

# Dualism Regulations Regarding Taxpayer's Representative of Non Tax Consultant: A Case Study of the Taxation System in Indonesia

MOCHAMAD FERDIANSANSA

*Tax Attorney for the Indonesian Tax Court  
Former DG of Taxes Indonesia Officer*

DOI: 10.29322/IJSRP.11.02.2021.p11073

<http://dx.doi.org/10.29322/IJSRP.11.02.2021.p11073>

**Abstract**-The taxpayer's representative has the duty to represent and provide protection for the rights of the taxpayer, both in assisting data clarifications, tax audits, and other tax procedural processes that require the tax payer's representative to appear in front of the tax authorities. Its presence in Indonesia has a place for registered tax consultants as well as for non-tax consultant professionals. However, in practice, the taxpayer's representative who comes from non-tax consultant professionals often gets obstacles in providing assistance for taxpayers. This happens because there are dual regulations that apply to taxpayer's representative from the non-tax consultant path. These two regulations are of different levels, but both are still valid and are used as the legal basis for the two parties confronting in the taxation field, namely the taxpayer's representative and the tax authority. Realizing this, this research will actually explain what happened to the dualism of regulations in Indonesia regarding the taxpayer's representative from non-tax consulting professionals and how the decisions of the constitutional court as the highest and final level of justice change direction and must be respected by every citizen, including the tax authority itself.

**Index Terms** : Tax Representative, Dualism Regulations, Non Tax Consultant, Taxpayer Rights

## I. INTRODUCTION

Indonesia is a country of law (*rechstaat*), which means that everything related to legal events must be based on law, not based on the belief of each person or any particular interest. This is in accordance with article 1 paragraph 3 of the constitution of the Republic of Indonesia. Everything must be in accordance with the corridors of applicable regulations and equal for every citizen.

In terms of taxpayer's representative, there is an irony of dualism in its application in the Indonesian tax system. There is a flexible treatment of tax authorities in accepting a taxpayer's representative from non-tax consultants, but not a few tax authorities are very rigid in their opinion that a taxpayer representative must be a tax consultant. The tax authorities base their legal arguments on the Minister of Finance Regulation Number 229 of 2014 concerning the requirements and implementation of the rights and obligations of a taxpayer representative. In this regulation, a taxpayer representative can only come from a tax consultant and an employee of a taxpayer, so that professions outside of the above cannot become a taxpayer representative in terms of taxpayer assistance at the tax service office.

The essence of this problem is that the regulation of the minister of finance is an implementing regulation of the regulations above it in the form of government regulations. In terms of taxpayer representative, Government Regulation Number 74 of 2011 has regulated it very clearly. In this regulation, it is known that the taxpayer's representative can come from tax consultants and non-tax consultants. The clause of the taxpayer's representative originating from non-tax consultants is narrowed by the minister of finance to become taxpayer employees, something that should not be a contradiction between a government regulation and the implementing regulations under it. As a result, there are restrictions on the rights of citizens to make a living, and this is strictly prohibited, because restrictions on citizens' rights can only be regulated by law as the same level with constitution. Because of this refusal, a non-tax consultant taxpayer representative, namely a lawyer filed a judicial review to the Constitutional Court of the Republic of Indonesia and produced a verdict which changed the map of the taxpayer's representative incrementally.

## **II. THEORETICAL BASIS**

Article 32 of the law on general provisions of Indonesian taxation number 16 of 2009 states that the requirements and implementation of the rights and obligations of taxpayer representative as referred to in paragraph 3 are regulated by or based on a Regulation of the Minister of Finance. One form of recognition, guarantee and protection of human rights is to guarantee equality or equality for everyone before the law (Equality Before The Law) as regulated in

1. Article 27 paragraph 1 of the 1945 Constitution which reads, "All citizens shall have the same position before the law and government and are obliged to uphold the law and government without exception",
2. Article 28D paragraph (1) of the 1945 Constitution which reads, "everyone has the right to recognition, guarantees, protection and legal certainty that is just and equal treatment before the law",
3. Article 27 paragraph (2) of the 1945 Constitution which reads, "Every citizen has the right to work and a living that is decent for humanity", and
4. Article 28D paragraph (2) of the 1945 Constitution which reads, "Everyone has the right to work and to receive fair and proper compensation and treatment in a work relationship"

