



## INTRODUCTION

Tax tribunal as a special court conducting judicial authorities in examining and deciding tax disputes still use dualism guidance system, because until now there has been no revision or amendment of Act No. 14 of 2002 on tax tribunal. Article 8 of Law No. 14 of 2002 on the Tax tribunal governing the appointment of the Tax tribunal Judge, as stated as follows: (1) Judges appointed by the President from a list of candidates proposed by the Minister after obtaining the approval of Supreme Court Chief Justice; (2) The Chairman and Vice-Chairman appointed by the President of the Judges proposed the Minister after approval by Supreme Court Chief Justice; (3) the Chairman, Vice Chairman and Judge appointed for a term of 5 (five) years and can be extended for 1 (one) term; (4) the Chairman, Vice Chairman, and Judge are state officials who carry out the task of judicial authorities in fields of Tax Dispute. A parameter for determine an independent judiciary, according Manan (2004) argued that the independent judiciary is the power to organize judicial or judicial function which includes the power to examine and decide a case or dispute, and the power to make a determination of law. Special powers beyond the power to examine and decide cases and make legal provisions, possible interference from such supervision and inspection of branches outside judicial authority.

Reduction of judicial independence in the tax tribunal to examine and decide the tax dispute means gradually paralyzing tax tribunal as the last bastion for justice and truth which leads to legal protection, especially for the taxpayer. It must be avoided that the Tax tribunal judge to examine and decide the tax dispute may result in a decision that can be justified (Harahap, 1997). Besides the constraints of the institution, court judges taxes also vulnerable from the influence arising of the case/dispute is being handled, such as the pressure of a person or a group of appellant or plaintiff moreover authorities, which has hit a very strong (political, economic, social and others) to influence or impose the will to the court or judge to win his case. To ensure equality, free trial, the necessary independent judiciary and the independent judges.

Based on the description that has been presented on the background of this research, the researchers will elevate the subject matter as follows: (1) How does a legal perspective on appointment setting the Tax tribunal judge in examining and deciding tax disputes ?; (2) How does the application of the arrangements concerning the independence and freedom of the

Tax tribunal judge in adjudicating tax disputes that meet the principles of independent judicial powers ?; and (3) any factors the may lead to lack of independently as well as the lack of freedom in the Tax tribunal judge to examine and decide the tax dispute in the Tax tribunal?.

As a profession related to the court proceedings, the definition of judges stated in Act No. 4 of 2004 (as last amended by Act No. 48 of 2009) on Judicial Power Article 31 states, "Justice is an official who perform judicial power set in law". As a legal profession which is functionally the main actors in the administration of judicial power, judges are required to have a special skill at the same time in-depth understanding of the scope of duties and obligations. One element that distinguishes the profession of judges with other professions is the process of recruitment and education are specifically applied for each person who will carry out this profession.

The wishes from community, especially from the taxpayers to the Tax tribunal, especially to the judges to be completely independent in examining and adjudicate tax disputes they proposed the fairest decision. Therefore, in the code of ethics judges, a judge should uphold and exemplify the independence, both individually and institutionally.

Tax tribunal was established by Act No. 14 of 2002, the State Gazette No. 27 of 2002 Additional State Gazette No. 4189, with a view to resolving tax disputes. Based on Act No. 6 of 1983 concerning General Provisions and Tax Procedures, Tax Advisory Council tax imposed as a legitimate judicial body and not contradictory with the provisions contained in Law No. 14 Year 1970 on Basic Provisions on Judicial Power.

Based on Act No. 17 of 1997 established the Tax Dispute Settlement Agency (TDSA), where TDSA as a judicial body for settling disputes only the tax administration, namely in terms of the calculation and accounting, not about criminal taxes. Although it is not contrary to Act No. 14 of 1970, TDSA in fact not a judicial authorities which culminates in the Supreme Court. Therefore, we need a Tax tribunal in accordance with the judicial power system prevailing in Indonesia at the same time able to create fairness and legal certainty in the tax dispute resolution. On these considerations, the Government of the Republic of Indonesia passed Act No. 14 of 2002 on the Tax tribunal (Sadhani, 2008).

