

Application of Substantive and Formal Legal Rules Related to Approval to Avoid Double Taxation as an Effort to Maximize Tax Revenue

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KEYWORDS	ABSTRACT
P3B; Substantive Law; Formal Law, Tax Disputes; Legal Certainty, Justice.	Tax revenue is the main source of state revenue, but disputes often arise related to the application of Double Taxation Avoidance Agreements (DTAs). These disputes generally revolve around the fulfillment of administrative requirements, especially the inclusion of a Domicile Certificate (SKD). This research aims to analyze the application of material and formal legal principles in two Tax Court decisions, namely PUT-001293.35/2020/PP/MXVIII A Year 2022 and PUT-004868.13/2021/PP/MXIIIB Year 2022, as well as the implications for legal certainty and taxpayer protection. The research uses normative juridical method with statutory, case, and conceptual approaches. Data is obtained from literature studies in the form of laws and regulations and legal doctrines. The results show that decisions that prioritize material legal principles provide substantive justice but have the potential to weaken the application of tax regulations. Conversely, decisions that prioritize formal legal principles provide legal certainty by emphasizing the importance of fulfilling administrative requirements. The conclusion of this research emphasizes the need for a balance between substantive justice and legal certainty in the application of P3B. Implementing regulations, such as PER-25/PJ/2018, are important instruments to ensure P3B is used appropriately and prevent misuse, thus supporting the optimization of tax revenue

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Introduction

Taxes are the largest source of state revenue contained in the State Revenue and Expenditure Budget (APBN) so they have an important role in state life. The 2024 APBN recorded state revenue of IDR 2,802.29 trillion with a tax revenue target of IDR 1,988.88 trillion. According to P. J. A. Andriani, in Soemitro dan Kania (2023), says that tax is a forced contribution to the state which is owed by those who are obliged to pay it according to regulations with no return, which can be directly appointed, and whose purpose is to finance general expenses related to duties. Government (Aloysius, 2016).

The government's efforts to collect funds from the public through tax collection must be regulated by law because such collection is coercive and is a burden that will be borne by the community. The third amendment to the 1945 Constitution regulates taxes in a separate article,

namely in Article 23 A which reads "Taxes and other coercive levies for state needs shall be regulated by law".

The tax function is divided into two, namely the budget function and the regular function. The budgetary function or budget function means that taxes function as a source of funds for the government to finance its expenses. The regular function or regulatory function, namely tax, functions as a tool to regulate or implement government policies in the social and economic fields. Tax seen from its function is the *prima donna* of development financing, because tax is one of the most potential tax revenues (Nur et al., 2019; Prayogo, 2016). Tax revenues are used by the Government for the development of facilities and infrastructure for the public interest, in other words, taxes, both directly and indirectly, are expected to increase economic growth and social welfare.

Indonesia adheres to the taxation principle of a self-assessment system, namely a taxation system that gives taxpayers confidence to fulfill and carry out their own tax obligations and rights. The Directorate General of Taxes (DJP) is given the authority to carry out audits to test taxpayers' compliance with tax obligations with legal products in the form of Tax Assessment Letters. Differences of opinion regarding the amount of tax owed between the Taxpayer and the DJP (*fiscus*) as stated in the Tax Assessment Letter give rise to tax disputes.

The tax dispute resolution process is carried out in stages, starting from the administrative settlement process at the DJP which is called objection. Judicial settlement at the Tax Court is carried out if there is still a dispute that cannot be resolved. In the event that the Taxpayer or DJP is of the opinion that the Tax Court Decision has not met the provisions, legal action can be submitted at the final level, namely a request for Judicial Review to the Supreme Court (Wahyudi, 2019).

Tax disputes also occur in the international tax aspect. Economic activities that involve two or more countries cause cross-border transactions and have consequences on aspects of international taxation. International tax is a tax agreement between countries that have an Agreement on the Avoidance of Double Taxation (P3B) or called a tax treaty and is carried out in accordance with the provisions of the Vienna Convention (Siallagan, 2016).

Article 32A of the Income Tax Law gives the government the authority to enter into agreements with governments of other countries in order to avoid double taxation and prevent tax evasion. Elucidation of Article 32A of the Income Tax Law explains that in order to increase economic and trade relations with other countries, a special legal instrument (*lex-specialist*) is needed which regulates the taxation rights of each country in order to provide legal certainty and avoid imposition. double taxation and preventing tax evasion. The form and material refer to international conventions and other provisions as well as the national tax provisions of each country.

P3B is an international agreement made by two countries in the field of taxation to regulate the distribution of taxation rights on income received or earned by citizens of one country or citizens of both countries that signed the agreement. The aim of apportionment of rights is to avoid double taxation as much as possible. P3B is usually used to determine the allocation of taxation rights for transactions that occur between the source country and the country of domicile. Taxpayers who have a P3B are entitled to different tax treatment from taxpayers who do not have a P3B. Special treatment given to taxpayers who have P3B includes a facility to reduce withholding taxes for certain types of income such as dividends, interest and royalties.