The long history of regulating taxpayer's representative begins with Government Regulation Number 80 of 2007 concerning procedures for implementing tax rights and obligations. In this regulation, there are 2 legal bases for its issuance, namely article 5 paragraph 2 of the constitution concerning government authority to stipulate regulations for implementing the law, and law number 16 of 2009 concerning general taxation provisions. Article 28 paragraph 2 states that a representative as referred to in paragraph 1 includes a tax consultant and not a tax consultant. Furthermore, Article 31 states that further provisions regarding the terms and rights and obligations of tax consultants who can be appointed as taxpayer's representative are regulated by a Regulation of the Minister of Finance.

This further provision was realized by the Ministry of Finance by issuing Regulation of the Minister of Finance Number 22 of 2008 concerning the requirements and implementation of the rights and obligations of a proxy. Article 2 paragraph 2 states that a taxpayer's representative is every citizen who meets the requirements to have a taxpayer identification number, has submitted an annual tax report, is in control of taxation regulations and has taxpayer's representative letter, including a tax consultant. However, for non-tax consultants, there is a limit in Article 4 in receiving taxpayer's representation regarding the type of taxpayer and business turnover with the following details: A person who is not a tax consultant including taxpayer employees can only receive taxpayer's representation letter from:

1. Individual taxpayers who do not run independent businesses or jobs;
2. Individual Taxpayers who run independent businesses or jobs with a gross turnover or gross revenue of not more than IDR 1,800,000,000.00 (one billion eight hundred million rupiah) in 1 (one) year; or
3. Corporate Taxpayer with a gross turnover of not more than IDR 2,400,000,000.00 (two billion four hundred million rupiah) in 1 (one) year.

In 2011, the Government of Indonesia issued Government Regulation Number 74 of 2011 concerning procedures for exercising rights and fulfilling tax obligations. Article 66 of this Government Regulation states that at the time this Government Regulation comes into effect, Government Regulation Number 80 of 2007 concerning Procedures for Implementing Tax Rights and Obligations Based on Law Number 6 of 1983 concerning General Provisions and Tax Procedures last time amended by Law Number 16 of 2009, revoked and declared invalid. This means that both this Government Regulation and its implementing regulations in the form of Minister of Finance Regulation Number 22 of 2008 as mandated in Article 31 of Government Regulation Number 80 of 2007 are also declared invalid. In Government Regulation Number 74 of 2011 Chapter 8 Article 49 paragraph 1, it is stated that taxpayers can appoint a representative with a special letter of representation to exercise rights and fulfill obligations in accordance with the provisions of laws and regulations in the field of taxation. Whereas in paragraph 2 it is further stated that a taxpayer's representative as referred to in paragraph (1) includes a tax consultant and not a tax consultant. This Government Regulation actually restores the spirit of the previous Government Regulation and seeks to emphasize that a taxpayer's representative can be a tax consultant or not a tax consultant. An affirmation that was previously annulled by a Regulation of the Minister of Finance which should not be in conflict with existing regulations. Furthermore, in Article 51 of Government Regulation Number 74 of 2011, there are limitations that are administrative in nature, not substantive anymore, which say that a taxpayer's representative cannot exercise the rights and or obligations of the taxpayer who is authorized to him if he exercises his tax rights and or fulfills his tax obligations. :

1. violates the provisions of laws and regulations in the field of taxation;
2. obstruct the implementation of the provisions of laws and regulations in the tax sector; or
3. was convicted of committing a criminal offense in the field of taxation or other criminal acts.

Meanwhile, in Article 52 that follows, it is stated that further provisions regarding the terms and rights and obligations of a tax consultant who can be appointed as taxpayer's representative are regulated by a Regulation of the Minister of Finance.

