



LEGAL DECONSTRUCTION OF TAX AUDIT ON THE TAXPAYER’S REFUND APPLICATION FOR TAX OVERPAYMENT IN INDONESIA (PART 2 OF 2)*

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Article	Abstract
<p>Keywords: Legal Deconstruction; Tax; Tax Audit; Overpayment; Taxpayers.</p> <p>History of Article Received:, 2022; Reviewed:, 2022; Accepted: 2022; Published:, 2022;</p> <p>DOI:</p>	<p>There is still an empirical and philosophical juridical gap in tax audits on Overpayment Tax Returns (SPT) as referred to in Article 17 and Article 17B of the KUP Law. It is necessary to conduct philosophical research in the field of non-positivistic law with the method of legal deconstruction and use the theory of justice as fairness that John Rawls has put forward in answering the two existing problems. This study yields two conclusions. First, legal texts related to Article 17 and Article 17 B of the KUP Law and Regulation of the Minister of Finance Number 17/PMK.03/2013 in conjunction with Regulation of the Minister of Finance Number 184/PMK.03/2015 in conjunction with Regulation of the Minister of Finance Number 18/PMK.03/ 2021 does not meet the theory of justice as fairness to taxpayers. Second, it is necessary to carry out legal deconstruction of Article 17B of the KUP Law so that a definitive legal text in tax audits is produced based on the theory of justice as fairness. It is recommended that there be reforms to tax laws and regulations related to the provisions on the examination of Overpayment Tax Returns (SPT) that take into account the following matters, among others, the abolition of the 12-month audit period of Overpayment Tax Returns (SPT) while maintaining the same examination period and equal treatment of administrative sanctions in exchange for interest fairly.</p>

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4. ANALYSIS AND DISCUSSION

a. Audit on Tax Overpayment and Its History in Indonesia

The definition of a juridical tax audit is demonstrated in Article 1 number 25 of the KUP Law which states that a tax audit is a series of activities to collect and process data, information, and/or evidence that is carried out objectively and professionally based on an audit standard to test compliance by fulfilling tax

obligations and/or for other purposes in the context of implementing the provisions of the tax laws and regulations.

Furthermore, several articles in the KUP Law have regulated the Overpayment Tax Returns, among others, if the results of the examination state that the amount of tax credit or the amount of tax paid is greater than the amount of tax payable as referred to in Article 17 of the KUP Law, the period of examination of Overpayment SPT as referred to in Article 17B of the KUP Law, the period of examination of the application for refund of the overpayment tax from the Taxpayer with certain criteria as referred to in Article 17C of the KUP Law, and the examination of the application for the refund of the overpayment of tax from the Taxpayer who meets certain requirements as referred to in Article 17D of the KUP Law. Article 17 Paragraph (1) and Paragraph (2) of the KUP Law stipulates that the application of the Taxpayer, the Directorate General of Taxes who conducts the audit issues an Assessment Letter of Overpayment Tax (SKPLB) if the amount of tax credit or the amount of tax paid is more significant than the total tax owed. Then, Article 17 Paragraph (3) of the KUP Law stipulates that SKPLB can still be reissued if based on the examination results and/or new data, it turns out that the overpayment tax is greater than the tax overpayment that has been determined.

Article 17B Paragraph (1) of the KUP Law stipulates that the application for refund of the tax overpayment must be audited by issuing a tax assessment letter no later than 12 (twelve) months after the complete application letter is received from the taxpayer. However, this period does not apply to taxpayers being examined for preliminary evidence of criminal acts in the taxation sector, as referred to in Article 17B Paragraph (1a) of the KUP Law. Article 17B paragraph (2) and paragraph (3) of the KUP Law stipulates that if after exceeding the 12-month period a decision is not issued, the application for refund of the tax overpayment is considered granted by giving an SKPLB no later than 1 (one) month after the said period ends, and if the SKPLB is late in issuance, the taxpayer is given an interest rate of 2% permonth calculated from the end of the 12-month audit period until the issuance of the SKPLB. Furthermore, Article 17B Paragraph (4) formulates that if the examination of the initial evidence of a criminal offense in the taxation sector is not followed up with an investigation; continued the investigation, but not continued with the prosecution of criminal acts in the field of taxation; or continue with the investigation and prosecution of criminal acts in the field of taxation, but are acquitted or released from all lawsuits based on court decisions that have permanent legal force, and in the event that a Taxpayer is issued an SKPLB, the taxpayer is given an interest rate of 2% (two percent) permonth for a maximum of 24 months, calculated from the end of the examination period for a maximum of 12 months until the issuance of the SKPLB, and part of the month is calculated in full 1 (one) month.