This research uses the theory of justice based on Pancasila. The term justice in the Pancasila can be encountered in the second principle which reads "just and civilized humanity" and the fifth precept that says "Social justice for all Indonesian people". Many people think that acting is fair and unfair depends on the strength, to be fair enough looks simple, but certainly not as well as its application in human life. There are some opinions that explain this justice to look at it from several aspects, for example Aristotle divides justice into five forms, namely (Raper, 1991): (1) commutative justice, namely the treatment of a person regardless of the merits of his accomplishments; (2) Distributive justice, namely the treatment of a person in accordance with the services that have been made; (3) Justice natural nature, that is providing something in accordance with that given by others to us; (4) Justice conventional, which is someone who has to obey all laws and regulations that have been required; (5) Justice according to the theory of improvement is someone who has been trying defamation who have been tainted.

Another opinion on the meaning of justice revealed by Rawls (in Muqowim, 2001) as follows: (1) Maximizing independence. Restrictions on this freedom just for the sake of liberty itself; (2) Equality for all people, both equality in social life and equality in the form of utilization of social goods. Restrictions in this case can only be allowed if there is the possibility of greater profits; (3) Equality of opportunity for honesty, and the elimination of the inequalities based on nativity and wealth.

To provide the answers this, Rawls (in Fauzan and Prasad, 2006) spawned three (3) the principle of fairness, namely: (1) The equal liberty of principle; (2) The differences principle and; (3) The equal opportunity principle. Rawls (in Muqowim, 2001) argues that if there is a conflict, then the principle of equal liberty should be a priority of the other principles. Equal opportunity principle must be given priority rather than differences principle. The principles of justice presented by Rawls in general is very relevant for countries that are developing, such as Indonesia. The relevance of the stronger because the majority of the Indonesian population is still relatively weak as the people who live below the poverty line.

As we align the principles of justice from Rawls and the Indonesian constitution, the two principles of justice that became the main premise of the theory of Rawls is also listed in the Indonesian constitution, even more so after the changes in the 1945 Constitution through four stages from 1999 to 2002. The

principle of freedom of the equal liberty principle is reflected in the provisions on constitutional rights and freedoms of citizens are contained in Chapter 9 A on Human Rights, among which Article 28 E the 1945 Constitution regarding freedom of religion, the freedom to express thought appropriate of freedom conscience, as well as freedom of assembly and speech (Faiz, 2009).

As well as the second principle in the first part as the principle of distinction (difference principle), the Indonesian Constitution adopted the same principle in Article 28 H paragraph (2) of the Constitution of 1945 which reads: "Every person shall have the right to receive facilitation and special treatment to have the same opportunity and benefit in order to achieve equality and fairness.". From this basic application of affirmative action or positive discrimination can be justified constitutionally (Faiz, 2009). The equal opportunity principle as the second principle the second part of Rawls's theory of justice. The Indonesian Constitution explicitly also provide constitutional guarantee were similar, as the one contained in Article 28D paragraph (3) in the Constitution of 1945. Thus it can be said that regardless of the intent or not, Indonesia obviously have included the principles fairness initiated by Rawls in the body of the constitution (Faiz, 2009).

In addition this study using the State of Law as a middle range theory with the consideration that in the Constitution of 1945 stated that Indonesia is a State of Law, as the article 1 paragraph (3) of the Constitution of 1945. State law in question is countries which give priority to the rule of law to establish truth and fairness, and there is no power which is not justified (MPR, 2010). According Kusnardi and Ibrahim (1988), stating that the country is a state law that stands above the law that guarantees fairness to its citizens. Justice is a prerequisite for achieving happiness in life for its citizens, and as the basis of justice that needs to be taught a sense of decency to every human being so that he becomes a good citizen. Similarly, the rule of law actually exists only if it reflects equity laws for social life among its citizens.

The 1945 Constitution uses the term "judicial authority" as the counterpart of the judiciary, *rechtspraak* or judiciary (Manan, 2005). The existence of an independent judiciary and free is a characteristic of a democratic constitutional state. Because of the justice and law is an integral state, meaning that the judicial power was a major aspect of state law. If this aspect is not present in a country, that country is not a state of law (Zaini, 1991).

In applied theory is used the theory of independent judicial power. Settlement of legal disputes by something independent judiciary is the basis of the functioning of the law properly. With independent judicial power, everyone will get a guarantee that the government will act in accordance with applicable law. Trust this can be achieved independent judiciary and free to decide cases. Linkage independent judicial power to governance can lead to the judicial power control function of governance. The control functionality is the task of the judicial authorities to assess the validity of the legal basis (*rechtmaticheid*) organization of government actions or deeds. Independent judicial power is also intended to ensure the impartiality, fair, honest and impartiality. If freedom and neutrality was not owned by the judicial authorities can be assured of justice will not be realized, especially in the event of a dispute between the rulers and the people (Manan, 1998).

