do not agree with the amount of tax deduction/collection by third parties. The implementation of tax collection can also be a subject of dispute if taxpayers feel aggrieved by the tax collection process.

Based on Article 1, paragraph 1 of Law No. 14 of 2002 concerning Tax Court (hereinafter referred to as Law No. 14 of 2002), a tax dispute is a dispute arising in the field of taxation between taxpayers and authorized officials as a result of the issuance of decisions. It can be appealed or sued in the Tax Court based on tax legislation, including lawsuits regarding the enforcement of tax collection based on tax collection laws with a forceful letter. From the definition of tax dispute, the following can be identified:

⁷ Anang Mury Kurniawan, *Upaya Hukum Terkait Dengan Pemeriksaan, Penyidikan, Dan Penagihan Pajak* (Yogyakarta: Graha Ilmu, 2011).

⁸ Ibid, p.199.

- a. The disputing parties are the taxpayers or tax bearers on one side, opposing the Government as the tax collector.
- b. The object of the dispute is the Tax Assessment Letter (SKP), which can be appealed and litigated)

Based on the characteristics mentioned above, it can be considered that tax disputes are essentially similar to administrative disputes but in a specific area, namely taxes. This is based on the parties involved and the nature of the dispute. The party positioned as the defendant is the Government, as the authority responsible for tax collection, while the party positioned as the plaintiff is the citizen, who acts as the taxpayer.

Tax disputes, although resembling administrative disputes, have specific characteristics, especially concerning tax calculations. Therefore, their resolution requires a particular approach that cannot be thoroughly addressed through the State Administrative Court (PTUN). Dispute resolution is conducted through internal resolution mechanisms, with the competent court being the Tax Court. While the Tax Court is not explicitly mentioned as a specialization of any specific judiciary in Law No. 14 of 2002, revisions to several laws specify it as a specialization of the Administrative Court. These laws include Law No. 27 of 2008 concerning the Third Amendment to Law No. 6 of 1983 concerning General Provisions and Tax Procedures, Law No. 51 of 2009 concerning the Second Amendment to Law No. 5 of 1986 concerning the State Administrative Court, and Law No. 48 of 2009 concerning the Judiciary.

Based on the issuance of those laws, it can be said that the Tax Court is a specialized court which is part of the specialization of the Administrative Court.⁹ The Tax Court is a differentiation or specialization within the Administrative Court environment.¹⁰

If we look at the characteristics of tax disputes above, tax disputes can be considered to be disputes in the field of public law (public disputes). This is because tax disputes arise between civil law subjects and the government. Civil law subjects in this case feel disadvantaged by the

⁹ Didik Hery Santoso, "Tinjauan Yuridis Gugatan Di PTUN Terhadap Surat Ketetapan Pajak," in Prosiding Simposium Nasional Keuangan Negara (Jakarta: Jurnal BPPK, Kemenkeu, 2020), 517.

¹⁰ Imam Muhasan, "Menakar Ulang Spesialitas Hukum Pajak Dalam Lapangan Hukum Di Indonesia (Tinjauan Atas Penerapan Kompetensi Absolut Dalam Penyelesaian Sengketa Pajak)," Jurnal Pajak Indonesia (Indonesian Tax Review) 01, No. 01 (2017): 07.

government in the government's capacity as an office holder (AMBT) and the government is carrying out its actions in the field of public law. Theoretically, to determine whether government action is regulated by private or public law, it is seen from the government's position. If the government acts in its quality as a government as an office holder, then only public law applies.¹¹ In this case, the government acts as the party safeguarding public interests and tends to be a unilateral action by the government. This is different from the government's actions in the field of private law. The government's position in private law is equivalent to that of private entities subject to private law.¹²

Based on the description above, it can be considered that tax collection is an act of the government in the field of public law considering. Firstly, the government's position as the holder of authority. Secondly, the government's position is superior; it is not on par with civil law subjects because the Government is the sole entity authorized to collect taxes. When the government takes action in the field of public law, the law governing its actions is public law.