In the same year, the Minister of Finance Regulation Number 229 of 2014 was issued regarding the requirements and implementation of the rights and obligations of a taxpayer's representative. This regulation uses a legal basis, namely the Law on General Tax Provisions and Government Regulation Number 74 of 2011. This means that this regulation of the Minister of finance is a mandate of Article 52 of Government Regulation Number 74 of 2011. In Article 2 paragraph 4 of the Regulation of the Minister of Finance Number 229 of 2014 states that a proxy consists of tax consultants and taxpayer employees. Again, the clause of a taxpayer's representative from non-tax consulting circles is defined differently when it is regulated by the Minister of Finance. Meanwhile, the regulation of a tax consultant is regulated by the Minister of Finance Regulation Number 111 of 2014 concerning tax consultants.

### III. RESEARCH METHODOLOGY

In this study, researchers used qualitative research methods with a case study approach, namely research conducted with literature review according to the main research question regarding how the influence of CFC Rules on contemporary or current phenomena in the context of Tax Abuse (Robert, 2002: 1).

A case study is an empirical inquiry that investigates phenomena in real life when the boundaries between the phenomena in the context are not clearly visible and where multiple sources of evidence are used (Robert, 2002: 18).

In the book Moleong (2014: 4), Bogdan and Taylor say that qualitative research methods are research procedures that produce descriptive data in the form of words or verbally from people and observable behavior. This approach is directed at the setting and the individual holistically or intact. So that in this study, it is not allowed to isolate individuals or organizations into variables or hypotheses, but it is necessary to see them as part of a whole.

### IV. RESEARCH RESULTS AND DISCUSSION

Tax disputes are a very common thing to happen. On the one hand, different interests among tax authorities who use many methods to explore potential revenue are faced with the interests of taxpayers who want to save their tax burden on the other. Both have the same position before the law (equal before the law). Since the principle of supreme power is the sovereignty of the people, it is not true that one party feels superior to the other. The existence of abuse of power must be balanced with the freedom to make an equal defense of different perceptions of tax law. This is an important point why taxpayers also need to be protected in terms of appointing a taxpayer's representative.

In this case, of course the majority of taxpayers do not fully know the details of the tax obligations they must carry out. Moreover, according to the Minister of Finance of the Republic of Indonesia, Mrs. Sri Mulyani once said that "In a study, that our (Indonesia) tax is one of the most complex countries in terms of taxation regulations," (www.finance.detik.com dated August 6 2018). When these taxpayers have less knowledge about taxes, it has the potential for taxpayers to experience injustice in the application of tax regulations according to the tax authorities because of these different interests.

The Indonesian state is a state based on the constitution which is known as the constitution. In this constitution there are many protections for Indonesian citizens, including guarantees of work and remuneration. So it is fitting that there are no other regulations that can change this except with an equivalent law. The existence of taxpayer's representative plays a vital role in providing a balance between taxpayers and tax authorities. This is in accordance with the principle of equity before the law, which means that every citizen is equal before the law, regardless of his status as a state official. Taxpayer's representative also has a role to protect the rights of taxpayers in the corridor of prevailing laws and regulations.

Isn't it a common thing that there is a term "Power tend to corrupt absolute Power Corrupt absolutely" (Lord Acton, 18th century British scientist). This protection is very important considering the high disparity between public knowledge of taxation compared to tax authorities. Tax regulations can be very dynamic in Indonesia and the speed of which is certainly not catching up with entrepreneurs whose focus is to make the maximum profit possible. This taxpayer protection is something that cannot be reduced in terms of protection of citizens, especially only with a Regulation of the Minister of Finance. So the taxpayer's representative is also a profession that must be independent, independent and professional in its field. It is not ideal if the tax authority holds the taxpayer's representative permit because it has the potential to eliminate protection of taxpayer rights.

The limitation of taxpayer’s representative from non-tax consultant channels is also paradoxical if it is limited considering the ratio of the number of residents whose rights need to be protected and the number of registered tax consultants. Meanwhile, registered tax consultants do not have tax knowledge inclusively. Let's take a look at the table below.