According to Mahfud (1993), the judicial power and the judiciary is the power to examine and adjudicate as well as give a decision on the case submitted to him for law and justice based on law. Entities who hold this authority should be able to work well in their duties so that the resulting decisions are objective and impartial by continuing to respect for the law and justice, hence The agency is must be free from the influence of other powers or influence government authority.

With due regard to the concept of independent judiciary has several basic objectives, among others (Manan, 2004): 1) As part of the system of separation or power-sharing between the institutions of state officials; 2) To prevent state officials acted arbitrarily; 3) To assess the validity of legal actions organizers state on a legislation, so that the function of checks and balances can be run properly. In carrying out the functions of independent judicial power, an element of legal certainty necessary to use a basic consideration in making a decision. According to Manan (2004), there are several reasons that some legislation may give rise to legal uncertainty, namely: 1) The rules are outdated; 2) The rules that contradict one another or overlap, both the content and competence; 3) The rules are "hanging" without any rules of procedure so that the basic rule cannot be implemented.

## RESEARCH METHODS

The research was conducted using a normative juridical research method. Types of data used is secondary data through a study of the documents, to obtain the data taken from the literature, with sec-

ondary data. Data collection techniques used in this research is through the study of documents. Analysis of the data used in this study is juridical qualitative data analysis by using the power of abstract and legal interpretation, which deals with the problems studied. Then the results of the analysis is set forth in the form of descriptions or descriptions. This research starts on the legislation in force in the Tax tribunal as a positive law that said research with juridical approach (Soekanto, 1986) whereas said qualitative research because the data analysis in this study starts in the attempt to find the principles of law relating to the principles of justice in the administration of taxes judicial in Indonesia.

## RESULTS AND DISCUSSION

### LEGAL PERSPECTIVE ON ARRANGEMENT RECRUITMENT TAX TRIBUNAL JUDGE IN EXAMINING AND RESOLVING DISPUTES TAX

Terms of recruitment and training of judges, prosecutors and advocates a separate unfavorable judicial system integrated (Hamzah, 1987). Superior Court Judge is equivalent to the same taxes and other judges in the courts, the Supreme Court functions in the recruitment of judges on the quality and competence of prospective judges, for the involvement of the Judicial Commission is indispensable for ensuring objectivity in recruitment. Judging from the requirements to become a judge, then the Tax tribunal a person who holds a law degree or another bachelor must master the tax issues with a minimum age of 45 years and the judge appointed by the president from a list of candidates proposed by the Minister of Finance. The age limit is intended that can be appointed as a judge of tax only people who already have work experience proficient and in practice at least experienced and know about the tax laws, whereas to be a judge of state administration only who holds a law degree graduate school candidates judge at least 25 years of age up to 40 years and passed the acceptance of candidates for the selection of judges.

Associated with the guidance and supervision of the Tax tribunal, the Tax tribunal Law stipulates that the general supervision of the Judge conducted by the Supreme Court as provided for in Article 11 (1) of the Act Tax tribunal. Furthermore, in Article 11 (2) stipulated that the Chairman of the Tax tribunal to provide guidance and supervision of the implementation of the tasks and the behavior of Deputy Chairman and Secretary/Registrar. Guidance and supervision of Tax tribunal judge, either in connection with the execution of judicial duties or conduct



and behavior, internally done by under the Supreme Court. The provisions of Article 39 of Act Number 48 of 2009 on Judicial Power, it is known that the Supreme Court exercises supreme supervision of the administration of justice and the tasks of administration and finance at all judicial bodies under the Supreme Court. Supervision conducted of the Supreme Court does not diminish the independence of judges in examining and deciding cases. The provisions of Article 39 of Act No. 48 of 2009 on Judicial Power, it is known that the Supreme Court exercises supreme supervision of the administration of justice and the tasks of administration and finance at all judicial bodies under the Supreme Court. Supervision conducted of the Supreme Court does not diminish the independence of judges in examining and deciding cases.