III. ADR Concept

Before Alternative Dispute Resolution (ADR) is a concept of resolving disputes through non-litigation channels or resolving disputes outside of court that prioritizes the principle of agreement. Referring to the handbook written by James L. Creighton et al., ADR is defined as follows:¹³

ADR is an effort to arrive at mutually acceptable decisions. It's an alternative to adversarial processes such as litigation or administrative processes that result in "win/lose" outcomes". Based on this understanding, it can be said that ADR (Alternative Dispute Resolution) is a form of dispute resolution based on efforts to reach a mutually acceptable decision or win-win solution. This is different from litigation, which results in a win or lose outcome.

¹¹ Ridwan HR, *Hukum Administrasi Negara*, Edisi Revi (Jakarta: Raja Grafindo, 2018).

¹² Ibid.

¹³ James L. Creighton, Et.al., *Overview Of Alternative Dispute Resolution (ADR): A Handbook for Corps Managers* (IWR Pamphlet, n.d.).

Standard M. Atschul states that Alternative Dispute Resolution (ADR), “A trial of a case before a private tribunal agreed to by the parties so as to save legal cost, avoid publicity, and avoid lengthy trial delays,”¹⁴ what Standard M. Atschul means by ADR is a dispute examination conducted by a private panel agreed upon by the parties involved, to save costs, avoid publicity, and streamline the examination process.

ADR emerges as an effort to find a way out of the weaknesses of resolving disputes through litigation (court proceedings), which are considered lengthy and costly. Dispute resolution through ADR is considered to have several advantages, such as:¹⁵

- a. It can expedite dispute resolution, as it is based on negotiation between the parties involved.
- b. The parties determine the decision, giving them significant control and ensuring predictability.
- c. This approach also saves time and costs.

This is directly proportional to several reasons for using ADR as an alternative dispute resolution, as follows:¹⁶

- a. Affordability, which is due in part to the quick decision-making process.
- b. Swift resolution.
- c. Maintaining good relationships.
- d. Preserving confidentiality.
- e. Conducted by experts in their field.
- f. Impartiality.

Some forms of Alternative Dispute Resolution (ADR) consists of:¹⁷

- a. Negotiation: Dispute resolution conducted by the parties themselves through negotiation or consultation without the assistance of others.

¹⁴ Stanford M. Atschul sebagaimana dikutip Indah Sari, “Keunggulan Arbitrase Sebagai Forum Penyelesaian Sengketa Di Luar Pengadilan,” *Jurnal Ilmiah Hukum Dirgantara*, Fakultas Hukum Universitas Dirgantara Marsekal Suryadarma, 09 (2019).

¹⁵ James L Creighton, Overview Of Alternative Dispute Resolution (ADR): A Handbook for Corps Managers.

¹⁶ Sudiarto, “Penyelesaian Sengketa Di Luar Pengadilan,” *Jurnal Kompilasi Hukum* 08, no. 01 (2023).

¹⁷ Suryadi Et.al, “Laporan Penelitian Alternative Dispute Resolution (Penyelesaian Sengketa Alternatif Dan Court Connected Dispute Resolution (Penyelesaian Sengketa Yang Terkait Dengan Pengadilan)” (Jakarta, 2000).

- b. Mediation: A dispute resolution mechanism with the assistance of a third party, where the third party helps in resolving the dispute. The mediator only serves as a facilitator to assist the parties and does not have the authority to make decisions.
- c. Conciliation: Dispute resolution through a third party where the third party formulates settlement offers; implementation depends on the disputing parties.
- d. Arbitration: A dispute resolution mechanism that utilizes a neutral third party authorized by the parties to act as a judge, thereby having the authority to make decisions.
- e. CDR (Court Dispute Resolution): A method that integrates ADR into the court proceedings, as mandated by Article 130 of the Indonesian Civil Procedure Code (HIR), requiring judges to reconcile disputing parties.

The existence of ADR in Indonesia is regulated by Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. The considerations of this law state that civil dispute resolutions, besides being resolved through general courts, are also possible to be settled through arbitration and alternative dispute resolution methods.

In the development, dispute cases in public law, particularly criminal cases, have started to explore the possibility of ADR for certain cases, albeit with specific limitations. This is known as Restorative Justice (RJ). In certain criminal cases, Restorative Justice requires the victim's consent on whether they agree for their case to be settled peacefully. This opens up discretion for law enforcement officials. Therefore, there needs to be limitations in place to prevent abuse of power by authorities.