Based on the Income Tax Law and the Pay as You Earn principle, Tax Withholding Officers are required to deduct income given to Overseas Taxpayers according to tax rates in Indonesia,

unless Overseas Taxpayers meet the requirements to utilize P3B. Article 32A of the Income Tax Law gives the Government the authority to enter into agreements with governments of other countries in order to avoid double taxation and prevent tax evasion. "The government has the authority to enter into agreements with governments of other countries in order to avoid double taxation and prevent tax evasion."

P3B regulates the distribution of taxation rights on income so that the Minister of Finance and the Director General of Taxes as competent authorities need to ensure that the P3B is actually used by parties who are entitled to benefit from P3B rates. Competent authorities need to make further implementing regulations regarding procedures for implementing P3B so that P3B implementation can be used appropriately. Article 24 of Government Regulation Number 94 of 2010 concerning Calculation of Taxable Income and Payment of Income Tax in the Current Year, regulates that the Agreement to Avoid Double Taxation only applies to individuals or entities that are domestic Tax Subjects from Indonesia and/or from partner countries of the avoidance agreement. double taxation as proven by a Certificate of Domicile (Firman, 2020).

Article 35 of the Income Tax Law and Article 24 paragraph (1) of Government Regulation Number 94 of 2010 provide a mandate to create implementing regulations related to P3B, namely PER-25/PJ/2018 as a necessary freebie in order to further regulate the use of P3B benefits. which is regulated in Article 32A of the Income Tax Law. The provisions in PER-25/PJ/2018 have given the withholding Taxpayer the authority to test the administrative compliance of the transaction counterparty so that the P3B can be applied to the transaction counterparty.

Based on Article 12 of the Regulation of the Director General of Taxes Number PER-25/PJ/2018 concerning Procedures for Implementing Double Taxation Avoidance Agreements, one of the requirements that must be met to be able to apply P3B provisions is that Foreign Taxpayers (WPLN) must submit a Domicile Certificate (SKD).) or Certificate of Domicile (CoD) to the Tax Service Office whose working area includes residence, place of business activities or place of domicile of WPLN in Indonesia no later than the end of the deadline for submitting Periodic SPT for the tax period for which the tax is due.

Taxpayers who cannot fulfill the administrative requirements based on Article 12 of the Director General of Taxes Regulation Number PER-25/PJ/2018, then the Taxpayer as the Tax Withholder/Collector is obliged to withhold or collect the tax owed in accordance with Article 26 of the Income Tax Law. This provision gives rise to disputes between the tax authorities and taxpayers. Fiskus is of the opinion that the provisions in the P3B can be applied if the administrative requirements in Article 12 of the Director General of Taxes Regulation Number PER-25/PJ/2018 have been fulfilled. Taxpayers declare that they have withheld and reported PPh Article 26 by applying rates in accordance with P3B.

Tax disputes are submitted to legal action in the form of objections and appeals by the Taxpayer. Legal action for tax disputes is first carried out through objections. Taxpayers who feel they have been treated unfairly by the tax administration can use tax objections as a way to seek justice. Taxpayers who are not satisfied with the results of the objection decision can submit an appeal to the Tax Court. Referring to Article 1 paragraph 6 of Law Number 14 of 2002 concerning the Tax Court, an appeal is a legal remedy that can be taken by a Taxpayer or Tax Insurer against a decision that can be appealed, based on the applicable tax laws and regulations.

The Panel of Tax Court Judges differed in their opinion regarding the dispute over non-fulfillment of administrative requirements in the form of Taxpayers not attaching an SKD to their Periodic Income Tax Return Article 26 to apply the P3B provisions. Some of the Panel of Judges prioritize substantive legal rules, arguing that considering legal principles, judges must choose a

branch of law that favors justice. Administrative requirements such as having to fulfill the SKD as regulated in the Director General of Taxes Regulation Number PER-25/PJ/2018, as long as the fulfillment of the SKD in question is not regulated in the P3B, then the absence of the SKD in question cannot invalidate the provisions in the P3B. P3B provisions are *lex specialis* as stated in the Vienna Convention and the Elucidation to Article 32A of the Income Tax Law. The Judge's decision which prioritizes substantive legal rules can be seen in the Tax Court Decision number PUT-001293.35/2020/PP/MXVIII A of 2022.

The Panel of Judges, which focuses on formal legal rules, is of the opinion that P3B regulates the distribution of income tax rights, to ensure that P3B is received by entitled beneficiaries and to avoid misuse of P3B, further regulation regarding procedures for implementing P3B is regulated in the Director General of Taxes Regulation Number PER-25 /PJ/2018. The a quo Director General's Regulation states that the administrative requirement to obtain treaty benefits from P3B is that WPLN must have an SKD which functions as a population identity document containing information about the country in which the taxpayer is registered or registered as a resident based on that country's taxation system. The Judge's decision which focuses on formal legal rules can be seen in the Tax Court Decision number PUT-004868.13/2021/PP/MXIIIB of 2022.