Article 17C of the KUP Law regulates research on applications for refund of tax overpayments from taxpayers with particular criteria, which must be issued with a Preliminary Refund of Excess Tax (SKPPKP) Decree no later than 3 months after the complete application is received for Income Tax (PPH) and no later than 1 (one) month since the application is received in full for Value Added Tax (VAT). Taxpayers with particular criteria are determined by a Decree of the Directorate General of Taxes, which include: (a) timely submission of tax returns; (b) do not have tax arrears for all types of taxes, except tax arrears that have obtained permission to install or defer tax payments; (c) the Financial Statements are audited by a Public

Accountant or a government financial supervisory agency with an unqualified opinion for 3 (three) consecutive years; and (d) have never been convicted of a crime in the taxation sector based on a court decision that has permanent legal force within the last 5 (five) years. Meanwhile, a taxpayer with specific criteria cannot be given a preliminary refund of the tax overpayment if: (a) the taxpayer is investigated for a crime in the field of taxation; (b) being late in submitting SPT for a specific type of tax for 2 (two) consecutive Tax Periods; (c) late in submitting the Periodic Tax Return for a particular type of tax 3 (three) Tax Periods in 1 (one) calendar year; or (d) late in submitting the Annual Tax Return. Then, the Taxpayer whose SKPPKP has been issued, can be audited and issued a tax assessment letter (SKP) by the Directorate General of Taxes, provided that if based on the results of the examination an Underpayment Tax Assessment Letter (SKPKB) is issued, the amount of tax underpayment is added with administrative sanctions in the form of an increase of 100% from the amount of tax underpayment.

As for Article 17D Paragraph (1) of the KUP Law, it regulates research conducted by the Directorate General of Taxes on applications for refund of tax overpayments from taxpayers who meet particular requirements, by issuing SKPPKP no later than 3 (three) months after the complete application is received for PPh and no later than 1 (one) month since the complete application is received for VAT. Taxpayers who meet particular requirements that can be given a preliminary refund of tax overpayments are: (a) Personal taxpayers who do not run a business or independent work; (b) Personal taxpayers who run a business or independent work with a total turnover of the business and the amount of overpayment up to a certain amount; (c) corporate taxpayers with the amount of business turnover and the amount of overpayment up to a certain amount; or (d) Taxable Entrepreneur (PKP) who submits VAT Period SPT with the amount of submission and the amount of overpayment up to a certain amount. Taxpayers who have issued SKPPKP can be audited by issuing SKP; if based on the results of the examination, the SKPKB is issued, the amount of underpayment tax is added with administrative sanctions in the form of an increase of 100%.

Furthermore, the audit procedure, including in the case of overpayment tax returns, is regulated in the Minister of Finance Regulation Number 17/PMK.03/2013 *juncto* the Minister of Finance Regulation Number 184/PMK.03/2015 *juncto* the Minister of Finance Regulation Number 18/PMK.03 /2021, the procedure for calculating and refunding tax overpayments is regulated in the Minister of Finance Regulation Number 244/PMK.03/2015, and the procedure for the preliminary refund of tax overpayments is regulated in the Minister of Finance Regulation Number 39/PMK.03/2018 as already stated last amended by Regulation of the Minister of Finance of the Republic of Indonesia Number 117/PMK.03/2019 (hereinafter referred to as PMK No. 39/PMK.03/2018),