**Number of Tax Consultants In Various Countries**

Country	Registered Tax Consultant	Citizen(Millions)	Ratio
Austria	9.987	8,1	815
Belgium	8.903	10,4	1.167
Ceko Republic	4.113	10,5	2.550
Germany-BStBK	72.245	82,5	1.142
Dutch	11.000	16,3	1.478
Ireland	5.500	4,0	732
Italy	100.000	57,9	578
Latvia	115	2,3	20.165
Poland	9.400	38,2	4.062
Rusia	9.000	141,9	15.766
Slovakia	780	5,4	6.897
Spanish	35.000	42,3	1.209
England	14.000	59,7	4.263
Japan	70.000	127,6	1.823
Indonesia	3.500	257,0	73.249

*Processed from DDTc.co.id*

It would be sad by looking at the data above if the protection of the taxpayer's rights is left only to the tax consultant. This data shows that the ratio of Indonesia is still far behind, even when compared to small countries. Therefore, the existence of a taxpayer’s representative outside the tax consultant channel is very vital, while still prioritizing the qualified tax capabilities of the taxpayer’s representative as well as ensuring that the protection of taxpayer rights can still be implemented optimally. Based on the opinion of Victor Thuronyi as Senior Council Taxation IMF and Frans Vanistendael as Head of European Tax Collage (Tax Law Design and Drafting, 1996: Regulation of Tax Professionals), it is very difficult to implement a tax system properly if it does not involve tax advisors. This is due to the fact that most taxpayers find it difficult to understand all tax regulations precisely due to the dynamic and complexity of tax regulations. In this context, a tax advisor is needed to become a taxpayer’s representative so that taxpayers can fulfill their tax obligations properly and correctly. (The Constitutional Court Decision No. 63 / PUU-XV / 2017, page 53).

In Indonesia itself, the scope of tax practitioners and academics outside of tax consultants is also very widely. Apart from the existence of lawyers who study taxation, there are also many tax practitioners who come from taxation lecturers, tax book authors, tax seminar speakers, former employees of the tax directorate general, former corporate tax managers, and many more. They are the assistance staff as taxpayer’s representative whose numbers will be very less if it depends only on the existence of a registered tax consultant. Not to mention that there are still many tax consulting organizations whose members are non-tax consultant tax practitioners. Likewise, the organization of each practitioner I mentioned above, they have several organizations that exist and show that their tax knowledge is very qualified, even filled by tax experts in Indonesia who are very widely known.

To be able to accommodate the tax practitioners above, Indonesia needs to learn from benchmarks applied by other countries in the world, so that it can maximize the protection of taxpayers' rights fairly and proportionally. In Australia, to become a taxpayer’s representative must be in a parent association called the Tax Practicioners Board and to become a member there are several requirements, namely: being 18 years and over, physically and mentally healthy, meeting the required qualifications and experience, having professional indemnity insurance who meet the requirements, submit an online application with the required documents, pay a \$ 500 membership fee and renew their membership every 3 years. In Japan, to become a taxpayer’s representative must take part in a parent association called the Japan Fed of Zeirishi Association and to become a member there are several requirements, namely: participants who pass the National Zeirishi exam, lawyer and CPA. In America, to become a taxpayer’s representative must be part of a parent association called the IRS and to become a member there are several requirements, namely: passing the BAR and CPA exams for lawyers and accountants (not controlled by the IRS), enrolled agents must pass an examination made by the IRS and held by a third party, for non-credentialed people must have a PTIN, pass a tax compliance test and have no criminal record without any education or specific exam

requirements, to be credentialed, the same as non-credentialed but added requirements for tax training or pass one of several exams . (Constitutional Court Decision Number 63 / PUU-XV / 2017, page72).

It is not right that the regulation regarding the rights and obligations of the taxpayer's representative is considered as the absolute power of the Minister of Finance. Protection of citizens' rights, which is a symbol of people's sovereignty, must be above the Minister of Finance whose powers cannot limit the rights of certain state citizens. In a petition to the Constitutional Court, Article 32 paragraph (3a) of the *the law on general provisions of Indonesian taxation Number 16 of year 2009* which is further regulated in the Minister of Finance Regulation proves the authoritarian absolutism of the Minister of Finance by changing the taxpayer's representative group in its regulation, namely Government Regulation Number 74 of 2011 which states that the taxpayer's representative consists of tax consultants and non tax consultants, became a tax consultant and taxpayer employees.