In industrial relations disputes, conflicts between workers and employers or entrepreneurs can also be resolved through ADR concepts. This is understandable considering the character of industrial relations disputes, which are essentially civil disputes in nature, both in terms of the subjects and objects of the disputes.

Based on the descriptions above, it is evident that ADR is commonly used in civil disputes, although the criminal disputes offer the opportunity for non-litigious dispute resolution through Restorative Justice, which

requires the victim's consent or focuses on restoring personal relationships.

IV. The Opportunities for ADR in Resolving Tax Disputes in Indonesia

To discuss the opportunities for resolving tax disputes through ADR, it is essential to understand the concept of tax disputes. As previously explained, a tax dispute arises in the field of taxation where the parties involved are the taxpayers and the tax authorities. The disputed matters include the Tax Assessment Letter and issues that can be appealed.

From the perspective of the subject and object of the tax, tax disputes can be categorized as administrative disputes with a specific object, namely taxes. Rochmat Soemitro referred to this as administrative justice in the field of taxation. He further stated that administrative justice in the field of taxation can be identified based on the disputing parties and the nature of the dispute. The disputing parties are the citizens, specifically those acting as taxpayers on one side, and the government, particularly those with the authority to collect taxes as mandated by law, on the other side.¹⁸

The government, as the party involved in litigation, is empowered by regulations to collect taxes. In addition to being authorized by legislation, its authority is also constrained by legislation. This aligns with the mandate of Article 23A of the 1945 Indonesian Constitution, which stipulates that when the tax authority collects taxes, its basis is the law. This means that when the tax authority collects taxes, including determining the amount of tax to be collected and the applicable rates, it adheres to the law.

Based on the description above, it can be said that in the context of State administrative law, ADR is not appropriate for resolving tax disputes. This is because tax debt is a public debt. The amount of tax that must be paid by taxpayers has been clearly determined in law, namely based on the rate and tax base. The tax authorities collect taxes based on clear noma provisions. As is known in State Administrative Law, actions

¹⁸ Rochmat Soemitro, *Peradilan Administrasi Dalam Hukum Pajak Di Indonesia* (Bandung: Eresco, 1991), p.48.

carried out by the state must be based on clear norms. If the resolution of tax disputes is based on ADR which is based on the concept of agreement, this could potentially mean that the government will override norms and potentially harm state finances.

Returning to the question of how tax disputes can be resolved through ADR in Indonesia, as previously explained, ADR is an alternative dispute resolution concept commonly used in civil disputes, emphasizing agreements to achieve a win-win solution between the parties. There is flexibility in resolution that does not adhere strictly to regulations but returns decision-making to the parties involved. Negotiation, bargaining, and deliberation are possible in ADR. If applied to tax dispute resolution, where the basis for tax collection is clearly defined by law, the possibility of negotiation and deliberation for bargaining in ADR exists. This could result in decisions on tax payment obligations that are not solely based on the law.

Government officials in the concept of Administrative Law are allowed to exercise discretionary powers to take action or make decisions based on their own initiative and judgment to resolve an urgent matter that arises suddenly, where there is no existing legislation. This is referred to as "pouvoir discretionnaire" or "Freies Ermessen," or discretion.¹⁹ Based on this description, governmental (administrative officials) discretion may only be exercised if there is a matter that lacks regulation or if the regulation is ambiguous or unclear.

If applied to tax collection where the regulations are clearly defined, discretion would not be necessary. Moreover, if discretion were allowed, it could potentially lead to abuses of power that may result in losses for the state. Deliberative dispute resolution in tax disputes can only be understood as a means to avoid prolonged litigation, but it must still be based on the normative basis of governing regulations.

If applied to tax collection where the regulations are clearly defined, discretion would not be necessary. Moreover, if discretion were allowed, it could potentially lead to abuses of power that may result in losses for the state. Deliberative dispute resolution in tax disputes can only be

¹⁹ Saut Panjaitan, *Makna Dan Peranan Freies Ermessen Dalam Hukum Administrasi Negara (Dimensi-Dimensi Pemikiran Hukum Administrasi Negara)* (Yogyakarta: UII Press, 2001), p.107.

understood as a means to avoid prolonged litigation, but it must still be based on the normative basis of governing regulations. (belasting souvereiniteit).²⁰ The state is granted the authority to collect taxes based on the philosophical understanding that taxes are intended to provide welfare for its citizens. Based on this principle, private entities do not have the authority to determine an individual's tax obligations because taxation is the absolute right of the state.