Regulation of the Minister of Finance Number 17/PMK.03/ *juncto* Regulation of the Minister of Finance Number 184/PMK.03/2015 *juncto* Regulation of the Minister of Finance Number 18/PMK.03/2021 regulates several audit criteria to test compliance with the fulfillment of tax obligations in the case of SPT i.e. if there is a refund of the tax overpayment as referred to in Article 17B of the KUP Law, the taxpayer submits a Tax Return stating the overpayment, other than the one who submitted the application for the refund of the tax overpayment, and the taxpayer has been given a preliminary refund of the tax overpayment. The types of audits to

test compliance with tax obligations in terms of overpayment tax returns can consist of comprehensive audits, simple audits, or correspondence checks. A comprehensive audit is carried out on taxpayers with a low level of compliance; a simple audit is carried out on taxpayers with a moderate level of compliance, while correspondence checks are carried out on taxpayers with a high level of compliance.

Minister of Finance Regulation Number 244/PMK.03/2015 regulates the procedure for calculating and refunding excess PPh, PPN, and Land and Building Tax or PBB (as has been regulated in Law Number 12 of 1985 concerning Land and Building Tax as amended with Law No. 12 of 1994). Article 2 paragraph (1) Regulation of the Minister of Finance Number 244/PMK.03/2015 stipulates that the overpayment of PPh, PPN, and/or PPnBM can be returned if there are:

- a) The overpayment tax as stated in the Tax Overpayment Assessment as referred to in Article 17 Paragraph (1) of the KUP Law;
- b) The overpayment tax as stated in the Tax Overpayment Assessment as referred to in Article 17 Paragraph (2) of the KUP Law;
- c) The overpayment tax as stated in the SKPLB as referred to in Article 17B of the KUP Law;
- d) The overpayment tax as stated in the SKPPKP as referred to in Article 17C of the KUP Law;
- e) The overpayment tax as stated in the SKPPKP as referred to in Article 17D of the KUP Law;
- f) The overpayment tax on the purchase of Taxable Goods brought out of the Customs Area by an individual holding a foreign passport as referred to in Article 17E of the KUP Law and Article 16E of the VAT Law;
- g) The overpayment tax as stated in the SKPPKP as referred to in Article 9 paragraph (4c) of the VAT Law;
- h) The overpayment tax due to the issuance of a Decision on Objection, Decision on Appeal, or Decision on Review by the Supreme Court; Taxes that are overpayment due to the issuance of the Correctional Decree as referred to in Article 16 of the KUP Law;
- i) The overpayment tax due to the issuance of a Decree on the Reduction of Administrative Sanctions or a Decree on the Elimination of Administrative Sanctions as referred to in Article 36 Paragraph (1) letter a of the KUP Law;
- j) The overpayment tax due to the issuance of a Decree on SKP Reduction or a Decision on Cancellation of SKP as referred to in Article 36 paragraph (1) letter b of the KUP Law; or
- k) The overpayment tax due to the issuance of a Decree on STP Reduction or a Decree on Cancellation of STP as referred to in Article 36 paragraph (1) letter c of the KUP Law.

Furthermore, Article 5 Paragraph (1) PMK-244/PMK.03/2015 stipulates that the overpayment of VAT as stated in SKPPKP Article 17D of the KUP Law must first be calculated with Tax Payables which are administered at the

domicile Tax Service Office (KPP) and/or KPP location. Calculating overpayment tax with Payable Tax and/or tax that will be payable is followed up with compensation to Payable Tax and/or tax that will be payable as stipulated in Article 7 paragraph (1) PMK-244/PMK.03/2015. Then, Article 7 paragraph (3) PMK-244/PMK.03/2015 stipulates that compensation to Payable Tax and/or taxes that will be payable shall be made through a deduction of the Order to Pay Excess Taxes (SPMKP).