Based on the description above, the question is how to apply substantive and formal legal rules related to P3B in Tax Court Decisions (case study in Tax Court Decisions Number PUT-001293.35/2020/PP/MXVIII A of 2022 and PUT-004868.13/2021/PP/MXIIIB 2022) in the context of legal protection for the tax authorities. The next question is what is the model of the national taxation system's treatment of P3B as a form of legal certainty for the parties concerned with the judge's considerations in making decisions.

Materials and Methods

The research method used in this research is normative juridical. The normative juridical research method is library legal research which is carried out by examining library materials or mere secondary data. According to Bachtar (2018), research that is normative or doctrinal in nature, namely legal research that focuses on rules or principles in the legal sense, is conceptualized as norms or rules originating from statutory regulations, court decisions, as well as doctrines from legal experts.

This research uses normative juridical research methods because this research is a library legal research, examining various legal rules to analyze the consistency of Tax Court Decisions regarding substantive and formal legal rules regarding the application of the Double Taxation Avoidance Agreement.

Presentation of data in research is in the form of descriptions. The data obtained is in the form of writing and documents which are then compiled into research results. Descriptive research is research that aims to describe an event or symptom that is occurring currently, focusing attention on solving the problem as it existed at the time the research was carried out.

The legal materials obtained are then analyzed using qualitative analysis. Qualitative research is research that explains the real picture of facts that occur in the field which is presented in the form of written descriptions through the stages of interpretation, evaluation and general knowledge. Qualitative descriptive research describes all the conditions that occurred in the field at the time the research took place based on applicable positive law.

Results and Discussions

Application of substantive and formal legal rules related to P3B in the Tax Court Decision Number PUT-001293.35/2020/PP/MXVIII A of 2022 and PUT-004868.13/2021/PP/MXIIIB of 2022 in the context of legal protection for the tax authorities

The government in its efforts to collect funds from the public through tax collection faces challenges that are not easy. Indonesia adheres to the taxation principle of a self-assessment system, namely a taxation system that gives taxpayers confidence to fulfill and carry out their own tax obligations and rights. The government, in this case the Directorate General of Taxes (DJP), is given the authority to carry out inspections to test taxpayers' compliance with tax obligations, which is carried out using a self-assessment system. The legal product resulting from the audit results is a Tax Assessment Letter. The DJP and Taxpayers often have different opinions regarding the amount of tax owed as stated in the Tax Assessment Letter, giving rise to tax disputes (Ardianyah, 2021).

One type of tax dispute that often occurs between the DJP and Taxpayers is related to the fulfillment of administrative requirements to implement the provisions stipulated in the Double Taxation Avoidance Agreement (P3B), especially because the Domicile Certificate (SKD) is not attached to the relevant Periodic Tax Return. P3B is an agreement between the Indonesian Government and the governments of partner countries or partner jurisdictions to prevent double taxation and tax evasion. The benefits of a P3B are facilities in a P3B which can be in the form of a tax rate that is lower than the tax rate as regulated in the Income Tax Law or an exemption from taxation in the source country.

The dispute resolution process for fulfilling the administrative requirements to apply P3B provisions is carried out in stages, starting from the administrative settlement process in the form of objections at the DJP, judicial settlement at the Tax Court, as well as legal action at the final level, namely Judicial Review at the Supreme Court. This writing discusses judicial dispute resolution at the appeal stage at the Tax Court.

P3B only regulates taxation rights and does not regulate taxation methods. The method of taxation depends on the tax regulations of each country. Indonesia regulates tax procedures in the Regulation of the Director General of Taxes in accordance with the mandate of Article 24 paragraph (2) of Government Regulation Number 94 of 2010. Provisions in the Regulation of the Director General of Taxes Number PER-25/PJ/2018 give the authority to withholding Taxpayers to test compliance administration of the counterparty to the transaction so that the P3B can be applied to the counterparty. One of the administrative compliance forms is attaching the SKD for Overseas Taxpayers (WPLN) to the relevant Periodic Tax Return.

The WPLN SKD is a certificate in the form of a form filled in by the WPLN and ratified by the authorized official from the partner country or P3B partner jurisdiction in the context of implementing the P3B. Status as a resident of the country concerned requires proof, and the instrument that proves it is an SKD in accordance with Article 24 paragraph (1) Government Regulation Number 94 of 2010. Withholding/Collector Taxpayers who do not carry out tests on the residence status of their transaction counterparties abroad may incur losses. country in the form of a reduction in the PPh portion for the source country (Indonesia) due to the application of the PPh withholding rate according to the P3B which should not be given to residents of the other country.

