

Evaluating the Regulation of Indonesian Tax Dispute Resolution: Study Comparative in United Kingdom

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Abstract: Statistical data in the tax court shows the increasing tax dispute in Indonesia. Taxpayers spend over 3 years waiting for the legal certainty. The regulation of Indonesian Tax Dispute Resolution are in the Law No. 16 of 2009 concerning general provisions and tax procedures (UU KUP) and the Law No. 14 of 2002 concerning tax court. Based on the evaluating in the regulation of Indonesian Tax Dispute Resolution, the objection need 12 months and litigation process need 15 months. OECD has given a notion on the importance of cooperation between taxpayer and tax administration. Enhancing the relationship with the taxpayer has been implemented by some countries by giving quick tax dispute resolution service through alternative dispute resolution such as mediation. ADR is expected to be able to create a good relationship right after the dispute ended. Indonesia is able to make a legal breakthrough on the tax dispute resolution using ADR. ADR has the chance to control tax dispute resolution in Indonesia through administrative effort in form of objection. Discussion with the taxpayer, concerning the objection is expected to provide win-win solution in reaching an agreement regarding to the obligation of tax payment.

Key words: Tax dispute, alternative dispute resolution, Indonesian Tax Dispute Resolution, tax administration, tax payment, obligation

INTRODUCTION

Indonesian government has been applying self-assessment system in collecting tax in order to keep people's trust, raise self-awareness in paying tax and enhance people's role in contributing to the country's income. As we know, since, there was tax reform on Law No. 6 of 1983 on general provisions and tax procedures, Indonesia has changed the system of tax collection from official assessment into self-assessment system. In this system, taxpayers have rights to fill in their own tax return, calculate their tax, report and pay their tax to the taxation office. This system trusts the taxpayer in order to enhance their honesty in paying the tax. Self-assessment system is stated under Article 12 of Law No. 6 of 1983 on General Provisions and Tax procedures, Law No. 16 of 2009 on Government's Regulation in Lieu of Law No. 5 of 2008 on Fourth Revision on Law No. 6 of 1983 on general provisions and tax procedures (UU KUP).

Based on the control of self-assessment system in the general provisions and tax procedures, it implicitly stated the principle of trust, simplicity and modesty. Principle of trust describes that taxpayer is able to

calculate his/her own tax honestly. Furthermore, principle of simplicity and modesty can be seen from its easiness in paying. The taxpayer can easily fill in annual tax return by using e-Filing which can be accessed through android system.

As the increased number of taxpayer through self-assessment system and understanding of rights and obligations of tax, tax dispute emerged between taxpayer and Directorate-General of Taxation. This condition needs fair resolution under fast, affordable and simple procedures and processes. In order to resolve tax dispute in 2002 the government issued Law No. 14 of 2002 on Tax Court (known as Tax Court Law). Court law replaced the tax dispute settlement agency as the institution that fulfilled the taxpayers rights.

Tax court takes control of inspecting and resolving tax dispute between taxpayer and tax authorities as the result of issuance of court ruling which can be appealed or claimed toward tax court based on the tax legislation (Article 25 (1) UU KUP). Court ruling of tax is a final appeal and holds permanent legal entity (Article 77 (1) UU No. 14 Tahun 2002 about the tax court), so, the disputing parties could not do other legal remedies unless they have reason to do reconsideration

(Article 91 of Tax Court Law). The only tax court is located in the capital city which has jurisdiction all over Indonesia.

As the increasing number of taxpayers, the number of tax dispute is also increasing every year. According to statistical data in the secretariat of the tax court (<http://www.setpp.kemenkeu.go.id/Statistik>, 31 January 2017), the number of tax dispute in 2012-2016 was 49.257 cases. The number of cases which had been pleaded was 44.659 and those which hadn't been pleaded was 4.598. The number of those cases is imbalance with the number of tax court judge who were only 55 judges. So, in average, each judge got 291 cases every year. So, if it is divided based on the number of the judges, 18 judges, everyone got 889 cases every year. This condition is quite apprehensive. Therefore, this factor made tax dispute resolution takes longer, even 3 years. According to Radbruch, law has three aspects; justice, utility and certainty. When the resolution of tax dispute in Indonesia could not meet those objectives of law, a breakthrough is needed to meet the justice for the society.