Into order to optimize the development of judges, the Supreme Court has issued Circular No. 14 of 2009 on Building Personnel Judge. Into circular, Supreme Court Chief Justice gave instructions for the President of the Court of Appeal to perform the steps of coaching in order to improve the quality of judges. Keep in mind that the judicial power is not only independent institution, but also the independence of the judicial process that is indicated on the proceedings, evidence, to the decision handed down. Parameter independently whether or not the judicial process is characterized by the whether or not intervention from other parties outside the judicial power (Sirajuddin, 2006).

Therefore, in Article 11 paragraph (3) Act No. 14 of 2002 declared that the supervision referred to in Article 11 paragraph (1) and (2) must not reduce the freedom of judges to investigate and adjudicate tax disputes. But that should also be understood that guarantees the independence of the judicial power does not mean there should be no party other than the judiciary to take care of something related to the judge and the judiciary (MA, 2003).

Primary key to the success of the administration of justice as mandated by the constitution is law and justice based on Pancasila for the sake of implementation of the State Law of the Republic of Indonesia, is located in the hands of judges. Therefore, the judge is an independent, high moral integrity and insightful, is an essential requirement that cannot be bargained for a judge. According to Syamsuddin (2008), the failure of law enforcement in Indonesia because of the inability of law enforcement agencies to enforce the law correctly in accordance with applicable law. As part of efforts to reform the le-

gal field. Article 24B the 1945 Constitution gives authority to the Judicial Commission to establish checks and balances in the administration of judicial power. According to the provisions this article, the Judicial Commission has the task of proposing the appointment of judges and other tasks in order to preserve and uphold the honor, dignity and conducts of judges. .

The duties and the supervisory authority of the judge was reaffirmed in Article 12A Act No. 50 of 2009, that the internal controls over the behavior of judges conducted by the Supreme Court and external oversight in order to preserve and uphold the honor, dignity, and the behavior of judges conducted by the Judicial Commission. Thus, external supervision for the Tax tribunal judge conducted by the Judicial Commission. This oversight is a representation of public scrutiny of the behavior of judges, integrity, and professional in carrying out the task of the judiciary power. Supervision is done by the Judicial Commission Code of Ethics and Code of Conduct of Judges.

#### **THE INDEPENDENCE AND FREEDOM TAX TRIBUNAL JUDGE BREAKING IN TAX DISPUTE**

Taxes Judiciary in Indonesia is an administrative court that is specialized in the field of taxation. A court said as court administration if it meets the elements, which one of the parties to the dispute must be an administrator (administration officials), which is bound by works one of the officials within the limits of its authority, and to the issues raised enacted public law or administrative law (Mustafa , 1979). Speaking about the court and the justice system cannot be released from the Chapter 9 on Judicial Power (*Rechterijke macht*) stipulated in the Constitution of the Republic of Indonesia Year 1945 (the 1945 Constitution).

Independent judiciary is an important principle for Judicial Power. Judicial Power independent means free from the interference of other powers and free of coercion and intervention direct or recommendations that come from the outside of the judicial authority. Law of the Supreme Court its meaning is defined as "free from the influence of government and other influences".

The position of the Tax tribunal in the judicial system in Indonesia is a judicial authorities implementing judicial power to the taxpayer or tax guarantor to seek justice against the tax dispute. Fourth Amendment the 1945 Constitution, particularly in relation to Article 24 paragraph (1) of "Judicial Power con-

ducted by a Supreme Court and others Bureau of Justice according to law” and paragraph (3) that “Other agencies whose functions related to power judiciary regulated by law”, hence Tax tribunal as a judicial body having the authority in the field of taxation should be adapted to the juridical construction which requires the Tax tribunal under of the Supreme Court, both in terms of technical development as well as organizational development, administration and finance. This is in accordance with the provisions of the Law of Judicial Power.

Tax tribunal is a tendency within the State Administrative Court, is due to the nature of the dispute and the nature of it. Judging from the subject of the dispute, both (the Tax tribunal and State Administrative Court) brought together representatives of the government and the people element of an individual or a legal entity, where the position of the government as a defendant/compa that the decision in question. And judging from the disputed, both concerned about concrete decisions (statutes/*beschikking*) from a government agency devoted to individuals, where provision is considered to be detrimental to the people as individuals. Under the provisions of Article 31 and Article 32 Act No. 14 of 2002 on the authority of the Tax tribunal include authority over the settlement of a tax dispute (i.e. the authority to examine and decide on tax disputes in terms of appeal and lawsuit) and authorities in supervising attorney to provide assistance law to the parties to the dispute in the Tax tribunal.