PMK No. 39/PMK.03/2018 regulates the procedure for the refund of the overpayment of taxes. Article 1 point 7 PMK No. 39/PMK.03/2018 stipulates that the Preliminary Return of the Overpayment of Taxes, hereinafter referred to as the Preliminary Return, is the return of the overpayment tax given to the taxpayer as referred to in Article 17C or Article 17D of the KUP Law, or Article 9 Paragraph (4c) VAT Law. Section 2. PMK No. 39/PMK.03/2018 stipulates that the Directorate General of Taxes issues SKPPKP after conducting research on applications for refund of tax overpayments from Taxpayers with Certain Criteria, Taxpayers with Certain Requirements, or Low-Risk Taxable Entrepreneurs (PKP). Article 3 PMK No. 39/PMK.03/2018 regulates the criteria for taxpayers with particular criteria, namely:

- a) punctual in submitting SPT;
- b) does not have tax arrears for all types of taxes, except for tax arrears that have obtained permission to make installments or postpone tax payments;
- c) the financial statements are audited by a public accountant or government financial supervisory agency with an unqualified opinion for 3 (three) consecutive years; and
- d) has never been convicted of a crime in the field of taxation based on a court decision that has permanent legal force within the last 5 (five) years.

Article 9 PMK No. 39/PMK.03/2018 regulates the criteria for taxpayers with particular requirements, namely:

- a) Personal Taxpayer who does not run a business or independent job submitting Annual Income Tax Return over restitution;
- b) Personal Taxpayer who runs a business or independent occupation who submits the Annual Income Tax Return of overpayment restitution with an overpayment amount of at most Rp. 100 million;
- c) Corporate Taxpayers who submit Annual Income Tax Returns for overpayment of restitution with a maximum overpayment of Rp 1 billion; or
- d) PKP submitting the Periodic SPT of VAT overpayment of restitution with an overpayment amount of at most Rp. 1 billion.

Article 13 PMK No. 39/PMK.03/2018 regulates the criteria for Low-Risk PKP, namely:

- a) companies whose shares are traded on a stock exchange in Indonesia;
- b) companies whose majority shares are owned directly by the central government and/or local governments;

- c) PKP that has been designated as the Main Customs Partner following the provisions in the Regulation of the Minister of Finance which regulates the Main Customs Partner;
- d) PKP that has been determined as an Authorized Economic Operator following the provisions in the Regulation of the Minister of Finance which regulates the Authorized Economic Operator;
- e) manufacturers or producers other than PKP as referred to in letters a to d, which have a place to carry out production activities; or
- f) PKP meets particular requirements as referred to in Article 9 paragraph (2) letter d PMK No. 39/PMK.03/2018.

b. Critical Reflection on Justice as Fairness on Tax Audit of Overpayment Tax

Rahardjo has emphasized that government system that work through public officials are not automatic machines of laws and procedures, so they cannot only implement written regulations in “black and white”, but must keep asking whether what they are doing is good for the community and whether or not they have done - will give justice to society.¹ This shows that every legal action taken by public officials in carrying out their authority, power, and obligations must continue to provide a tremendous sense of justice for the community. Likewise, the idea of justice remains the primary basis for tax audit policies on overpayment SPTs, so that every legal action of the tax authorities in the implementation of tax audits is in line with the elements of the rule of law that must be understood based on the concept of protection of human rights (HAM), distribution of the power to guarantee the implementation of human rights, a government based on statutory regulations, and the existence of an administrative court in disputes.² In this case, the tax audit of the overpayment SPT must provide the maximum sense of justice for the community through a fair allocation to taxpayers and to countries that really need taxes to finance government and development.

The concept of fairness in the tax audit of the overpayment SPT must begin with the original position idea and then do the public reason idea. Understanding these two ideas will lead this study to use the two principles of justice as fairness theory. The critical reflection of the concept of justice as fairness in the tax audit of the overpayment SPT is as described below.

1) On the Original Positions

The nature of tax audit is as a means to test tax compliance as a correct point of view that must be fair to taxpayers and the state due to the agreement on the self-assessment system in tax collection in Indonesia. In order to guarantee that the self-assessment system is following the applicable tax laws and regulations, voluntary compliance must be measured based on tax compliance testing carried out by the tax authorities based on the applicable tax laws and regulations. In this case, the obligation to report and submit SPT based on the self-assessment system and based on the tax laws is an agreement that meets fair conditions and appropriate restrictions on

¹ Satjipto Rahardjo, *Membedah Hukum Progresif*, (Jakarta : Kompas Media Nusantara, 2008), pg.,38.