In 2008, OECD (Organisational for Economic Cooperation and Development) proposed an idea on the importance of relationship between taxpayer with administration of taxation in the form of cooperative. OECD observed most countries and saw that the formed relationship between taxpayer and tax authorities still used old tradition paradigm (Anonymous, 2010). The cooperative model between taxpayer and tax authorities is a new trend which was mostly used in several countries like Australia, Bangladesh and Netherland. In recent time's the Australian Taxation Office (ATO) in Australia have adopted various forms of in-house facilitation processes following the conduction of pilot trials (Jones, 2017). This study will evaluating the regulation of Indonesia tax dispute by enhancing the relationship between taxpayers and tax authority.

MATERIALS AND METHODS

The evaluating of Indonesian Tax Dispute Resolution procedure: The effort of taxpayer in obtaining justice is part of their rights in the law. There are legal remedy administration and litigation done to obtain the justice (Ilyas and Burton, 2012).

Legal remedy administration: It is possible for Directorate General of Taxation to issue tax assessment letter which does not conform the real condition after they audited the tax. It might be caused by an error, no dispute between taxpayer and auditor included, error written form or miscalculation for example in discrepancy of tax rate or error in adjusting non-taxable income. On

the fallacy in applying the provision in legislation, rectification can be done. Moreover, for the issued tax assessment letter, legal remedy of objection can be proposed to obtain justice in tax payment according to taxation law. Here, are legal remedies in form of rectification, reduction or revocation and objection as part of obtaining justice through legal mechanism of tax administration.

Rectification of tax assessment letter: In Article 16 of Public Tax Office Law, it is clearly stated that rectification of tax assessment letter can be done by the Director General of Taxation or at the request of taxpayer. The definition of rectification in law is limited on three aspects; rectification for errata, rectification for miscalculation and rectification for mistake in applying certain provision in tax legislation. In Article 2 Paragraph 2 of the Minister of Finance Regulation No. 19/PMK.03/2008 on the Procedure of Rectification Errata, Miscalculation and/or Mistake in Applying Certain Provision in Tax Legislation, stated that the rectification for the mistake of tax credit in value added tax could only be done if there is difference in tax input as the tax credit and does not contain dispute between the tax authority and taxpayer.

Reduction or revocation of administration charge: Reduction or revocation of administration charge set in Article 36 Paragraph 1(a) of Public Tax Office Law regulated further in the Minister of Finance Regulation No. 21/PMK.03/2008 implemented in February 6, 2008. In Article 2 Paragraph 2 the Minister of Finance Regulation stated that administration charge which can be reduced or wiped out includes administration charge in the tax collection letter, tax underpayment assessment letter or additional tax underpayment assessment letter. Specifically for reduction or revocation of administration charge as stated in tax underpayment assessment letter and additional tax underpayment assessment letter is only applied in the tax assessment letter without any objection or propose objection but it has been revoked by the taxpayer or propose objection but it is not qualified as objection as stated in Article 25 Paragraph 4 of general provisions and tax procedures.

Reduction or termination of tax assessment letter: The reduction or termination of tax assessment letter is regulated in Article 36, Verse 1, letter of general provision and taxation procedures law. It is stated that the reduction or termination is performed by the Tax Directorate-General of Taxation because of his position or tax payer based on justice aspect caused by the improper tax provision letter. It, for example, might be addressed to the tax payer whose objection filing is

rejected, since, it does not meet the formal requirement (unpunctual filing of objection letter) although the material requirement has been fulfilled.

Afterward, Article 2, Verse 1 of the regulation of Minister of Finance No. 21/PMK.03/2008 states that the tax assessment letter, tax receipt and the inspection result can be reduced or terminated by the Directorate-General of Taxation either based on the position or tax payer's request including:

- Reduction or termination of improper tax provision letter
- Reduction or termination of improper tax receipt
- Termination of tax provision letter of the inspection result is performed without any notification letter of the inspection result or without final discussion of the inspection result

The provision elaborates that the reduction or termination of tax provision letter can be requested by the taxpayer if his/her objection request is rejected because the formal requirements are not fulfilled as regulated in Article 25, Verse 4 of the Law of the Republic of Indonesia No. 28 of 2007 concerning the Third Change of Law No. 6 of 1983 concerning the General Provision and Taxation Procedures Law. The examples of unfulfilled formal requirement are the taxpayer who does the objection filing but has exceeded the limit time, 3 months over, since, the tax provision letter sent or the taxpayer does not pay off the amount of tax as it has been agreed in the final discussion of the inspection result.

