



Consideration of Judges in PPh Correction Disputes Article 23: Review of PK Decision Number 5360/B/PK/CHD/2024

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ABSTRACT

This article analyzes in depth the legal considerations of the Supreme Court in the judicial review decision (PK) number 5360/B/PK/Chjk/2024 relating to the dispute over the correction of Income Tax (PPh) Article 23 on the payment of the coal selling commission by PT Arzara Baraindo Energitama to PT Maceral Energitama. The dispute stems from differences in interpretation between taxpayers and tax authorities regarding the juridical character of the payment, whether it is a remuneration for services included in the object of withholding income tax Article 23, disguised dividends, or not both. The Directorate General of taxes determined the correction on the basis that the payment was not supported by evidence of the provision of real services and did not qualify as a deductible expense under the tax provisions. The Tax Court, through the previous ruling, confirmed that the coal selling commission did not meet the characteristics of Service Remuneration as stipulated in Article 23 of the Income Tax Law and was also not a dividend as referred to in Article 4 paragraph (1) letter g of the Income Tax Law. However, the court retained the correction of the DGT because the payment did not meet the criteria for deductible expenses under Article 6 paragraph (1) of the Income Tax Law. The Supreme Court in the PK level affirms *Judex Facti* consideration by stating that the subject matter of the dispute is closely related to the assessment of facts, so it is beyond the scope of the PK examination which can only be submitted on the basis of real errors, errors of judges, or the discovery of new evidence (*novum*). Through the approach of normative legal research and analysis to the construction of judges' considerations, this article finds that the Supreme Court affirms important legal positions: (1) PK cannot be used to re-examine the facts that have been examined in the trial of the previous level; (2) the economic substance of a transaction becomes a valid basis for making tax corrections; and (3) evidence related to the character of the transaction and the existence of services is within the taxpayer's burden. This ruling has significant practical implications for the consistency of the application of tax law, the legal certainty of tax administration, as well as the limitation of judicial authority in tax disputes.

INTRODUCTION

Income tax (PPH) Article 23 is a tax withholding instrument attached to the payment of certain income, especially on income derived from Capital, Services, and certain activities as stipulated in the Income Tax Law. As a withholding tax, income tax Article 23 is an important part of the Indonesian tax system because it places the income giver as a withholding agent who is responsible for its deposit and reporting.

Normatively, the provisions of Income Tax Article 23 stipulates that tax deductions are made on payments in the form of fees for Technical Services, management services, consulting services, and various other types of services stipulated in government regulations and regulations of the minister of Finance. The tax literature emphasizes that the determination of whether a payment includes remuneration for services is not based solely on the terminology in the agreement, but must be seen from its economic substance. Waluyo (2019) and Mardiasmo (2020) mention that a cost can be categorized as a reward for services if it meets three main elements:

1. The existence of real activities carried out by the service provider, which can be proven through reports, correspondence, physical evidence of work, and the resulting output.

2. The existence of direct benefits (direct benefit) for the recipient of the service, IE these activities contribute to business activities, business processes, or decision-making.

3. The existence of a legal relationship as a basis for payment, generally in the form of a cooperation agreement, letter of appointment, or other document agreed by both parties.

The application of these three elements is often at the center of tax disputes, given the differences in interpretation between taxpayers and fiscal authorities. In various tax dispute literature and practices, the DGT applies the principle of substance over form, which is to assess transactions based on activities or benefits that actually occur, not just based on formal agreements. Therefore, in making corrections to the object of Income Tax Article 23, the DGT not only looks at the existence of a contract but also the existence of substantive evidence that shows that a service was actually performed.

When substantive evidence is insufficient or does not indicate the existence of activities directly related to the provision of services, the DGT has a basis to conclude that the transaction does not belong to the category of remuneration for services under the provisions of taxation. This is then one of

the bases for correction in the dispute analyzed in this article.

Dividends, as stipulated in Article 4 paragraph (1) letter g of the Income Tax Law, include the distribution of profits directly or indirectly to shareholders. In the doctrine of taxation, dividends are not only understood as a formal distribution of profits based on the decision of the general meeting of shareholders (GMs), but also include disguised dividends (constructive dividends), that is, payments that are economically a division of profits, although packaged in other forms such as loans, remuneration for services, or other payments to shareholders.

In the context of tax disputes, fiscal authorities often use the substance approach to assess whether the payment is actually a disguised dividend. But its implementation requires an in-depth analysis of the relationship of the parties, the purpose of the payment, as well as evidence of the underlying activities.

