

Resolution of Income Tax Case Regarding the Permanent Establishment of PT Bank Danamon Indonesia Tbk (Case Study of Supreme Court Decision No. 919/B/PK/DK/2015)

Irwan Haryowardani¹, Verry²

Email: wanharyowardani@gmail.com

^{1,2}Law Program of Study, Universitas Pembangunan Pancabudi

ABSTRACT

In 2011, a case involving PT Bank Danamon Indonesia, a private foreign company engaged in the banking and financial institution sector, occurred. Initially, the taxpayer (Director General of Taxation) issued a tax audit order (SP2) numbered Print-019/PJ.04/RIKSIS/2010 on July 16, 2010. The taxpayer (Directorate General of Taxation) issued a tax assessment letter for Article 26 Income Tax Article Number 00009/204/08/091/12 on February 7, 2012, for the tax period of September 2008, with an underpaid tax amounting to Rp 5,155,062,376,-. As a result, Bank Danamon Indonesia Tbk filed legal objections and appeals, including cassation to the Supreme Court. The resolution of the income tax case involving the permanent establishment of PT Bank Danamon Indonesia based on Supreme Court Decision No. 919/B/PK/PJK/2015 can be pursued through legal avenues, including objections, appeals, tax court lawsuits, and, as a last resort, cassation to the Supreme Court if the appeal decision in the tax court is rejected. The synchronization of the Supreme Court Decision No. 919/B/PK/PJK/2015 in terms of the implementation of Law Number 36 of 2008 on Income Tax leads to the Supreme Court granting the request for a review by the applicant for the review, and the respondent for the review (the Directorate General of Taxation) is declared the losing party. The tax court decision No. Put 54951/PP/M.XVA/13/2014 dated September 8, 2014, is hereby canceled.

Keywords: Resolution, Income Tax, Case Regarding, PT Bank Danamon Indonesia Tbk.

INTRODUCTION

Taxes are mandatory contributions from taxpayers. Taxes are expected to improve the well-being of all members of society. These taxes cannot be directly utilized by the public. They are related to the presence of objects within a region's surface area, such as land and everything of value above it. In 2011, a case involving PT Bank Danamon Indonesia, a private foreign company engaged in the banking and financial institution sector, occurred. Initially, the tax authority (Director General of Taxation) issued a tax audit order (SP2) numbered Print-019/PJ.04/RIKSIS/2010 on July 16, 2010.

The tax authority (Directorate General of Taxation) issued a tax assessment letter for Article 26 Income Tax Article Number 00009/204/08/091/12 on February 7, 2012, for the tax period of September 2008, with an underpaid tax amounting to Rp 5,155,062,376,-. As a result, Bank Danamon Indonesia Tbk filed legal objections and appeals, including cassation to the Supreme Court. Based on the above, the author is interested in researching this topic in the form of a thesis with the title "Resolution of Income Tax Cases Regarding the Permanent Establishment of PT Bank Danamon Indonesia Tbk as Reviewed Under Law Number 36 of 2008 (Case Study of Supreme Court Decision No. 919/B/PK/DK/2015)."

LITERATURE REVIEW

Definition of Dispute Resolution Techniques

According to Pramesti Tri Jata Ayu (2021), the definition of dispute resolution techniques is a method of settling disputes that involves one party resolving a case with another party. Dispute resolution consists of two methods, namely through litigation (court proceedings) and non-litigation (out-of-court). In the process of dispute resolution, litigation is considered the last resort (*ultimum remedium*) for parties in dispute after attempts at non-litigation resolution have proven unsuccessful. Article 1, paragraph 10 of Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution/non-litigation (out-of-court) consists of five methods:

1. Consultation: an action taken between one party and another party acting as a consultant.
2. Negotiation: resolution outside the court with the aim of reaching a mutual agreement based on more harmonious cooperation.
3. Mediation: resolution through negotiations to reach an agreement among the parties with the assistance of a mediator.
4. Conciliation: dispute resolution assisted by a conciliator who mediates between the parties to find a solution and reach an agreement among them.
5. Expert Opinion: the opinions of experts on technical matters within their field of expertise.
6. However, in its development, there are also forms of out-of-court dispute resolution that have become part of the resolution process conducted within the court (litigation). For example, mediation. From this article, we understand that mediation is an out-of-court resolution, but in its development, mediation can also be conducted within the court.

Definition of Income Tax

Article 1 of the Income Tax Law states that income tax is a tax imposed on taxpayers based on the income they receive or acquire in one tax year. The key point in Article 1 is that the tax is levied on taxpayers. This is the primary characteristic of income tax. The tax liability is attached to the taxpayer. The essential requirement for taxation is the existence of a taxpayer. If the recipient or earner of income is not a taxpayer, then the imposition of the tax cannot be carried out.

Definition of Permanent Establishment (Bentuk Usaha Tetap)

Bohari explains that a Permanent Establishment (*Bentuk Usaha Tetap*) refers to a form of business used by an individual who does not reside in Indonesia for more than 183 days in a 12-month period (Bohari:2012.42). According to Law Number 36 of 2008 on Income Tax, Article 2, paragraph (5), a Permanent Establishment is defined as a form of business used by an individual who does not reside in Indonesia, an individual who is in Indonesia for not more than one hundred and eighty-three days in a twelve-month period, or an entity that is neither established nor domiciled in Indonesia but conducts business activities or operations in Indonesia.