² H. Syaiful Bakhri, *Ilmu Negara: Dalam Konteks Negara Hukum Modern*, Yogyakarta: Total Media, 2010, p. 133

taxpayers whose origin is free and equal. In this original position, reporting SPT and paying taxes for all taxpayers is not a profit-and-loss consideration and/or based on the amount of tax paid and/or other discriminatory conditions.

However, the existence of Article 17 and Article 17B of the KUP Law has far shifted the original positions from the meaning of testing compliance with the fulfillment of taxpayers' tax obligations, which were initially free and equal to not free and unequal with the existing distinctions, among others on the SPT. Payments reported by the Taxpayer must be subject to a tax audit by the Directorate General of Taxes, and the period of tax audit on the Overpayment SPT is no later than 12 months from the receipt of the application letter. This is different from underpayment SPT, which does not automatically carry out tax audits but at least meets the parameters in Article 12 paragraph (3) of the KUP Law, as the formula confirms that the Directorate General of Taxes determines the amount of tax payable if there is evidence of the amount of tax owed. According to the SPT submitted by the Taxpayer, it is not true. Then, the tax audit period between the Overpayment SPT and the Underpayment SPT is different, where the tax audit on the Overpayment SPT is no longer than 12 months from the receipt of the application letter, while the period for testing the Underpayment SPT is a maximum of 6 months for field inspections or 4 months for office audits, which is calculated from the time the Taxpayer's (Field or Office) Tax Return is submitted to the taxpayer, his representative, proxy, employee, or adult family member of the taxpayer, until the date the Audit Result Notification Letter (SPHP) is submitted to the taxpayer. Taxpayer, representative, proxy, employee, or adult family member of the taxpayer itself. The inspection period for the underpayment tax return can be extended, which is a maximum of 2 months for field inspections or office inspections, as has been stipulated in PMK Number 17/PMK.03/2013 *juncto* PMK Number 184/PMK.03/2015 *juncto* with PMK Number 18/PMK.03/2021.

2) On the Veil of Ignorance

As the position of the origin of tax audits is consistently agreed upon in the veil of ignorance, that is, each party (Taxpayer and Tax Officer) does not have any different treatment, such as Overpayment SPT, Underpayment SPT, conflict of interest, personal interest or certain groups, and others. A good original position will reduce a good veil of ignorance, considering that the initial position guarantees a fair procedure and the results will be accepted fairly.³ The only thing that can only be known by taxpayers in reporting their SPT is to carry out a self-assessment system and fill out an SPT based on the applicable tax laws and regulations in order to fully participate in exercising their rights and fulfilling their tax obligations to the state, as well as the existence of consequences in the form of SKP and/or STP for incorrect SPT. So that what is carried out by Tax Officers in terms of tax audits is to focus on matters that are relevant to a series of activities to collect and process data, information, and/or evidence carried out to test compliance with fulfilling tax obligations and/or for other purposes in order to implement the provisions of

³ Koerniatmanto Soetoprawiro, Justice as Fairness, *Jurnal Hukum Pro Justitia*, Vol. 28, No. 2, 2010, pp. 238-239.

tax laws and regulations. Thus, the objective that contemplates on justice is obtained, as the meaning of the self-assessment system is in line with Article 12 of the KUP Law.