Indonesia is a country based on law (*rechtsstaat*), not based on mere power (*machtsstaat*) as stated in the general explanation of the state government system of the 1945 Constitution before the amendment. Article 1 paragraph (3) of the third amendment to the 1945 Constitution confirms that the State of Indonesia is a legal state. Development Law Theory means that law in the sense of norms is expected to direct human activities in the direction desired by development and renewal. Tax collections used as development financing need to be maintained so that the portion of tax revenue is not eroded as a result of Tax Court decisions granting Taxpayer requests regarding disputes regarding the fulfillment of administrative requirements for implementing P3B provisions.

Disputes regarding the fulfillment of administrative requirements to apply P3B provisions are disputes over formal tax provisions. Formal law (adjective/administrative law) is a regulation that regulates the implementation of material law or ways to realize tax rights and obligations that exist in material law. Formal tax law contains provisions regarding procedures for ensuring that the tax owed becomes a reality so that it reaches the state treasury. Formal tax law contains provisions regarding procedures, rights and obligations of taxpayers as well as sanctions if these obligations are not carried out properly. Formal tax law is procedural law.

The Supreme Court has issued Supreme Court Circular Letter (SEMA) Number 1 of 2017 concerning the Implementation of the Formulation of the Results of the 2017 Supreme Court Chamber Plenary Meeting as a guideline for the implementation of the duties of the Court. SEMA regulates, among other things, the choice of law in the event of a conflict between substantive legal rules and formal legal rules. The SEMA is meant to emphasize that if there is a conflict between substantive legal rules and formal legal rules in a casuistic manner, in terms of certainty of a person's rights or legal status which is clear through a court decision that has permanent legal force, either through a civil court decision, a criminal court decision or an administrative court decision. country, then taking into account:

- a. The aim of the procedural law of the State Administrative Court (*Peratun*) is to harmonize *rechtmatigheid* commencesel and *doelmatigheid* commencesel towards the main objective of material truth, in accordance with the theory of *spanningsverhältnis* (standard priority) of Gustav Radbruch
- b. The function of formal law/procedural law is to enforce/maintain material/substantive legal rules
- c. Remembering legal principles, judges must choose a branch of law that favors justice
- d. provisions in Article 24 of the 1945 Constitution of the Republic of Indonesia that judicial power is aimed at upholding law and justice. It is considered appropriate and fair if Judge *Peratun* prioritizes substantive justice over formal justice.

The Panel of Tax Court Judges differed in their opinion regarding the dispute over the failure to fulfill the administrative requirements to apply the provisions of the P3B in the form of an SKD not being attached to the relevant Periodic SPT. Some of the Panel of Judges prioritize substantive legal rules as in the Tax Court Decision number PUT-001293.35/2020/PP/MXVIII A of 2022. Some of the Panel of Judges emphasize formal legal rules as in the Tax Court Decision number PUT-004868.13/2021/PP/MXIIB of 2022.

1) Application of Substantive Legal Rules related to P3B in Tax Court Decision Number PUT-001293.35/2020/PP/MXVIII A of 2022

Tax Court Decision Number PUT-001293.35/2020/PP/MXVIII A of 2022 is a tax dispute decision at the first and final level between the Directorate General of Taxes (DJP) and PT Caterpillar Indonesia. The DJP recalculated the DPP for Article 26 Income Tax Objects for the January-December 2015 Period based on evidence of the JLN VAT SSP and there was a difference

between the DPP calculated based on the JLN VAT SSP and the DPP reported in the Article 26 Income Tax SPT. The Appellant did not attach an SKD for the Article 26 Income Tax Object. in reporting Periodic Income Tax Returns Article 26. The DJP concludes that the administrative requirements for implementing the provisions regulated in the P3B are not fulfilled by the Taxpayer so that the tax collection tax payable in accordance with the provisions regulated in the Income Tax Law.

The Taxpayer does not agree with all DJP corrections on the grounds that the Appellant has reported all Objects of PPh Article 26. The Appellant has deducted and reported PPh Article 26 using a rate of 20% for compensation in connection with services, work and activities paid to income recipients. domiciled in the United States and Singapore who are not supported by the SKD Form.

The Panel of Tax Court Judges examined the substance of the dispute between the DJP and the Taxpayer which was related to the SKD issue, namely the correction of PPh Article 26 which arose because the Taxpayer was unable to show the SKD so he was subject to the PPh Article 26 rate of 20%. P3B is an agreement that has been agreed upon by the Indonesian Government with other countries which must be implemented and complied with by each country in accordance with the Vienna Convention which has been ratified by the Indonesian Government. The Assembly is of the opinion that the tax provisions made by the Indonesian Government, such as the Director General of Taxes' Regulation regarding administrative rules on P3Bs, cannot invalidate the provisions agreed upon by the Indonesian Government with other countries in P3Bs.

The Assembly stated that the P3B is a regulation that is *lex specialis* in relation to other domestic provisions so that if there is a P3B then the domestic provisions cannot invalidate the provisions in the P3B as explained in the Elucidation to Article 32A of the Income Tax Law.