In the case under review, the Tax Court concluded that the payment of the coal selling commission was not a remuneration for services and at the same time was not a dividend, because it was not clear that the payment was a distribution of profits to shareholders. Therefore, it is necessary to evaluate the character of the transaction under the terms of the fee according to tax law.

Judicial review (PK) is an extraordinary legal remedy in the Indonesian judicial system that can only be filed against Tax Court decisions that have permanent legal force. PK in tax disputes is subject to the provisions of Article 77 to Article 91 of the Tax Court Act. Because of its extraordinary remedy, the reason for filing PK is very limited and restrictive.

Yahya Harahap (2015) asserts that the PK is not intended to reopen fact-checking or reassess evidence that has been conducted by previous level courts. The realm is entirely under the authority of the *Judex Facti* (Tax Court). Therefore, the PK can only test whether there is an error in the application of the law or a judge's oversight, not to re-argue the facts or evidence that has been examined.

In many Supreme Court rulings, including those subject to review in this article, The Supreme Court has consistently stated that a PK application will be rejected if the reasons presented by the applicant relate to an assessment of the facts, such as the existence of services, the relevance of costs, or the legal relationship of the parties. Since the assessment of facts is the domain of *Judex Facti*, the Supreme Court is not authorized to modify or reassess such considerations at the PK level.

Tax disputes in Indonesia are a complex phenomenon and are often triggered by differences

in interpretation between taxpayers and fiscal authorities on tax norms. One of the most frequent issues is regarding the character of a transaction, especially in the context of withholding income tax (PPh) Article 23. The norm for withholding income tax Article 23 provides that a number of types of income from capital, delivery of services, or certain activities are required to be withheld by the party making the payment. The determination of whether a payment is included in exchange for services, disguised dividends, or other forms of income is essential, since the consequences have a direct effect on the taxpayer's withholding, reporting, and depositing tax obligations.

In the practice of tax administration, the problem of determining the character of transactions often stems from incomplete documentation, unclear agreements, and differences in emphasis between formal aspects and economic substance. The Directorate General of taxes (DGT) as a fiscal authority puts forward the principle of substance over form in assessing a transaction, while taxpayers tend to refer to formal aspects based on documents prepared. This inconsistency often leads to disputes that must be resolved through the mechanism of objection, appeal, Cassation, to extraordinary legal remedies in the form of judicial review (PK) to the Supreme Court. This reflects that tax disputes are not only administrative issues, but also issues of legal interpretation that require in-depth juridical analysis.

The case that is the focus of the study in this article is the Supreme Court Judicial Review Decision number 5360/B/PK/Chjk/2024 between PT Arzara Baraindo Energitama as the PK applicant and the Director General of taxes as the PK respondent. This dispute originated from the correction of the tax authority against Income Tax Article 23 owed Rp3,050,935,179 which came from the payment of the coal selling commission by the applicant to PT Maceral Energitama. The DGT is of the opinion that the payment does not meet the criteria for remuneration for services that can be proven to exist in real terms and cannot be recognized as an expense that can be deducted from gross income. As a result, the DGT established a correction to Article 23 of the Income Tax and stated that the withholding tax was not carried out as intended.

The Tax Court, through an appeal decision, stated that the payment of the coal selling commission did not meet the characteristics of remuneration for services as stipulated in the provisions of Income Tax Article 23 and also did not constitute a dividend as referred to in Article 4 paragraph (1) letter g of the Income Tax Law. However, because the payment was not supported

by sufficient evidence showing its relationship with business activities and income, the court maintained the correction of the DGT on the basis that the fee could not be charged in accordance with Article 6 paragraph (1) of the Income Tax Law. Not accepting the decision, the taxpayer filed a PK legal remedy on the pretext of a judge's oversight and error in the application of the law.

The Supreme Court in the PK ruling finally rejected the taxpayer's application. In its consideration, the Supreme Court held that the dispute is closely related to the assessment of facts and evidence, which is the realm of *Judex Facti* and cannot be retested in the PK application. In addition, the Supreme Court did not find any errors of judges, errors in the application of the law, or new evidence (*novum*) that could be the basis for changing the decision of the Tax Court.

Based on this description, the review of this decision is important to provide a more comprehensive understanding of the limits of the judge's authority at the PK level, the scope of application of Article 23 of the Income Tax norm, and how the court assesses the character of a transaction in a tax dispute. In addition, this article is relevant to provide legal certainty for Tax Practitioners, Tax authorities, academics, and taxpayers who face similar problems.

With this background, the analysis of the PK decision number 5360/B/PK/Pjk / 2024 is important to provide a deeper understanding of the juridical construction in assessing transaction character, the DGT's authority in implementing administrative Corrections, and the limits of extraordinary legal remedies in tax disputes. In addition, this study is relevant for the development of tax doctrine, State Administrative Law Literature, and tax professional practices that require theoretical and practical foundations in preparing legal arguments.