This can include the place of management, branch offices, representative offices, office buildings, factories, workshops, warehouses, promotional and sales spaces, mining and natural resource extraction areas, oil and gas mining areas, fisheries, livestock farming, agriculture,

plantations, or forestry areas, construction projects, installations, or assembly projects, provision of services in any form by employees or others, as long as it is conducted for more than sixty days in a twelve-month period, or individuals or entities acting as agents with a non-independent position, and agents or employees of non-established insurance companies.

METHODS

This research employs a descriptive-analytical method. The descriptive method involves providing a comprehensive overview of the core issue. It is qualitative in nature, meaning that it aims to determine the quality of truthfulness and then relate it to theories obtained from literature research to provide answers to the questions posed (Suratman and Philips Dillah, 2015:47). The data analysis approach in this research involves gathering information from legal sources, including concepts, theories, legislation, doctrines, legal principles, expert opinions, or the researcher's own perspective, all of which are related to the technique of resolving income tax cases concerning Permanent Establishments as viewed through the Income Tax Law.

RESULTS AND DISCUSSION

Results and Discussion

Overview of Income Tax Cases Involving Permanent Establishments According to Law No. 36 of 2008

The resolution of a tax case is a process that must be undertaken by taxpayers and tax authorities to ensure legal certainty regarding differences in tax calculations between taxpayers and tax authorities. Legal remedies can be pursued through objections, appeals, tax court lawsuits, and reviews. The tax court, as a specialized court that examines tax disputes, holds a unique position as both the first and final level of adjudication, as stipulated in Article 33, paragraph (1) of Law No. 14 of 2002 on Tax Courts, which states: "The tax court is the first and final level of adjudication in the tax dispute system."

This positioning of the tax court means that decisions made by the tax court carry legal finality. Furthermore, Article 33, paragraph (1) of Law No. 14 of 2002 explains that the first and final examination of tax disputes and procedures is carried out only by the tax court. Therefore, decisions of the tax court cannot be subject to lawsuits in general courts, administrative courts, or other judicial bodies, except for decisions related to "inadmissibility" concerning jurisdiction or competence.

The case of Income Tax on Permanent Establishment of PT Bank Danamon Indonesia Tbk Based on Supreme Court Decision No. 919/B/PK/PJK/2015)

Initially, Bank Danamon Indonesia established a permanent establishment outside Indonesia in the Cayman Islands, where Bank Danamon Indonesia's Cayman Islands branch provided interest on securities issued by BDI's Cayman Islands branch to its foreign customers. It was known that the securities were issued by BDI's headquarters through its Cayman Islands branch located abroad. In the consolidated financial statements audited by a Public Accountant, it was stated that the loan proceeds from the issuance of subordinated debt were used by BDI's headquarters to strengthen the capital adequacy ratio. The interest on the loans was recorded as an expense in the central office's books.

Based on the explanation above, the Directorate General of Taxation (DJP) as the tax examiner issued a statement that the payment of interest on the subordinated loans was subject to Article 26 Income Tax withholding by BDI's headquarters. The decision that has legal finality is Tax Court Decision No. Put-54951/PP/M.XVA/13/2014, dated September 8, 2014, notified to the Requester for Review on September 24, 2014. Subsequently, the Requester for Review, through its authorized representative based on a Special Power of Attorney No. SK-HKM-590, dated November 13, 2014, submitted a written request for review at the Tax Court Registry on November 26, 2014, as evidenced by Request for Review Deed No. PKA-L3804/PAN/2014, with its reasons, received at the Tax Court Registry on November 26, 2014.

Regarding the request for review, it was duly notified to the opposing party on May 28, 2015. Subsequently, the opposing party submitted its Response, which was received at the Tax Court Registry on June 26, 2015. The request for review and its reasons were duly notified to the opposing party, submitted within the prescribed time frame and in the manner specified by Law No. 14 of 1985 on the Supreme Court as amended by Law No. 5 of 2004 and its second amendment by Law No. 3 of 2009, in conjunction with Law No. 14 of 2002 on Tax Courts. Therefore, the request for review was formally accepted. Consequently, the conclusion of the Supreme Court Decision No. 919/B/PK/DK/2015 is that the Supreme Court granted the request for review from Bank Danamon Indonesia Tbk and annulled Tax Court Decision No. PUT.54951/PP/M.XVA/13/2014 dated September 8, 2014.