3) First Priority Justice as Fairness, Principle of Equal Freedom, and Second Priority of Justice as Fairness, Principle of Equal Opportunity and Principle of Difference

This principle emphasizes that everyone has the same demand for good patterns of fundamental rights and freedoms that are the same for all people. In terms of tax audits, all taxpayers who report their self-assessment tax return are openly and reasonably open for compliance testing by not discriminating in treatment, for example, between overpayment tax returns or underpayment tax returns. Likewise, the taxpayer on the tax return he reports (either underpayment or overpayment) is based on evidence, data, and tax laws and regulations. However, this principle is not in line with administrative sanctions between the examination of underpayment tax returns and overpayment tax returns. One of the facts is the tax audit of an Annual Income Tax Underpayment SPT (SPT A) and an Annual PPh Overpayment SPT (SPT B) for the 2020 tax year, which both have a January-December financial year and, for example, both the same as reporting its SPT on March 31, 2021. For example, SPT A and SPT B were audited in April 2021 and completed in November 2021. Based on these two examples of SPT, two possible audit outputs are generated, namely

- a. Regarding the results of the examination of SPT A and SPT B declare underpayment following the SKPKB, then Article 13 paragraph (2) of the KUP Law applies, namely the amount of tax underpayment in the SKPKB plus an administrative sanction in the form of interest of 2% (two percent) per month for a maximum of 24 (twenty-four) months, calculated from the time the tax becomes due or the end of the Tax Period, part of the Fiscal Year, or entire Fiscal Year until the issuance of the SKPKB.
- b. Regarding SPT B, for example, submitting an Overpayment of Rp. 5 billion, and the examination results show that there is still an overpayment of Rp. 3 billion, then issued SKPLB amounting to Rp. 3 billion without receiving interest compensation for the entire period of examination of the overpayment SPT, which is still within 12 months from the receipt of the complete application for the overpayment tax return. However, if the SKPLB is Rp. 3 billion is issued after the 12 months, then the Taxpayer is given an interest rate of 2% per month calculated from the period's end until the SKPLB is issued, as stipulated in Article 17B Paragraph (3) of the KUP Law.

The example a above has fulfilled justice as fairness, as the same fundamental rights and freedoms have been fulfilled for all taxpayers who have reported SPT and there is no different treatment in terms of taxpayers whose compliance is tested. However, example b shows the non-fulfillment of justice as fairness, because there are differences in treatment that are completely unfair to taxpayers who turn out to be overpayment tax returns after tax audits are still overpayment. Indeed, there is a second priority in terms of the first priority has been fulfilled, namely the priority of justice to efficiency and welfare based on the principle of equal opportunity and the principle of difference, provided that the fair equality of opportunity applies first than the difference principle. In the event of social and economic inequalities, it is arranged so that the maximum benefit is obtained for the most disadvantaged

members of society. There must be openness of positions to all people to get fair equality of opportunity. So, in example b, if the difference principle applies, it is interpreted as treatment of inequality through controlled policies that benefit the weakest taxpayer. In the case of an overpayment SPT examination which turns out to be overpayment, it should be investigated sooner, not even longer up to 12 months, and the taxpayer is entitled to a 2% interest reward from the time the SPT Overpayment application is submitted until the issuance of the SKPLB. This treatment is also fair if the overpayment SPT that is audited turns out to be a SKPKB which must be subject to a 2% interest penalty from the end of the tax period, tax share, or tax year.