If the Government itself, in this case the tax authority (fiskus), acts as the mediator in ADR, then in resolving disputes, the tax authority is bound by the limitation that its actions must still adhere to the law. Furthermore, as an administrative official, the tax authority is subject to external oversight, including from the Supreme Audit Agency (BPK). If the tax authority makes decisions based on its own policies that are not grounded in the law, it could lead to findings that have legal consequences.

The concept of ADR or non-litigious dispute resolution in tax dispute settlement is more appropriately termed as administrative efforts that are indeed permissible in administrative disputes. Administrative efforts prioritize principles of harmony, mutual cooperation, and deliberation, although the principle of deliberation in tax disputes is not the same as deliberation in private disputes. In private debt, negotiation is possible, whereas in tax debt, which is a public debt, negotiation is not possible. Deliberation in administrative efforts is used as advisory for taxpayers and as a means for the tax authority to rectify its errors.²¹

Dispute resolution through administrative efforts is an administrative tool that prioritizes principles of harmony, peace, and mutual cooperation, aiming to minimize dispute resolution through the courts. This achieves a simple, quick, and cost-effective dispute resolution²² The existence of administrative efforts in achieving these goals must be capable of providing an objective decision, making this effort truly effective in resolving disputes, particularly tax disputes.

Tax dispute resolution through ADR is indeed utilized in several countries today. One country that has implemented ADR in tax dispute

²⁰ Wiratni Ahmadi, "Perjanjian Penghindaran Pajak Berganda (Tax Treaty) Dalam Kaitannya Dengan Transaksi Internasional," *Jurnal Hukum Pro Justitia*, 25, No. 04 (2007): 388.

²¹ SF Marbun, *Peradilan Administrasi Negara Dan Upaya Administratif* (Yogyakarta: liberty, 2003), p.107.

²² Ibid, p.109.

resolution is Australia. There are three forms of ADR applied in tax dispute resolution in Australia: firstly, internal facilitation in the form of mediation where independent ATO facilitators trained to assist in negotiating disputes; secondly, in large and complex cases, the ATO may involve external practitioners for ADR; thirdly, ADR can also be initiated by the courts in cases being litigated.

From the practice of ADR implementation in Australia, if applied to tax dispute resolution in Indonesia, in the author's opinion: For the first form, ADR should still be interpreted as an administrative effort, where the parties, taxpayers, and representatives of the Tax Office are called by the Examination/Reviewer Team. Even though objections raised by the Examination/Reviewer Team are within the fiscal domain, they should be objective. For the second form, in cases involving significant matters, the involvement of external practitioners can be considered, but they should be seen only as expert testimony that is worth considering and may be used to correct any misunderstandings by the Reviewer. For the third form, the panel of judges should conduct proceedings similar to those in other cases. Before proceeding, they should offer the parties the opportunity to resolve the matter through deliberation. In addition, deliberation in tax disputes, which are essentially public disputes, is not the same as deliberation in civil disputes. Deliberation in tax disputes should be understood as a dispute resolution based on norms.

Regarding the problem of resolving tax disputes, whether ADR can be applied or not, it can be stated as follows, If the resolution of tax disputes is equated with civil disputes where civil disputes allow for bargaining in the resolution, then this ADR concept is not appropriate for resolving tax disputes. The ADR concept that is possible in resolving tax disputes is that negotiation is only used by the parties to review their calculations while remaining based on statutory norms. If it has entered into a mediation trial, it is interpreted as the judge's offer to the parties whether the parties will settle amicably or not. The context of deliberation in resolving tax disputes remains based on normative guidelines.

V. Conclusion

Alternative Dispute Resolution (ADR) is less suitable for resolving tax disputes. This is due to the character of tax disputes falls within the realm of public law, in which the state collects taxes based on norms established by legislation. If ADR is implemented, it will open up opportunities for discretion for the tax authorities, thereby giving rise to the potential for abuse of authority.