Based on the description, the formulation of this research problem is as follows:

1. What is the legal basis for the correction of PPh Article 23 in the coal selling commission payment dispute?
2. What are the considerations of the Tax Court in determining the character of the payment as not an object of Income Tax Article 23 but still cannot be charged as a fee?
3. How is the Supreme Court's consideration in rejecting PK's application and what are the limits of authority in PK's legal efforts in tax disputes?

METHOD

This study uses the normative legal research method which generally focuses on the assessment of legal principles, norms of legislation, legal doctrine, and relevant court decisions. This method was chosen because the problems in the study related to the interpretation of tax norms, the application of the provisions of Income Tax Article 23, as well as the evaluation of the consideration of judges in judicial review decisions. Normative legal research puts the law as a rule or norm written in legislation and judges' decisions, so it is appropriate to use it to study tax corrections and legal constructions in tax disputes.

RESULTS AND DISCUSSION

A. Coal Sales Commission Payment Character

One of the main issues in this dispute is the determination of the character of payment of coal selling commission by PT Arzara Baraindo Energitama to PT Maceral Energitama. In the perspective of tax law, determining the character of a payment is very important because it has direct implications on the obligation to withhold income tax Article 23, recognition of costs, as well as the potential for correction by the tax authorities. When a payment is claimed in exchange for services, the taxpayer must be able to show evidence of the actual activities carried out by the service provider, the direct benefit to the recipient of the service, as well as the legal relationship on which the payment is based.

1.1. DJP analysis of payment character

DJP argues that the coal selling commission can not be qualified as remuneration for services because:

1. There is no concrete evidence of services performed by PT Maceral Energitama.

2. No documentation was found showing any marketing activity, buyer search, or other activities commonly performed in the provision of sales commissions.

3. The payment appears to be more related to the internal relationship of the shareholders and the process of transfer of shares, so it does not reflect a reasonable business relationship (arm's length transaction).

Thus, according to the DJP, the payment does not meet the service elements as in Article 23 of Income Tax.

1.2. Tax Court Analysis

The Tax Court in its ruling stated that the coal selling commission can not be considered as:

* remuneration for services, because there is no substantive evidence of service provision activities;

* dividends, since there is no indication that the payment is a distribution of profits to shareholders;

* deductible expenses because they do not meet the requirements directly related to earning income as stipulated in Article 6 paragraph (1) of the Income Tax Law.

The panel of judges considered that all payments claimed did not have a direct relationship with the company's operational activities, so they could not be recognized as expenses. The position of the Tax Court shows that the existence of an agreement is not enough to prove merit; there must be verifiable real activity.

1.3. The Importance Of Substantive Proof

This case shows that substantive evidence is a fundamental element in avoiding correction. Taxpayers should be able to show:

- * activity report,
- * letter of appointment,
- * correspondence,
- * the result of the work, or
- evidence of benefits.

The absence of such evidence makes the value of the transaction is seen as unnatural and has no economic substance.

Thus, the correction of the payment of the coal selling commission is considered legally valid.

B. DJP correction in tax law perspective

The authority of the DJP to make administrative Corrections is part of the supervisory and enforcement functions of compliance in the self-assessment system. Corrections to claims for fees or tax deductions are made based on basic principles in the Income Tax Law and the KUP law. In this case, the DJP correction is based on the following three fundamental principles:

2.1. The Principle Of Materiality

The principle of materiality requires that any recognized cost must have actually occurred and be adequately substantiated. Materiality requires existence:

- * supporting documents,
- * authentic proof of transaction, and
- * the economic logic underlying the payment.

In this case, the DJP considered that there was no solid evidence showing real merit, so the principle of materiality was not met.

2.2. The principle of direct linkage (Directly Related to Earning Income)

Article 6 paragraph (1) of the Income Tax Law provides that only expenses directly related to business activities can be charged. Direct linkage assessment refers to:

- causal relationship between expenditure and income,
 - * cost contribution to operational activities,
 - * the prevalence of costs in similar business practices.

Since the payment of the commission does not correlate with the profitable sales activities of the company, the DJP considers that the linkage conditions are not met.

2.3. Principle Of Proof

Article 13 of the KUP law confirms that the burden of proof rests on the taxpayer in demonstrating the correctness of documents and transactions. If the evidence is insufficient, the DJP is authorized to make corrections.

In this case, the taxpayer is not able to show evidence of service provision activities or evidence of benefits received by the company. Therefore, the correction of the DJP is legally valid and logical in the perspective of the tax administration.