Furthermore, in the case of a lawsuit, according to Article 31, Paragraph (3) of Act No. 14 of 2002, the Tax tribunal is authorized to examine and rule on the dispute over the implementation of tax collection or decisions rectification or other decision as referred to in Article 23, Paragraph (2) Act No. 16 of 2000 as amended by Act No. 28 of 2007 regarding provisions and tax Procedures and other decisions in accordance with applicable tax laws. Other decisions referred to in Article 23, Paragraph (2) Act No. 28 of 2007 which can be disputed in the lawsuit. The independence of judges is a guarantee for the enforcement of law and fairness, and a prerequisite for the realization of the ideals of the legal state. State law in the modern constitutional state there are two principles and the main prerequisite and its justice system, namely:

First, the principle of judicial independence itself, among others, should be embodied in the attitude of the judges in examining and deciding the case at hand. In addition, the principle of independence

judges should be reflected in the examination and decision making on every case, and is closely related to the independence of the judiciary as an institution that is authoritative, dignified and reliable. Independence of judges and courts manifested in independence and freedom of judges, both individually and as an institution, from various influences that come from outside the judge’s own form of intervention that are affecting the smooth, pressure or intimidation, coercion, violence, or retaliation because political or economic interests of the government (executive) or the ruling political powers or groups, with the threat of suffering or damage, or to compensation or reward in the form of position, economic benefits, or any other form (Raban, 2003). Second, the principle of impartiality (the principle of judicial impartiality). Phillips *et al.*, (in Raban, 2003) said that the impartiality or the impartiality itself implies the need for judges who not to be as impartial, but also looks to appear to the as impartial.

Particularly in Indonesia, with the Chairman of of the Supreme Court decree No. 104/SK/XII/2006 dated December 22, 2006, has approved the Code of Conduct of Judges which should be a guide for judges and other court personnel. Violations of the guidelines perpetrators of these judges, will be penalized (penalty). There have been many judges and other court personnel who were penalized (penalty) for violation of the code of conduct of judges (As’ad, 2011). In the framework of professionalism and integrity of judges in performing their duties and functions, the Supreme Court. Based on Article 24A (2) the 1945 Constitution and Article 5 paragraph (2), Article 52, Article 53 Act No. 48 of 2009 on Judicial Power, the Judicial Reform Blueprint 2010-2035 stated that the behavior of judges should be an example for the community. Behavior of judges and fair in carrying out their duties, will foster public confidence in the credibility of the decision which is then made (As’ad, 2011).

Judges should be able to carry out their duties, in carrying out judicial authority in a professional and responsible manner. Integrity and honesty are also animates the implementation of tasks other judicial personnel. This is partly realized by treating the parties’ litigant in a fair and equal, making decisions based on the evidence and facts in the trial and conviction of judges based on the norms of law and live in the midst of society (MA, 2011).

Related to the things mentioned, at least there are four principles that are relevant to this study, which (Asshiddiqie, 2007): *First*, Principle of Integrity (In-

tegrity Principle), that the judge should have an attitude of mind and wholeness and balance, which the judge as a person and as a state official in performing his duty. The integrity of personality the judge include honesty, loyalty, and sincerity in performing his professional duties with mental strength to set aside and reject all persuasions and temptation position, wealth, fame, or the temptations of other, while the balance of personality include spiritual balance and physical or mental and physical, as well as the balance between spiritual intelligence, emotional intelligence, and the intelligence quotient in the discharge of his duties.

*Second*, deserving principles and propriety principle, that the judge should have the appropriate personal and behaved and polite, both as individuals and as a state official and performing his professional duties, which creates a feeling of respect, dignity and confidence. Decency reflected in and display a personal behavior associated with the ability to put themselves in the right, both about the place, time, fashion, sound, or certain activities. Politeness is reflected in the behavior of respect and not demeaning of others in interpersonal relationships, both in the spoken speech, writing, or body language; in the act, work, and act; in the association of fellow judges, with the employee or employees of the courts, with the guests, with the parties in the hearing or other parties associated with the case.

*Third*, the Equality Principle, the judge must treat equally to all people based on humanity fair and civilized, without distinction from one another on the basis of religion, ethnicity, race, color, sex, marital status, physical condition, socioeconomic status, age, political views, or other reasons were similar. This equality is an essential principle inherent in the attitude of every judge to always treat all parties to the proceedings are the same appropriate each position in the judicial process.