Synchronization of the Supreme Court Decision No. 919/B/PK/PJK/2015 Reviewed in Terms of the Implementation of Law No. 36 of 2008 on Income Tax

Differences in the scope of the definition of income tax dispute resolution between Law No. 36 of 2008 on Income Tax and the Tax Court Law and the Supreme Court Law have led to disparities in judges' decisions when handling income tax disputes between taxpayers and tax authorities (Directorate General of Taxes). Objections submitted to the Regional Tax Office (Kanwil) are considered executive institutions, while the Tax Court and the Supreme Court are considered judicial institutions (independent). From the synchronization of the above case, in Supreme Court Decision No. 919/B/PK/PJK/2015, there was a difference in the outcome compared to the objection result at the Kanwil, with the amount of tax still to be paid remaining as stated in SKPKB Article 26 No. 00009/204/08/091/12 dated February 7, 2012, for the Tax Period of September 2008, amounting to Rp 5,155,062,376. Consequently, a Decree No. Kep-214/PJ/2013 dated April 3, 2013, was issued.

Due to the rejection of the objection by the Kanwil, Taxpayer (PT Bank Danamon Indonesia Tbk) filed an appeal with the Tax Court, resulting in Tax Court Decision No. PUT-54951/PP/M.XVA/13/2014 dated September 8, 2014, which had legal finality. The Tax Court decision upheld the original decision, SKPKB Article 26 No. 00009/204/08/091/12 dated February 7, 2012, for the Tax Period of September 2008, amounting to Rp 5,155,062,376. Since the appeal by PT Bank Danamon Indonesia Tbk was rejected, the Taxpayer submitted a cassation to the Supreme Court, resulting in Supreme Court Decision No. 919/B/PK/PJK/2015 dated January 13, 2016. This decision canceled Tax Court Decision No. 00009/204/08/091/12 dated February 7, 2012, for the Tax Period of September 2008, amounting to Rp 5,155,062,376, and granted PT Bank Danamon Indonesia Tbk's Request for Review. Therefore,

SKPKB Article 26 No. 00009/204/08/091/12 dated February 7, 2012, for the Tax Period of September 2008, amounting to Rp 5,155,062,376, was deleted and reduced to Rp 0 (Zero) Rupiah.

In conclusion, the synchronization of the resolution of each Income Tax on Permanent Establishment case at Bank Danamon Indonesia Tbk was pursued through various legal avenues. However, each judge's decision yielded different results, some were rejected and ultimately granted. Nevertheless, the process took a long and arduous time for each case. Due to the prolonged time it took for the resolution of these cases, it should be noted that for every case won by the plaintiff (Taxpayer), the defendant (DJP) should provide interest on the principal penalty issued by DJP to the taxpayer as compensation. The calculation mechanism for interest compensation is determined based on a percentage and the duration of the court process until the verdict is delivered by the judge.

Table. Tax Calculation According to KEP-214/PJ/2013

	Description	Originally (IDR)	Becomes (IDR)
1	Taxable Income/Net Taxable Income	17.004.713.729	17.004.713.729
2	Article 26 Income Tax Payable	3.502.990.666	3.502.990.666
3	Tax Credit	19.840.412	19.840.412
4	Underpaid/Unpaid Income Tax	3.483.150.254	3.483.150.254
5	Administrative Sanctions	1.671.912.122	1.671.912.122
6	The Amount of Article 26 Income Tax Still Due	5.155.062.376	5.155.062.376

The issue at hand, as argued by the DJP (Directorate General of Taxes), was to maintain the positive correction of Article 26 Net Taxable Income for the September 2008 Tax Period, amounting to Rp. 16,861,285,205.00, related to subordinated loan interest expenses. However, in Supreme Court Decision No. 919/B/PK/DK/2015, the Supreme Court Panel accepted the request for a review filed by the applicant for the review. The party subject to the review was declared the losing party and was therefore ordered to pay the costs of this review case. The decision also annulled Tax Court Decision No. 54951/PP/M.XVA/13/2014 dated September 8, 2014, and annulled the DJP Decree No. Kep-214/PJ/2013 dated April 3, 2013, regarding objections to the Income Tax Underpayment Assessment for Article 26 Income Tax Number 00009/204/08/091/12 dated February 7, 2012, by issuing Supreme Court Decision No. 919/B/PK/DK/2015.

CONCLUSION

Based on the results of the research conducted can be concluded as follows:

1. An overview of the income tax case for Permanent Establishment entities under Law No. 36 of 2008 requires them to remit the due income tax and report it monthly. This includes various tax articles such as Article 21 Income Tax, Article 23 Income Tax, Article 26 Income Tax, Value-Added Tax, and Land and Building Tax. Additionally, they must report Corporate Income Tax annually, with the deadline being the end of April of the following year.
2. The resolution of the income tax case for Permanent Establishment entities such as PT Bank Danamon Indonesia, based on Supreme Court Decision No. 919/B/PK/PJK/2015,

can be pursued through legal avenues. This includes filing objections and appeals, bringing lawsuits to the tax court, and as the final stage, seeking cassation at the Supreme Court if the appeal decision at the tax court is rejected.

3. Regarding the synchronization of the outcome of Supreme Court Decision No. 919/B/PK/PJK/2015 with the provisions of Law No. 36 of 2008 on Income Tax, the Supreme Court Panel has granted the request for a review submitted by the petitioner of the review. The respondent of the review (DJP) has been declared the losing party, and the decision of Tax Court Decision No. 54951/PP/M.XVA/13/2014 dated September 8, 2014, has been annulled.

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