Legal effort through objection: In the inspection process, the calculation of the indebted tax as the inspection result or fiscal research may be bigger than the taxpayer's calculation. Thus, the remaining amount is billed through the issuing of underpaid tax assessment letter or additional underpaid tax assessment letter. However, for the sake of tax justice, the process will still be progressed. If the taxpayer considers that the inspection calculation is incorrect, the law can give the taxpayer the right to file an objection.

Objection is an act chosen by the taxpayers if they feel less satisfied or unsatisfied with the tax provision charged on them or with the reduction or collection carried out by the third party. It can be performed through delivering the letter of objection to the Directorate-General of Taxation. The objection decision letter is the decision letter of objection (issued by the Directorate-General of Taxation) toward the tax provision letter, reduction or collection carried out by the third party. It is done by the taxpayer. The decision of objection is need 3-12 months.

The objection is filed by the taxpayer by giving the objection letter only to the Directorate-General of Taxation caused by something (Article 25, Section 1, General Provision and Taxation Procedures Law):

- Underpaid tax assessment letter
- Additional underpaid tax assessment letter
- Overpaid-tax assessment letter
- Nil tax assessment letter
- Reduction or collection carried out by the third party based on the provision of tax legislation

Based on the regulation of administration legal effort especially in objection (there are dispute) is need a long time to final the decision. The taxpayers must be waiting until 12 months to get certainty.

Legal effort through tax court: The legal efforts through court cover.

Legal effort through appeal: To solve the tax dispute occurred in taxation field between taxpayer or tax bearer and the fiscal officer as the result of the released or issued decision made because of the objection which made it possible to request an appeal to the tax court. Moreover, if the taxpayer is not satisfied with the associated decision, the taxpayer can file a request to make an appeal to the tax court related to the objection decision letter based on the prevailing tax legislation.

Legal settlement through law suit: Law suit is the legal effort that may be carried out by the taxpayer or tax bearer toward the tax billing or unsatisfying decision based on the prevailing tax legislation.

The things which can be brought to the tax court or considered as law suit object based on Article 23, Section (2) of the general provision and taxation procedures law are:

- The implementation of forced letter, letter of confiscation or auction announcement
- The decision of prevention of tax billing
- The decision related to the implementation of taxation decision, beside those mentioned in Article 25, Section 1 and Article 26
- The issue of tax provision letter or objection decision letter which is not in accordance with the procedure or ways as regulated in tax legislation

Next, Article 37, Government regulation Number 74 of 2011 asserts that the decision related to the implementation of taxation decision which is brought to the tax court as a law suit as mentioned in Article 23, Section 2, Letter c of general provision and taxation procedures law.

Law suit does not terminate or inhibit the execution of tax billing or taxation obligation. The litigant can file a request to terminate the tax billing execution during the tax dispute inspection until the tax court decision is taken. The taxpayers need 15 months to waiting the certainty. In the implementation, it can more than 15 months (<http://www.setpp.kemenkeu.go.id/Statistik>, 31 January 2017).

The procedure is unfair to taxpayers. The time for tax dispute resolution can't give advantage to taxpayers in economic perspective. It need hight cost and a long time to get fairness.

Legal efforts of judicial review: Judicial review is the final legal effort that can be performed by both the taxpayer and Directorate-General of Taxation. If the associated party is unsatisfied/not satisfied yet regarding the tax court decision, the parties involved in the dispute can file a judicial review to the supreme court through tax court. It can only be filed once. The effort of judicial review can be carried out by the parties using certain reasons regulated through the provision of Article 91 in Law No. 14 of 2002 concerning the tax court. The taxpayers need 6 months to waiting the decision.

The tax dispute settlement in Indonesia has been regulated in general provision and taxation procedures law and tax court law. To simplify the understanding of the stages of tax dispute settlement in self-assessment system, the flow diagram of the taxpayer's effort staging in finding justice is shown in Fig. 1.