The Panel is of the opinion that in relation to administrative requirements such as the need to fulfill the SKD as regulated in the Regulation of the Director General of Taxes, as long as the fulfillment of the SKD in question is not regulated in the P3B, then the absence of the SKD in question cannot invalidate the provisions in the P3B. This is because the provisions of P3B are *lex specialis* as stated in the Vienna Convention and the Elucidation to Article 32A of the Income Tax Law.

The Panel of Judges in Tax Court Decision Number PUT-001293.35/2020/PP/MXVIII of 2022 places more emphasis on substantive legal rules. The Tax Court as a special judicial body under the Supreme Court, is part of an independent and independent judicial power, and has implemented court principles both in the judicial body institution and in the procedural law of the Tax court, so that in principle this makes the Tax Court can make decisions on tax disputes as final and binding decisions, which reflect substantive justice.

The Tax Court has carried out an assessment of the arguments and/or evidence submitted by the parties in the trial by prioritizing the principle of substance over form as regulated in Article 76 along with the explanation of Law Number 14 of 2022 concerning the Tax Court with the opinion that the administrative rules regarding P3B are not can invalidate the provisions agreed by the Indonesian government with other countries in the P3B.

The Panel of Judges was guided by the Explanation of Article 32A of the Income Tax Law which states that P3B is a regulation that is *lex specialis* against other domestic provisions so that if there is a P3B then the domestic provisions cannot override the provisions in the P3B. Administrative requirements, such as having to fulfill the SKD as regulated through the Director General of Taxes Regulation, do not invalidate the provisions in the P3B as long as the fulfillment of the SKD in question is not regulated in the P3B.

The opinion of the Panel of Judges as described above prioritizes substantive legal rules but does not pay attention to formal legal rules, namely ignoring the fulfillment of administrative requirements to apply P3B provisions, so this will actually set a bad precedent for the application of applicable tax regulations. P3B specifically regulates the distribution of taxation rights on income, while the procedures for implementing P3B so that P3B implementation can be used appropriately and can prevent misuse of P3B are regulated in further implementing regulations in the form of Regulations of the Director General of Taxes.

Article 35 of the Income Tax Law and Article 24 paragraph (1) of Government Regulation Number 94 of 2010 provide a mandate to create implementing regulations related to P3B, namely Regulations of the Director General of Taxes as freeies ermessen in order to further regulate the use of P3B benefits. This decision will actually create injustice for other Taxpayers who have fulfilled the procedures for submitting SKD WPLN documents as attachments to Periodic Income Tax Returns Article 23/26 correctly in accordance with the provisions of the applicable tax laws.

2) Application of Formal Legal Rules related to P3B in Tax Court Decision Number PUT-004868.13/2021/PP/MXIIIB of 2022

Tax Court Decision Number PUT-004868.13/2021/PP/MXIIIB of 2022 is a tax dispute decision at the first and final level between the Directorate General of Taxes (DJP) and PT RHB Sekuritas Indonesia. The DJP made corrections to Article 26 Income Tax Objects on the grounds that there were Article 26 Income Tax objects that had not been reported. Taxpayers do not fulfill the administrative requirements to apply the provisions stipulated in the P3B, as regulated in the Regulation of the Director General of Taxes, mainly because the SKD is not attached to the relevant Periodic SPT.

Taxpayers do not agree with the DJP's correction of Object PPh Article 26 which states that Taxpayers must withhold PPh Article 26 on payments to WPLN at a rate of 20% because they do not fulfill administrative requirements, namely SKD is not reported on the Periodic Income Tax Return Article 26 and does not report transactions and did not produce proof of withholding because there was no amount of PPh withheld in the Periodic Income Tax Return Article 26. The Taxpayer stated that there were no provisions governing if the Tax Withholder/Collector did not attach SKD and not reporting transactions and not making proof of withholding in reporting Periodic Income Tax Returns Article 26 means WPLN cannot get P3B benefits.

The Panel of Tax Court Judges stated that the main dispute in the appeal was because the Appellant did not fulfill the administrative requirements to apply the P3B provisions, as regulated in the Director General of Tax Regulations, especially because the SKD was not attached to the relevant Periodic SPT.

Article 32A of the Income Tax Law regulates that P3B is a special legal instrument (lex specialist) which can override the provisions of Income Tax laws and regulations, so that the Tax Court is of the opinion that as long as it can be proven that the transaction was carried out with a Taxpayer who is a resident of another country it is binding P3B with Indonesia, then the provisions used are the provisions regulated in the P3B.

P3B regulates the distribution of taxation rights on income, so in order to ensure that the benefits of P3B are received by entitled recipients and prevent misuse of P3B, further regulations regarding the procedures for implementing P3B are regulated in the Regulation of the Director General of Taxes which is a derivative regulation issued under the authority of Article 24 paragraph (2) Government Regulation Number 94 of 2010 and also Commentary on Article 1 part 19 OECD Model Tax Convention on Income and Capital.