References

- Ahmadi, Wiratni. "Perjanjian Penghindaran Pajak Berganda (Tax Treaty) Dalam Kaitannya Dengan Transaksi Internasional." *Jurnal Hukum Pro Justitia*, 25, no. 04 (2007): 388.
- Anang Mury Kurniawan. *Upaya Hukum Terkait Dengan Pemeriksaan, Penyidikan, Dan Penagihan Pajak*. Yogyakarta: Graha Ilmu, 2011.
- Asmorowati, Meiti. "Sengketa Keberatan Dibandingkan Dengan Sengketa Pengadilan Pajak Berdasarkan Peraturan Yang Berlaku." *Jurnal Wawasan Hukum* 25, no. 02 (2011): 370.
- Didik Hery Santoso. "Tinjauan Yuridis Gugatan Di PTUN Terhadap Surat Ketetapan Pajak." In *Prosiding Simposium Nasional Keuangan Negara*, 517. Jakarta: Jurnal BPPK, Kemenkeu, 2020.
- Et.al, Suryadi. "Laporan Penelitian Alternative Dispute Resolution (Penyelesaian Sengketa Alternatif Dan Court Connected Dispute Resolution (Penyelesaian Sengketa Yang Terkait Dengan Pengadilan)." Jakarta, 2000.
- Halima & Festy. "CHA Triyono Martanto: Tunggakan Perkara Peradilan Pajak Dapat Diatasi Dengan Penerapan Sengketa Sederhana," 2023. https://komisiyudisial.go.id/frontend/news_detail/15265/cha-triyono-martanto-tunggakan-perkara-peradilan-pajak-dapat-diatasi-dengan-penerapan-sengketa-sederhana#:~:text=Berdasarkan data yang calon paparkan,menggerus tunggakan sebanyak 821 perkara.
- Ilyas, Wirawan B, and Richard Burton. *Manajemen Sengketa Pajak Dalam Pemungutan Pajak (Analisis Yuridis Terhadap Teori Dan Kasus)*. Jakarta: Mitra Wacana Media, 2012.

- Imam Muhasan. "Menakar Ulang Spesialitas Hukum Pajak Dalam Lapangan Hukum Di Indonesia (Tinjauan Atas Penerapan Kompetensi Absolut Dalam Penyelesaian Sengketa Pajak)." *Jurnal Pajak Indonesia (Indonesian Tax Review)* 01, no. 01 (2017): 07.
- J.L.Bell. "No Taxation Without Representation (Part 2)." *Journal of the American Revolution*, 2013.
- James L Creighton, Et.al. *Overview Of Alternative Dispute Resolution (ADR): A Handbook for Corps Managers*. IWR Pamphet, n.d.
- Marbun, SF. *Peradilan Administrasi Negara Dan Upaya Administratif*. Yogyakarta: liberty, 2003.
- "Number of Tax Dispute." Accessed June 1, 2024. <https://setpp.kemenkeu.go.id/statistik>.
- Panjaitan, Saut. *Makna Dan Peranan Freies Ermessen Dalam Hukum Administrasi Negara (Dimensi-Dimensi Pemikiran Hukum Administrasi Negara)*. Yogyakarta: UII Press, 2001.
- Ridwan HR. *Hukum Administrasi Negara*. Edisi Revi. Jakarta: Raja Grafindo, 2018.
- Rochmat Soemitro. *Peradilan Administrasi Dalam Hukum Pajak Di Indonesia*. Bandung: Eresco, 1991.
- Sari, Indah. "Keunggulan Arbitrase Sebagai Forum Penyelesaian Sengketa Di Luar Pengadilan." *Jurnal Ilmiah Hukum Dirgantara* 09 (2019).
- Sudiarto. "Penyelesaian Sengketa Di Luar Pengadilan." *Jurnal Kompilasi Hukum* 08, no. 01 (2023).
- Wahyu Kartika Aji, et.al. "Penyelesaian Sengketa Pajak Atas Gugatan Dan Sanggahan : Suatu Perspektif Keadilan." *Jurnal Pajak Indonesia* 06, no. 01 (2022): 82.

DECLARATION OF CONFLICTING INTERESTS

The author state that there is no conflict of intersets in the publication this article.

FUNDING INFORMATION

None

ACKNOWLEDGMENT

None

HISTORY OF ARTICLE

Submitted : June 6, 2024

Revised : November 5, 2024

Accepted : November 8, 2024

Published : November 30, 2024