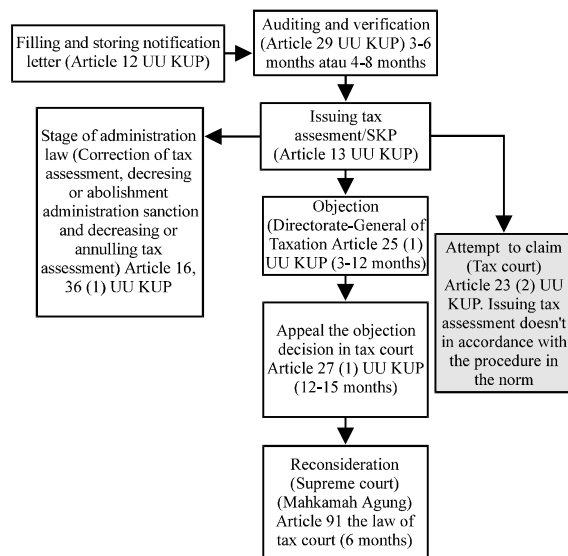


Fig. 1: The procedure of Indonesian Tax Dispute Resolution (UU KUP and the law of tax court)

RESULTS AND DISCUSSION

Enhanced relationship between taxpayer and revenue bodies: To face economic crisis and the increase of tax offense and aggressive tax planning done by big company (MNE) needs a model initiative related to the relation of taxpayer and fiscal. To improve the taxpayer compliance especially MNE, there is an offer of new model named cooperative compliance model (improving taxpayer compliance through cooperation). This model is considered to be able to unite two opposite destinations that is the nation is able to guard the tax income (is not disadvantaged by the taxpayer's aggressive tax planning) and can improve the advantageous business climate for the company, therefore, the company can contribute the investment to help the nation's economic growth, especially for developing country.

The model of cooperation between taxpayer and fiscal is a new trend that has been used by many countries. More than two decades, the recent government has changed the taxing system through cooperation (friendly) and support the businessperson in running their business (encourage entrepreneurship). Through OECD (Organisational for Economic Cooperation and Development) and United Nation have supported the nations members to form the international taxing system and suggested to avoid taxing dispute across nation and if it happens, it has to be resolved as soon as possible (Anonymous, 2010).

The model that improves the cooperative compliance can be a solution for the taxing administration problem in developing country. If this model is used, it will be able to create the pursuance of taxpayers effectively and efficiently. The concept through cooperative model in this international taxing is first introduced in the level of national taxing administration by Dutch through program named "horizontal monitoring" in 2005. This program gets wider attention in 2008 in OECD, introduced taxing administration through "Study into the Role of Tax Intermediaries" (OECD, 2008).

In the OECD report in 2008, there is a chapter explains the suggestion of the importance of developing the relations of taxpayers and fiscal (taxing administration). In 2013, OECD issued the more complete suggestion about the basic of the importance of relations between taxpayers and taxation administration through cooperation (Anonymous, 2013).

Jeffrey Owens cites that to improve the taxpayer's pursuance, the tax administration regulated by the government are wished to be not only through law

enforcement approach but also through the improvement of taxpayer service (Owens, 2012). Today, there are many countries which actively improve their tax administration through commercial awareness approach, especially in industry. Moreover, the tax administrators are also given power; they have better awareness in observing the taxpayers in running their businesses. Some countries have improved the taxpayers service through the Compliance Advance Program (CAP) in America and Horizontal Monitoring in Dutch (Netherlands), since 2005 (Owens, 2012).

The member countries are developing the relation between taxpayers and fiscal as recommended by OECD. According to the OECD's observation, country has placed itself as stronger one than taxpayers in this relation, tax authority must work under the law. This relation tends to lack the trust of taxpayers and give limitation of openness. This kind of relation tends to create friction and it is disadvantageous for the government (fiscal). The kind of relation offered by OECD is the quality improvement through trust given to the taxpayers, the transparency of taxpayers and fiscal in tax administration using commercial awareness approach, openness and responsive. This relation is hoped to be advantageous for both sides. They need transparency and open communication, so, they have to make an agreement in the form of cooperation and trust (Dawn, 2014).

The experience tax dispute resolution in United Kingdom: Tax institute in UK named Her Majesty's Revenue and Customs (HMRC) in 2011 had tried to create a program to end the dispute through ADR (Anonymous, 2015). The first program is providing ADR for big enterprises and individual taxpayers who have complex tax problem. This ADR process will involve independent third party that is accredited mediator. The second program is providing ADR for Small and Medium-sized Enterprises (SMEs) and individual taxpayers. In the ADR process for SMEs, HMRC provides competent and skilled facilitator in ending the dispute (without involving mediator). In the mediation and facilitating program in ending this tax dispute, HMRC involves neutral third party such as mediator and facilitator. Recently, this program is considered successful and used a lot to resolve the individual taxpayers cases and SMEs. But HMRC is more careful in mediating some big complex cases (Fig. 2).