The Regulation of the Director General of Taxes states that the administrative requirements for obtaining treaty benefits and P3B are mandatory and WPLN has an SKD which acts as a population identity document which informs in which country the Taxpayer is registered or registered as a resident according to the tax administration. The Taxpayer cannot prove that the SKD meets the requirements of the Director General of Taxes Regulations regarding domicile and transaction counterparties so that the appeal cannot be accepted.

Consideration of the Panel of Judges in PUT-004868.13/2021/PP/MXIIIB of 2022 which states that further regulations regarding the procedures for implementing P3B are regulated in the Director General of Taxes Regulation which is a derivative regulation issued under the authority of Article 24 paragraph (2) of Government Regulation Number 94 2010 and also Commentary on Article 1 part 19 OECD Model Tax Convention on Income and Capital. The Regulation of the Director General of Taxes states that the administrative requirements for obtaining treaty benefits from P3B are mandatory and WPLN has an SKD, so that when the Taxpayer cannot fulfill these requirements, the Taxpayer's appeal request will not be accepted. The consideration of the Panel of Judges shows that the Judge in making his decision provided legal certainty in the implementation of the P3B.

Indonesia has regulations that stipulate that not all WPLN can immediately use the tax treaty. WPLN who receive and/or earn income from Indonesia can obtain P3B benefits in accordance with the provisions stipulated in the P3B in accordance with applicable tax regulations, namely the Regulation of the Director General of Taxes. Fulfilling the administrative requirements in the Director General of Tax Regulations is useful for ensuring that income recipients are entitled to receive P3B benefits as well as preventing parties who wish to use P3B as a means of tax avoidance (treaty shopping or treaty abuse).

Formal law, apart from being a rule for implementing material law, is also used by judges as a means of law enforcement as a reference in deciding cases in court. Taxpayers ignore legal norms as regulated in Government Regulation Number 94 of 2010 as well as implementing regulations regulated in the Regulation of the Director General of Taxes. The Taxpayer does not fulfill the administrative requirements as stipulated in the Director General of Taxes Regulation, namely not attaching the SKD WPLN to the relevant SPT, so the Taxpayer should be subject to a 20% rate in accordance with the Income Tax Law. Legal protection for the tax authorities in disputes regarding the fulfillment of administrative requirements for implementing P3B provisions is necessary in order to maintain tax revenues.

National Tax System Treatment Model for P3B as a Form of Legal Certainty for Parties related to Judge Considerations in Making Decisions

Tax collection must be regulated by law because this collection is coercive and is a burden that will be borne by the community. Tax is regulated in a separate article, namely in Article 23 A of the 1945 Constitution. The law that regulates the material provisions of Income Tax is Law number 7 of 1983 and its amendments. Material tax law regulates provisions regarding who is subject to tax, what is subject to tax, and what the tax rate is so that the amount of tax payable can be calculated. Material tax law regulates tax subjects, tax objects and tax rates so that the amount of tax payable can be calculated. Material provisions for income tax in Indonesia can be divided into general and specific material provisions.

Material provisions of a general nature are income tax provisions originating from the laws in force in Indonesia. Specific material provisions are provisions that are *lex specialis* for certain types of income or taxpayers. The Income Tax Law regulates that certain types of income and

taxpayers are subject to material provisions which regulate separately for certain types of income or taxpayers in agreements or contracts. There are 2 (two) special provisions regulated in the Income Tax Law, namely the Agreement to Avoid Double Taxation (P3B) in Article 32A and special provisions in Article 33A paragraph (4) for Taxpayers in the mining sector.

Article 32A of the Income Tax Law gives the Government the authority to enter into agreements with governments of other countries in order to avoid double taxation and prevent tax evasion. P3B regulates the distribution of taxation rights on income, so the Minister of Finance and the Director General of Taxes as competent authorities need to ensure that the P3B is actually used by parties who are entitled to benefit from the P3B. Competent authorities need to make further implementation regulations regarding procedures for implementing P3B so that P3B implementation can be used appropriately and prevent misuse of P3B.

Implementing regulations related to the implementation of the P3B were also created to maintain the honor and sovereignty of the Unitary State of the Republic of Indonesia in the international world as an independent and sovereign state. Article 35 of the Income Tax Law and Article 24 paragraph (1) of Government Regulation Number 94 of 2010 provide a mandate to create implementing regulations related to P3B, namely Regulation of the Director General of Taxes number PER-25/PJ/2018 as the necessary freebies in order to regulate more further regarding the use of P3B benefits which are regulated in Article 32A of the Income Tax Law.

The government can intervene, either directly (direct government involvement) or indirectly (government influence), namely through regulations in order to save state revenue from the tax sector. Effective regulation to achieve the public interest is an essential government function. Indonesia has regulations that stipulate that not all WPLN can immediately use the tax treaty. WPLN who receive and/or earn income from Indonesia can obtain P3B benefits in accordance with the provisions regulated in the P3B in accordance with applicable tax regulations, namely Regulation of the Director General of Taxes number PER-25/PJ/2018.