*Fourth*, Skills Principles and precision (Competence and Diligence Principle), that the judge should have the capacity and precision. This becomes an important prerequisite in the administration of justice is good and trustworthy. Skills judges reflected in professional skills acquired from education, training, or experience a personal attitude of judges who describe austerity, prudence, diligence, perseverance and seriousness in the execution of professional duties of judges.

Tax tribunal has the authority to examine and decide the dispute on first and final level tax as stipulated

in Article 33 paragraph (2) of the tax tribunal. In his explanation, the court emphasized that as the first and final examination of tax disputes only by the Tax tribunal. Therefore, the Tax tribunal's decision cannot be submitted to the General Court lawsuit, the State Administrative Court, or any other Judicial Institutions, except in the form of unacceptable decision concerning the authority/competence. With authority as a court of first and final examination of tax disputes, the Tax tribunal did not recognize the justice of the cassation process in general. The absence of an appeal to the tax tribunal did not mean to make the Tax tribunal Law null and void alias invalid. According to the Court, although formally against the decision of tax tribunal of cassation is not known, but the substantive examination of an appeal by the Supreme Court indirectly has been done in an extraordinary legal remedy reconsideration (PK) tax case.

Article 91 letter (e) of the tax tribunal considered accommodate the causes reconsideration, that is, if the decision was obviously not in accordance with the statutory provisions in force. Substantively, the reason is the same as the reasons for the appeal which is commonly known in the Supreme Court (Act No. 5 of 2004). In other words, substantive reconsideration in the Tax tribunal together with the Supreme Court. Unknown system of appeal to the tax tribunal does not mean that the court does not culminating in the Supreme Court. According to Harjono (Constitutional Court) "even though in article 24A paragraph (1) the 1945 Constitution stated the Supreme Court authority to hear the appeal, but this does not mean that in order to determine the judicial environment that culminated in the Supreme Court must always opened the possibility for appeal for any cases decided by the courts concerned" (Harjono, 2009).

## **THE FACTORS INFLUENCING THE INDEPENDENCE OF JUDGES IN THE TAX TRIBUNAL DECISIONS**

### **THE INTERVENTION OF AUTHORITIES**

Intervention or influence of the powers of government interference is still so clear it looks and feels. In fact, the subordinate judiciary by the executive power and co-opted by the party that controls the economic and political resources. In a regime, the judiciary is part of the interests of the executive, since it must run the directive and safeguard the interests of rulers and power preferences. So as the genuine function cannot be performed optimally, actually serves to implement, maintain and secure program development and government interests, which as an instrument of political stability and economic growth drivers. In relation with Article 5 (1) and (2)



of the tax tribunal noted that the technical guidance for tax tribunal justice conducted by the Supreme Court and development organization, administration and finance for tax tribunal conducted by the Ministry of Finance. It is susceptible to affect the independence of tax tribunal as part of an independent judiciary. Institutional dualism a judicial authorities can have a significant effect to the freedom of judges to examine and decide a case.

### **GIVING GRATUITIES TO JUDGE**

Besides the intervention of the executive power of the judiciary has been a compelling actor judge betrayed his profession, the judicial authority in the judicial duty is still plagued by an acute disease that is rampant judicial corruption. Related to economic factors, the salaries of judges will determine whether or not the judge also on independence in making decisions. The factors of judges inadequate salaries compared to the size of the cost of living in big cities like Jakarta and the value of tax disputes are very large, creating opportunities for Taxpayer mischievous to approach the judge that won the dispute. As we know that salaries are not sufficient is no excuse and justification for corruption. In the midst of the demands of good law enforcement, especially in efforts to combat corruption requires qualified judges and professionals. With minimal revenue judges is certainly impossible to create justice we dream, here tested the integrity of a judge. Improved well-being is expected to prevent corruption by needs committed by law.

### **THE ESTABLISHMENT OF PUBLIC OPINION**

In addition to political factors and economic above, there are also social factors that affect the freedom and independence of judges. Social factors for example the proliferation of vigilante practices in the community, because it is less his trust in the judge's decision. The emergence of a demonstration urging the judge to decide in accordance with the will of the demonstrators or those who move. According to Abdullah (2010), the accumulation of the intervention, political, legal, and public opinion who broke into the law enforcement process spawned three states. First, the legal and political power politics would be a distraction for the law enforcement process. Some people argue that this situation gave birth to a settlement out of court (out of court settlement). Public opinion is more emphasis on social justice, while the law enforcement aims to create legal justice. Second, public opinion forming distrust of law enforcement agencies. The third is the image of disharmony between law enforcement agencies.