According to the HMRC's evaluation, observation and analysis, the ending of tax dispute through mediation is an effective strategy in overcoming the tax

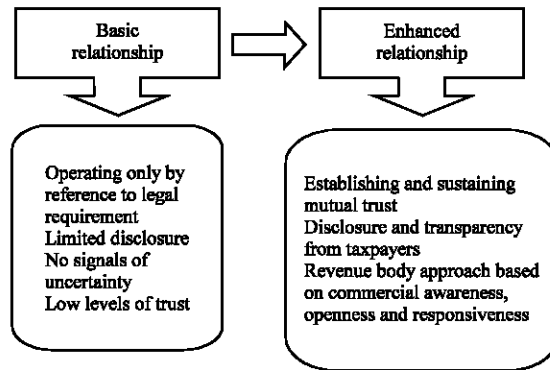


Fig. 2: Enhanced relationship

dispute in UK (Anonymous, 2015). Moreover, it also helps to reduce the time and cost in resolving this situation (especially, individual taxpayers in small and medium scale). Mediation can shorten the dispute which was between 8-23 months becoming 61 days up to 2 months faster. Mediation also helps to reduce the cost and time needed in overcoming the tax dispute in the big and complex cases (Dawn, 2014).

According to HMRC's opinion, qualitatively, there are some benefits of mediation process. Based on the observation, HMRC finds that even though there is no agreement during mediation, mediation can help to limit the issue. Besides, mediation also helps in reforming the relation with taxpayers and knowing the different opinions and beliefs of taxpayers. It becomes the reason why mediation is able to add value in the process of overcoming taxing dispute. Mediation can be advantageous for both parties to listen each other.

The observation result shows expected result, next HMRC has commitment in making ADR as a part of tax dispute overcoming process permanently (Anonymous, 2015). According to HMRC, the overcoming through ADR has been able to finish the dispute with efficient cost, through agreement and quicker time (the dispute completion through agreement). Taxpayers may request ADR as an alternative method to help resolving a tax dispute at any stage of the disputes procedures (Jones, 2017). Taxpayers are welcomed to use ADR if (<https://www.gov.uk/guidance/tax-disputes-alternative-dispute-resolution-adr>):

- There are different opinions of fact. There is a communication problem between taxpayers and HMRC
- The taxpayers want to know the reason why the evidence is rejected and why HMRC asks for other evidences

- HMRC needs explanation why they ask more information from taxpayers
- The taxpayers do not understand the HMRC's information and think that HMRC is making wrong assumption

Mediation cannot be used for all tax disputes. ADR is not allowed to resolve these disputes (<https://www.gov.uk/guidance/tax-disputes-alternative-dispute-resolution-adr>):

- Requests for time to pay similar issues
- Fixed penalties on the grounds of reasonable excuse
- Tax credits
- PAYE coding
- HMRC delays in using information
- Cases that HMRC's criminal investigators are dealing with
- Default surcharges

The principles in resolving the dispute through mediation can be seen implicitly through the objectives and vision of mediation as ADR by HMRC. Our purpose:

- We make sure that the money is available to fund the UK's public services
- We also help families and individuals with targeted financial support

Our vision, we will close the tax gap, our customers will feel that the tax system is simple for them and even-handed and we will be seen as a highly professional and efficient organization. Our way:

- We understand our customers and their needs
- We make it easy for our customers to get things right
- We believe that most of our customers are honest and we treat everyone with respect
- We are passionate in helping those who need it and relentless in pursuing those who bend or break the rules
- We recognize that we have privileged access to information and we will protect it
- We behave professionally and with integrity
- We do our own jobs well and take pride in helping our colleagues to succeed

- We develop the skills and tools we need to do our jobs well
- We drive continuous improvement in everything we do

According to the explanation above, there are the principles of openness, simplicity, efficiency, responsive and high professionalism.

ADR is potential for Indonesian Tax Dispute Resolution: Through the effort in improving the relation between taxpayers and tax authority (enhanced relationship) in the form of paradigm cooperative, then the tax dispute resolution in some countries start to use this method in form of mediation. As has been done by UK and Australia, ADR is considered to be able to reduce the number of tax dispute.