Regulation of the Director General of Taxes number PER-25/PJ/2018 was issued in order to provide legal certainty in the implementation of P3B. Regulation of the Director General of Taxes PER-25/PJ/2018 is useful for ensuring that income recipients are entitled to receive P3B benefits as well as preventing parties who want to use P3B as a means of tax avoidance (treaty shopping or treaty abuse). Regulation of the Director General of Taxes number PER-25/PJ/2018 provides technical guidelines for Taxpayers in carrying out their obligations as withholders/collectors of tax payable on income received or accrued by Foreign Taxpayers (WPLN).

Taxpayers withholding/collecting who do not carry out tests on the residence status of their transaction counterparties abroad may incur state losses in the form of reduced PPh portions for the source country (Indonesia) due to the application of PPh withholding rates according to P3B which should not be given to residents of other countries. Withholding/Collector Taxpayers are an extension of the Government in implementing P3B, so as a consequence, if the Taxpayer is negligent by not carrying out his obligation to carry out the tests required by the applicable tax regulations, then the person concerned will be subject to sanctions through the stipulation of a tax assessment letter.

Based on the provisions in Article 24 of Government Regulation Number 94 of 2010 concerning Calculation of Taxable Income and Payment of Income Tax in the Current Year (PP 94 of 2010), P3B only applies to individuals or entities that are domestic Tax Subjects from Indonesia and/or from partner country agreement to avoid double taxation as proven by a Certificate of Domicile.

Tax Withholding Agents are required to make deductions on income given to WPLNs according to the rates regulated in Indonesian tax regulations, unless WPLNs meet the requirements to utilize P3B. The philosophy of withholding obligations, the concept of paying taxes through a withholding tax mechanism, taxpayers who provide income are given the obligation to withhold taxes in accordance with applicable regulations. The provisions in PER-25/PJ/2018 regulate withholding taxpayers to test the administrative compliance of the transaction counterparty so that P3B can be applied to the transaction counterparty.

The provisions in PER-25/PJ/2018 were issued in order to protect tax withholding agents from being subject to tax burdens which should be the responsibility of the income recipient, because Tax Withholding Units are not required to test the material truth of SKD documents. Taxpayers who carry out administrative procedures correctly, in accordance with the principle of reciprocity which also applies generally, if they have already paid taxes in excess of the P3B provisions, residents of P3B partner countries can submit a refund of tax that should not be owed through the mechanism as regulated in Minister of Finance Regulation Number PMK-187/PMK.03/2015 concerning Procedures for Returning Tax Overpayments that Should Not Be Due.

P3B only regulates taxation rights, and does not regulate taxation methods. The method of taxation is regulated through the tax regulations of each country. Status as a resident of the country concerned requires proof, and the instrument that proves this in accordance with Article 24 paragraph (1) PP Number 94 of 2010 is the SKD. The SKD submitted at any time does not meet the provisions as stipulated in the Directorate General of Taxes Regulation, so there is no legal certainty for the Withholder when carrying out Tax Withholding.

A panel of judges that prioritizes substantive legal rules to provide justice by ignoring formal legal rules, namely ignoring the fulfillment of administrative requirements to apply P3B provisions, will actually set a bad precedent for the application of applicable tax regulations. This decision will also cause injustice to other taxpayers who have fulfilled the procedures for submitting SKD WPLN documents as attachments to Periodic Income Tax Returns Article 23/26 correctly in accordance with the provisions of the applicable tax laws.

The Judge's decision which ignores the fulfillment of administrative requirements to apply P3B provisions does not teach the public to comply with applicable regulations/provisions considering that Taxpayers may not show/provide SKD WPLN documents, without any legal consequences. Obedience means obeying, submitting, carrying out what is ordered and avoiding what is prohibited by a legal norm. Compliance related to tax administration can be defined as a situation where the taxpayer fulfills all tax obligations and exercises his tax rights.

Legal positivism creates a law that is concrete and free from abstract conceptions that would create uncertainty. Legal positivism is in line with the aims and objectives of the principle of legal certainty which ensures that justice seekers can use a law that is certain, concrete and objective, without the involvement of speculation or subjective views. The Tax Court in its position as a body based on the judicial power system in Indonesia must be able to create justice and legal certainty in resolving tax disputes, so that the Panel of Judges should also consider the existence of legal certainty by deciding disputes based on tax laws and regulations.

The implementation of P3B in Indonesia uses 2 (two) methods, namely the relief-at source method and the refund method. Taxpayers who meet the formal requirements as regulated in the Regulation of the Director General of Taxes, P3B benefits can be provided directly through the Tax Withholder by applying the provisions stipulated in the P3B in question (relief at source). Taxpayers who have not been able to fulfill the formal/administrative requirements at the time of the transaction, then for the transaction a tax deduction is made in accordance with Indonesian tax

provisions and WPLN can still utilize P3B through a mechanism for returning excess tax which should not be owed to the Director General of Taxes as regulated in the Minister of Finance Regulation number PMK-187/PMK.03/2015 concerning Procedures for Returning Tax Refunds That Should Not Be Due jo. Article 10 PER-25/PJ/2018 concerning Procedures for Implementing the Agreement to Avoid Double Taxation (refund method).