Public opinion seemed to conclude coordination between law enforcement agencies is very worrying.

The influence of the pressure common opinion or public opinion (public opinion) or the will of the majority is a factor that can affect the independence of the Tax tribunal judge in making decisions. Public opinion should not sacrifice the rights of individuals and/or minorities. In certain circumstances, a majority vote is not synonymous with truth and justice. Public opinion or deliberately engineered molded, not always as a truth and justice, but the manipulation of the will of a group of interests or a particular stressor. The possibility of denial of the rights of individuals or minorities are incorrect and unjust can only be protected and misuse of the majority can only be prevented, if there is independence of judicial power and judges are free.

### **CONCLUSION**

Based on the description that has been described, it can be formulated some conclusions in response to the three research problems, is as follows:

1. Tax tribunal is a judicial authorities implementing judicial power to the taxpayer or tax guarantor to seek justice for Tax Dispute. In examining and deciding tax disputes needed judges who meet the requirements as stipulated in Act No. 14 of 2002 on Tax tribunal. Judges are required to have a special skill at the same time in-depth understanding of the scope of duties and obligations. One element that distinguishes a profession Tax tribunal judge by profession other judges is the recruitment process as well as the knowledge that is specialized in the field of taxation for each person who will carry out this profession. The requirement for prospective judges the Tax tribunal are required to have knowledge in the field of taxation as stipulated in Article 9 of Law No. 14 of 2002 on Tax tribunal, becoming one of the inhibiting factors for prospective of judges who come from outside the Ministry of Finance to be appointed as Judge of Tax tribunal.
2. The principle of independence must be manifested in the attitude of the judges in examining and deciding that it faces a tax dispute. Independence is a form of accountability of the judicial authorities, meaning that the independence of judges not being used for anything other than the interests of upholding the law and justice. Based on the the research results indicate that the Court of Tax examine and decide the tax dispute has been carrying out its obligations which reflect the independence and the independence



of judges and impartially and has fulfilled the principles of independent judicial power, in accordance with the provisions of Article 24 of the Constitution of 1945 and other regulations.

3. Independence of judiciary, essentially aims to obtain a ruling that the fairest consideration and authority to judge independently without influence or interference by other parties. Thus the judicial power should avoid things that are related to the interests of the parties. Independent judicial authority and impartiality will only be realized if the judge is only subject to the applicable legal requirements and prioritizing justice that live and thrive in the community. Based on the the research results, the Tax tribunal judge to examine and decide the tax dispute is not affected by the parties to impede the independence and freedom of the judge. Internal factors such as the intervention of the Ministry of Finance and Regional Government, as well as external factors such as the provision of gratuity and the pressure of public opinion formation undertaken by the parties to the dispute and does not affect the Tax tribunal judge in examining and deciding tax disputes.

#### RECOMMENDATIONS

1. Need to be enhanced revenue administration requirements, especially requirements of the Tax tribunal judge has expertise and experience in the field of taxation or customs at least 15 years, these requirements show partiality to the civil servants in the Ministry of Finance only. It is

suggested that administrative requirements are amended to provide greater opportunities for public participation can participate as a candidate Tax tribunal judge, especially for academics, especially lecturers of taxation and tax attorney who is experienced.

2. To ensure the independence and freedom of the judge Tax tribunal to examine and rule on the dispute taxes, necessary to improve the Article 5 of Law No. 14 of 2002 on the Tax tribunal, which deals with the duality guidance to the Tax tribunal to realize the Tax tribunal as a judicial authorities that is independent in under the guidance of the Supreme Court, either development organization, administration and finance as well as technical guidance for the judiciary as an organizer of the highest judicial authority in Indonesia.
3. To avoid the influence of the parties to the dispute, the Tax tribunal Judge mandatory to obey, complies and implement the code of ethics judges as stipulated in the Decree with the Chairman of the Supreme Court and the Chairman of the Judicial Commission of Representatives on March 5, 2009 Number: (047/(KMASK B●IV●2009))/((02/SKB)P.K Y●IV●2009) on the Code of Ethics Judge. Improving the welfare of the judge by providing benefits to the Tax tribunal judge as the state officials who carry out the task of judicial authorities in the field of tax disputes as stipulated in Article 8 paragraph (3) of Law No. 14 of 2002 on Tax tribunal.

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