## V. CONCLUSIONS AND SUGGESTIONS

The Constitutional Court in its decision stated that the phrase "exercising the rights and obligations of taxpayer's representative " in Article 32 paragraph (3a) of Law Number 16 of 2009 concerning General Provisions of Indonesian Taxation is contrary to the 1945 Constitution of the Republic of Indonesia on a condition and does not have binding legal force as long as it is not interpreted only in relation to matters of a technical-administrative nature and not limiting and or extending the rights and obligations of citizens. This decision has the implication that the authority to receive the taxpayer's representative, no longer rests with the Tax Consultant or Taxpayer Employees as regulated and explained in the Minister of Finance Regulation number 229 of year 2014, all citizens can become the taxpayer's representative as long as they understand the problem related to taxation well. The Directorate General of Taxes will respond to this condition immediately by involving all related parties, to produce a guideline so that there is no friction at the implementation level in the field. Then there must immediately be an explanation of the criteria of the definition of "understanding tax-related issues" in an administrative, impartial and fair manner for taxpayers in order to provide protection for the rights of taxpayers.

The intellectual capacity of taxation whose education focus outside of taxation science but who wants to know tax science is very much needed considering the lack of registered tax consultants. An anomaly is if a citizen who already understands taxation, has enough experience, has good competence in taxation cannot become the taxpayer's representative. This is not only not in line with the low ratio of the number of tax consultants to the total population, but also inconsistent with the efforts to socialize tax rights and obligations to every citizen who cannot rely solely on the resources of the existing tax authorities and registered tax consultants numbers.

## VI. REFERENCES

- Article 1 paragraph 3 of the constitution of the Republic of Indonesia*  
*Article 32 of the law on general provisions of Indonesian taxation Number 16 of year 2009*  
*Article 27 paragraph 1 of the 1945 Constitution of The Republic of Indonesia*  
*Article 28D paragraph (1) of the 1945 Constitution of The Republic of Indonesia*  
*Article 28D paragraph (2) of the 1945 Constitution of The Republic of Indonesia*  
*Article 27 paragraph (2) of the 1945 Constitution of The Republic of Indonesia*  
*Article 5 paragraph 2 Government Regulation Number 80 of year 2007*  
*Article 28 paragraph 2 Government Regulation Number 80 of year 2007*  
*Article 31 Government Regulation Number 80 of year 2007*  
*Article 2 paragraph 2 the Minister of Finance Number 22 of year 2008*  
*Article 4 the Minister of Finance Number 22 of year 2008*  
*Article 66 Government Regulation Number 74 of year 2011*  
*Article 49 paragraph 1 Government Regulation Number 74 of year 2011*  
*Article 49 paragraph 2 Government Regulation Number 74 of year 2011*  
*Article 51 Government Regulation Number 74 of year 2011*  
*Article 52 Government Regulation Number 74 of year 2011*  
Bogdan, Taylor, et al., 1992. Introduction to Qualitative Research Methods, Translation by Arief Rurchan. National Business: Surabaya.  
*Constitutional Court Number 63 / PUU-XV / 2017, page72*  
<https://www.ddtc.co.id>  
*Government Regulation of The Republic of Indonesia Number 74 of year 2011*  
*Lord Acton, British scientist, famous term 18th century*  
*Minister of Finance Regulation of The Republic of Indonesia Number 229 of year 2014*  
MK Decision No. 63 / PUU-XV / 2017, page 72

Robert, Mathis. 2002. *Human Resource Management*. Salemba four: Jakarta.  
Victor Thuronyi, *Senior Council Taxation IMF and Frans Vanistendael as Head of European Tax Collage (Tax Law Design and Drafting, 1996: Regulation of Tax Professionals)*  
*www.finance.detik.com dated August 6 2018*