The tax refund mechanism that has been withheld is higher because the transaction counterparty cannot show SKD, this is also implemented in other countries, for example Japan. "If you want to claim the benefits of the tax treaty, you need to submit an "Application Form for Income Tax Convention" with certain attachments to the district director of the tax office which has jurisdiction over the payer's place for tax payment through the payer before the date of payment." "If you wish to claim the benefits of the tax treaty, you must submit the "Application Form for Income Tax Convention" with certain attachments to the district director of the tax office having jurisdiction over the payer's place for payment of tax through the payer before the payment date."

"If you fail to submit the form in time, you can still claim the benefits of the tax treaty by submitting an "Application Form for Refund of the Overpaid Withholding Tax" with the application mentioned above to the district director of the tax office which has jurisdiction over the payer's place for tax payment through the payer." In free translation: "If you fail to submit the form on time, you can still claim the benefits of the tax treaty by submitting the "Overpaid Withholding Tax Refund Application Form" with the above-mentioned application to the district director of the tax office having jurisdiction over the payer's place for payment of tax through the payer."

The application of Income Tax Article 26 in Indonesia is the same as in Japan, where to obtain the benefits of P3B rates, the transaction counterparty must first show SKD. Taxpayers who cannot show SKD will be charged a rate based on domestic tax law, but a refund can be submitted for the difference.

The existence of the principle of legal certainty is a form of protection for justice seekers (seekers of justice) against arbitrary actions. Legal certainty refers to the clear, permanent and consistent application of law where its implementation cannot be influenced by subjective circumstances. The principle of legal certainty provides clarity regarding positive law where there is regularity and certainty to support the legal system working well. Law is no longer conceptualized as abstract moral principles about the nature of justice, but has been written as a norm to guarantee certainty regarding what is regulated as law, and things which are not as law.

P3B only regulates the distribution of taxation rights on income. Article 35 of the Income Tax Law and Article 24 paragraph (1) of Government Regulation Number 94 of 2010 provide a mandate to create implementing regulations related to P3B, namely Regulations of the Director General of Taxes as freeies ermessen which are needed in order to further regulate the use of P3B benefits that have been regulated in Article 32A of the Income Tax Law. Legal certainty for the parties can be achieved if the judge in considering the dispute decision fulfills the administrative requirements to apply the provisions of the P3B and complies with the provisions in the Regulation of the Director General of Taxes.

Conclusion

Application of substantive and formal legal rules related to P3B in the Tax Court Decision Number PUT-001293.35/2020/PP/MXVIII A of 2022 and PUT 004868.13/2021/PP/MXIIIB of 2022 in the context of legal protection for the tax authorities: Legal protection for the tax authorities in disputes regarding the fulfillment of administrative requirements for implementing P3B provisions is necessary in order to

maintain tax revenues. a. Tax Court Decision Number PUT-001293.35/2020/PP/MXVIII A of 2022 places greater emphasis on substantive legal rules but does not pay attention to formal legal rules because it ignores the fulfillment of administrative requirements for implementing P3B provisions and states that P3B is a *lex specialis* regulation for internal taxation regulations. country. The opinion of the Panel of Judges will set a bad precedent for the application of applicable tax regulations. P3B specifically regulates the distribution of taxation rights on income, while the procedures for implementing P3B are regulated in further implementing regulations in the form of Regulations of the Director General of Taxes. This decision creates injustice for other Taxpayers who have fulfilled the procedures for submitting SKD WPLN documents as attachments to Periodic Income Tax Returns Article 23/26 correctly in accordance with the provisions of the applicable tax laws. b. Tax Court Decision Number 004868.13/2021/PP/MXIIIB of 2022 provides legal certainty in the implementation of P3B. WPLN who receive and/or earn income from Indonesia can obtain P3B benefits if they fulfill the administrative requirements for implementing P3B provisions in accordance with the applicable tax regulations, namely the Regulation of the Director General of Taxes.

National Tax System Treatment Model for P3B as a Form of Legal Certainty for Parties related to Judge Considerations in Making Decisions: Article 24 of Government Regulation Number 94 of 2010 regulates that P3B only applies to individuals or entities who are domestic tax subjects from Indonesia and/or from partner countries in the agreement to avoid double taxation as proven by a Domicile Certificate. The Regulation of the Director General of Taxes as an implementing regulation of PP 94 of 2010 was issued in order to provide legal certainty in the implementation of P3B. The Regulation of the Director General of Taxes is useful for ensuring that income recipients are entitled to receive P3B benefits as well as preventing parties who wish to use P3B as a means of tax avoidance (treaty shopping or treaty abuse). The Regulation of the Director General of Taxes provides technical guidelines for Taxpayers in carrying out their obligations as withholding/collectors of tax payable on income received or earned by Foreign Taxpayers (WPLN).

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