According to Eugen Ehrlich, core center of law development is not on the law or court decision but in the people themselves. Law must follow people's needs (Darmodihardjo and Sidharta, 1999). So, does with the regulation of tax dispute resolution in Indonesia, especially with the people's need of quick law warranty in form of dispute resolution. When Indonesia reforms its tax in 2007 has shown the relation with taxpayers, it is shown in the principle of openness in the Law No. 28 in 2007. But, some cases still use formal way that is through objection in court. Indonesia does not know ADR in tax dispute resolution. Some countries experiences and the offer given by OECD related to the better relation with taxpayers (in form of mediation) can be the reference of regulation change of tax dispute in Indonesia.

Theoretically, Gustav Radbruch explains that ideal and perfect law is if the rule is appropriate with the idea which is stakeholder aspiration as a party in charge that are nation, tax authority and taxpayers. The rule is considered ideal if it fulfills three requirements, that are (Tanya *et al.*, 2010):

- Gives justice (Richard justice)
- Gives legal security (Legal)
- Gives advantage (Right utility)

Based on those law objectives, mediation as ADR is hoped to be able to fulfill the law objective of tax dispute resolution in Indonesia in order to fulfill the principles of quick, minimal cost and simple.

First, justice, according to Gustav is an ideology (rechtsidee) refers to the justice theory of Aristoteles

that law justice is identical with general justice. The justice is marked with the good relation with others, prioritize others and being equal. While the offer from OECD to change the paradigm of relation between government and taxpayers is to create the tax justice. The tax dispute resolution through ADR in form of mediation is hoped to give continuous effect of good relation after the dispute because there is an effort of "win-win solution". It is different from the effort of dispute resolution in court, it tends to increase the tense of both parties which affects the good relation. Mediation is able to create proportional justice from the agreement of both parties.

The government requires the citizens to have awareness to pay tax on time to get the justice and quick legal security. This justice principle becomes good guidance to engage all people including citizens and officers. The dispute resolution through mediation indirectly gives advantage to both parties because the taxpayers do not have to pay much expense to get legal security and it is quick while the government will get stable income. Mediation will create equal rights and obligation of each party, therefore, the government is successful in giving justice for the citizens.

Second, the legal security of taxpayers in fulfilling the obligation is part of taxpayers wishes. If tax dispute occurs, the taxpayers wish to get quick legal security. Some countries experience, according to the observation of OECD, the dispute resolution which is done by court needs long time and high expense. In Indonesia, the taxpayers need 36 months to get legal security while UK needs 23 months. Mediation is expected to be able to give quick legal security. The experience in using mediation in tax dispute resolution in some countries proves that it gives quick legal security such as in United Kingdom which is able to make it faster up to two months from the needed period in court.

Third, law must be able to give advantage. The problem of many tax cases in court is the fact that they must get quick solution. In 2012-2016, the number of tax disputes in Indonesia are 4.598 cases. Mediation is expected to be able to reduce the number of tax disputes in court. This problem is faced very often by developing and developed countries.

Alternative Dispute Resolution like mediation was a good outcome for both parties (Sourdin and Shanks, 2015). Mediation is part of efforts suggested by OECD in tax dispute resolution. The mediation is expected to give some advantages, they are:

- Reduce the number of tax dispute in court
- Create the continuous good relationship after the dispute between taxpayers and tax authority

- Be able to give quick time for national income
- Improve the trust of taxpayers
- Improve the taxpayers compliance. This attitude will change the attitude of taxpayers in making tax planning that is not disadvantage for the nation

Based on the discussion about mediation as ADR, therefore, mediation can fulfill the principle of justice, legal security and advantageous. ADR by mediation will provide the parties some freedom to engage from an early stage before the litigation process (Billingsley and Ahmad, 2016).

CONCLUSION

The regulation of dispute resolution through tax court law has not fulfilled the principles of quick, cheap and simple. Tax dispute resolution in Indonesia which ends up in court does not give advantage for taxpayers and tax authority. Taxpayers is disadvantaged by the long period and high expense while the nation is disadvantaged by the late income. The tax dispute resolution through the court can also increase the emotion of both parties which end up in bad relation. Changing the paradigm of confrontation relation becomes cooperation relation can be done through tax dispute resolution that ends up in a good relation. This method has been implemented by United Kingdom with alternative dispute resolution such as mediation. The dispute resolution applied by ADR is able to reduce the number of tax disputes and can give quicker legal security for the taxpayers. Indonesia, through the openness principle can make a legal breakthrough to reduce the number of tax disputes. ADR can be an alternative in tax dispute resolution in Indonesia. ADR can be implemented during legal administration effort. This can be a preventive effort to avoid the dispute ended in tax court.

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