In addition to Article 17B paragraph (1) and paragraph (2) of the KUP Law, the neglect of the principle of fair equality in tax audits of overpayment tax returns is also reflected in Article 17B paragraph (1a) and paragraph (4) of the KUP Law which regulates the imposition of interest 2% of the tax audit on the overpayment SPT, which was suspended due to the preliminary evidence examination, but the examination was not continued in the investigation of criminal acts in the taxation sector and the taxpayer was issued an SKPLB. Following the idea of the veil of ignorance which is in line with the concept of the original positions, the SPT (either underpayment or overpayment) is filled in based on evidence, data, and applicable tax regulations, so taxpayers who pay SPT overpayment should be taxpayers who currently has the weakest position because of its weak financial position or poor liquidity, so it does not deserve the "suspicious" treatment from the KUP Law so that the Overpayment SPT is even examined longer, which is 12 months from the filing of the application by the taxpayer, compared to the standard the period of field inspection which is 6 months and an extension of 2 months. In addition to underpayment SPT, overpayment SPT is also not treated equally between Article 17 and Article 17B of the KUP Law, Regulation of the Minister of Finance Number 17/PMK.03/2013 juncto Regulation of the Minister of Finance Number 184/PMK.03/2015 juncto Minister of Finance Regulation Number 18/PMK.03/2021 with Article 17C and Article 17D of the KUP Law and Minister of Finance Regulation Number 244/PMK.03/2015 and Minister of Finance Regulation Number 39/PMK.03/2018. Article 17 and Article 17B of the KUP Law, Regulation of the Minister of Finance Number 17/PMK.03/2013 juncto Regulation of the Minister of Finance Number 184/PMK.03/2015 juncto Regulation of the Minister of Finance Number 18/PMK.03/2021 treats Overpayment SPT as an object that must be audited first without paying interest if the result of the examination remains overpayment as long as it is within a period of 12 months since the application for overpayment is submitted by the taxpayer. While Article 17C and Article 17D of the KUP Law and the Minister of Finance Regulation Number 244/PMK.03/2015 and the Minister of Finance Regulation Number 39/PMK.03/2018 treat the overpayment tax return fairly by first issuing the SKPPKP to taxpayers with particular criteria or Taxpayers who meet particular requirements. Then, on the overpayment SPT which the SKPPKP has issued, a tax audit can be carried out with the provision that if the SKPKB is issued, the amount of the underpayment tax is added with an administrative sanction in the form of an increase of 100% as regulated in Article 17C Paragraph (5) and Article 17D Paragraph (5) of the KUP Law.

5. CONCLUSION

This study concluded two results. First, the legal construction of tax audits on overpayment SPT in Indonesia is based on Article 17 and Article 17 B of the KUP Law and the Regulation of the Minister of Finance Number 17/PMK.03/2013 *juncto* the Regulation of the Minister of Finance Number 184/PMK.03/2015 *juncto* the Regulation of the Minister of Finance Number 18/PMK.03/2021. However, these legal texts do not reflect justice as fairness, both for tax audits of underpayment tax returns, overpayment tax returns issued by SKPKB, and overpayment tax returns that meet particular criteria or certain requirements as referred to in Article 17C and Article 17D of the KUP Law. Second, it is necessary to carry out legal deconstruction of Article 17B of the KUP Law in order to produce an ideal legal concept in tax audits of overpayment tax returns in Indonesia in the future. Legal deconstruction refers to the theory of justice as fairness, which can be done in the following ways:

- a) Removed the 12-month examination period for the overpayment tax return. The inspection period should only refer to the two types of inspections, namely the routine and special inspection periods.
- b) Strengthening the tax function as a function to regulate (regular function), one of them is by considering the rules for pre-payment of overpayment SPT through a fair social contract arrangement between the taxpayer and the DGT. For example, through creating an escrow account, if there is an application for a preliminary refund of the overpayment SPT. A Taxpayer may submit a prior refund of the overpayment SPT with a note that the amount received by the taxpayer will be subject to monthly interest sanctions if there is still an underpayment of the amount that the taxpayer has not obtained until the issuance of the tax assessment letter. Suppose the taxpayer does not apply for a preliminary refund of the overpayment SPT. If the audit results are still overpayment, the taxpayer will not be subject to monthly interest compensation.
- c) Considering the tax audit on the overpayment SPT, the results are issued by the SKPKB and added with an interest penalty of 2% per month since the end of the tax period, tax share, or tax year. So, it is appropriate to examine the overpayment SPT, which continues to issue SKPLB and is added with interest compensation of 2% per month since the taxpayer submits the application for overpayment SPT until the issuance of the SKPLB.
- d) If there is a proposed SKPPKP formulation or the formulation of articles such as Article 17C and Article 17D of the KUP Law on all overpayment SPT (regardless of overpayment SPT which meets particular criteria or certain requirements) and there is concern that the taxpayer will go bankrupt or the taxpayer has bad intentions towards SKPPKP will be accepted. So, if the results of the examination issue an SKPKB or SKPLB, which is smaller than SKPPKP, it is necessary to add rules regarding the use of an escrow account in the event of an overpayment SPT.

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