C. Supreme Court considerations in judicial review

The Supreme Court in Decision No. 5360/B/PK/CHD / 2024 rejects all taxpayer applications. The consideration of judges has important relevance for the doctrine of tax procedural law and the limits of the authority of the PK.

3.1. Dispute Is A Matter Of Fact

The Supreme Court stated that:

- * assessment of the existence of services,
- * cost relevance, and
- * the relationship between payments and business activities

it is *Judex Facti*, not *Judex Juris*.

Since the PK can only test for legal errors, not facts, the taxpayer's postulate cannot be granted.

3.2. There is no oversight of Judges or errors in the application of the law

The Supreme Court affirmed that the Tax Court has:

- * implement the provisions of Income Tax Article 23 appropriately,
- * interpret Article 4 paragraph (1) letter g of the Income Tax (dividend) law correctly,
- * assess evidence according to the evidentiary principle in tax law.

No legal errors were found that can be the basis of PK as stipulated in Article 91 of the Tax Court law.

3.3. No Novum

The PK applicant did not present any new evidence that could change the verdict. The evidence presented only repeats the old evidence, so it does not qualify as *novum*.

Thus, the Supreme Court considered that PK had no legal basis and should be rejected.

D. Implications Of The Verdict

This ruling has broad implications for the practice of tax administration and tax justice in Indonesia.

4.1. The importance of concrete evidence in determining the character of the transaction

This ruling affirms that the character of a transaction cannot be determined solely on the basis of an agreement, but must be supported by concrete evidence indicating economic substance. Taxpayers must prove:

- * types of services,
 - the person who performs,
 - * service output,
 - * service benefits for the company.

4.2. Stricter fee recognition standards

The panel of judges emphasized that the costs must meet:

- * relevance,
- * accountability, and
- * direct linkage to income.

Costs that are not directly related to business activities or do not provide tangible benefits cannot be charged.

4.3. PK limitation as an extraordinary legal remedy

This ruling confirms that:

- * PK is not a forum for repeat proofs,
- * the assessment of the facts is final in the Tax Court, and
- * PK is only for a judge's oversight or legal error.

This strengthens legal certainty in the tax dispute settlement mechanism.

CONCLUSION

Based on the analysis of the Supreme Court Judicial Review Decision number 5360/B/PK/Chjk/2024 and the doctrinal study of the relevant tax provisions, several conclusions can be drawn as follows:

Correction of Income Tax Article 23 by the DJP has a strong legal basis because it is related to the vagueness of evidence of services and non-fulfillment of fee recognition requirements.

The DJP made a correction to the coal selling commission payment because the taxpayer could not show substantial evidence of the services provided by the payee. The absence of evidence of actual activities, reports on the implementation of services, work output, or correspondence that supports making such payments cannot be qualified as remuneration for services under Income Tax Article

23. In addition, the payment also does not qualify as a deductible expense as stipulated in Article 6 paragraph (1) of the Income Tax Law, which requires that the cost must have a direct relationship with business activities and can be proven by valid documents.

The Tax Court has comprehensively assessed the evidence and concluded that the payment of the coal selling commission is not a service, not a dividend, and not a deductible expense. The Tax Court concluded that the payment did not meet the qualifications of the service because there was no evidence of service activity carried out. Such payments also cannot be considered dividends or disguised dividends, since they do not show any element of profit distribution to shareholders. In addition, the payment has no causal relationship with the company's business activities so it cannot be charged as a fee. Thus, the decision of the Tax Court has been consistent with the principle of substance over form (substance over form) and the principle of cost relevance in taxation.

The Supreme Court rejected PK's application because it did not meet the legal reasons that were the conditions for PK. The Supreme Court affirmed that the PK application was not qualified as provided for in Article 91 of the Tax Court law because it was not found:

- * the judge's negligence,
- * mistakes, as well as
- * valid and relevant novum (new evidence).

The Supreme Court also considered that the subject matter of the dispute relates to the assessment of facts and evidence, which is entirely within the scope of the authority of the *Judex Facti* (Tax Court). The PK cannot be used to request a reassessment of facts that have been decided by the Tax Court. Thus, the consideration of the Supreme Court showed consistency in the limitation of the scope of the PK as an extraordinary remedy. This ruling confirms the importance of documentation and substantive substantiation in tax practice.

This case shows that formal aspects such as the existence of an agreement are not sufficient to avoid correction if they are not supported by substantive evidence. The principle of substance over form is increasingly emphasized in tax law enforcement, so taxpayers need to pay great attention to the completeness and quality of documentation.

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