

CHAPTER ONE

INTRODUCTION

A. Background

Tax can be positioned onto the private law and public law field. In the private law field, tax is actually a debt from the citizen to the state. In legal understanding, debt is an obligation (*verbintenis*).¹ The obligation is a legal relationship between two person or parties, in which the party shall be obliged to fulfill the demand.² The obligation is the legal term which is needed to be emphasized. Legal studies discuss the existence and vanish of an obligation (tax debt), the expiry, the debt preference, enforcement, confiscation, judiciary, violation, etc. In public law understanding, the citizen will gain indirect rewards in the form of establishment of public infrastructure. The tax is collected from citizens to finance the public infrastructure, so it creates a big impact on society.

Since 1995, the government put the tax sector as one of the main state revenue. As having been seen in State Expenditure Budget in the year of 1997/1998, the tax revenue reaches Rp 12.2 trillion or 32% of the volume of State Expenditure Budget. Meanwhile in State Expenditure in the year of 1998/1999, the target of the tax sector is increased into Rp 81.725 trillion.³ It

¹ Rochmat Soemitro. 1988. *Asas dan Dasar Perpajakan 1*. Bandung. PT Eresco Bandung. P. 1

² Subekti. 1990. *Hukum Perjanjian*. Cetakan 12. Jakarta. PT. Intermasa. P. 1

³ Antariksa Budileksmana. "Manfaat dan Peranan Konsultan Pajak Dalam Era Self Assessment Perpajakan". *Jurnal Akuntansi & Investasi*. Vol. 1 No.2. (2015). P.1

has been a common if a state declares the target of a taxable income to keep the stability of a state's income. The tax income in Indonesia only achieved 89.4% of the set target. Thus, tax is one of the important aspects under the government of a state, not only in economic but also in other aspects, such as the infrastructure. In the other side, tax is one of the biggest income for a state, imposed for all citizen through the tax collection.⁴

In 1983, an improvement effort been aroused through the tax reformation. The tax system is changed from official assessment into the self-assessment system, where all taxpayers are given a trust, authority, and duty to count, determine, pay, and report an amount of the tax compliance. Right after the Reformation, the consequences of the new system is that every taxpayer who earns income shall register themselves to the taxation services office. In addition, the duty to determine and count the amount of tax compliance belongs to them, in order to comply with the prevailing regulation of taxation. The effectiveness of self-assessment depends on the taxpayers disciplinary and knowledge to fulfill the payment of tax compliance.⁵ The Directory General of Taxes will deliver Notice of Tax Assessment to the taxpayer, in case they found the unreported fiscal. In addition, the cost of the

⁴ Anak Agung Istri Pradnyarani, Made Sudarma, and friend. "Dilema Etis Konsultan Pajak dalam Tax Planning: Studi Fenomenologi". *Jurnal Ilmiah Administrasi Publik (JIAP)*. Vol 4 No 2, pp 128-139. (2018). P.1

⁵ Nuramalia Hasanah and Susi Indriani. "Efektifitas Pelaksanaan Self Assessment System dan Modernisasi Administrasi Pajak Terhadap Kualitas Pelayanan Pajak (Studi Kasus Pada KPP Kebon Jeruk 1)". *Jurnal Ilmiah Wahana Akuntansi*. Volume 8 No.1. (2013). P. 5

collection will increase during the fulfillment of the self-assessment system. The cost of the collection covers the administrative cost (spent by Directorate General of Taxes) and compliance cost (spent by taxpayers). Furthermore, many taxpayers found ambiguity upon tax knowledge which tends to mislead them in the end.⁶ The risk of being misinformed upon tax knowledge can be reduced by the hand of a tax consultant role, while the role of tax consultant can be advantages and disadvantages for the tax compliance. People could be more obedient or disobeyed upon tax compliance, which is dependent on the professionalism and knowledge of the tax consultant itself. The tax consultant is involved the tax compliance of tax evasion to their client.

The tax consultant professional standard shall be regulated, to enhance the role as a partner upon the tax compliance and decrease the tax evasion. The scheme of tax evasion could be used by taxpayer or tax consultant, in fact. The role of a tax consultant is in the tax consultant regulation itself. In 1987, the data of IRS of The United States research stated that tax consultant's vision and mission is less compatible with the tax authority, so that tax consultant regulation needs to be altered and improved. Jackson and Milliron research in early 90s, criticized the United States decision upon a gap or keep the distance with the tax consultants, while they are having a huge

⁶ Hadi Sugianto. *Peran Konsultan Pajak Sebagai Partner Direktorat Jenderal Pajak Dalam Sistem Pemungutan Pajak Di Indonesia*. Sekolah Tinggi Ilmu Ekonomi Indonesia Surabaya. P. 11

role between the government and the taxpayers. Many cases of tax evasion arise which criticize the credibility and professionalism of tax consultant.

The issue of its profession become a dilemma upon its regulation. Some experts argue about the importance of its alteration profession regulation. They argued that the tax consultant profession shall be regulated under the statute. Additionally, having it regulated under the Ministry of Finance Regulation is not firm enough. In any case, this is a debatable idea to find out the legal reason of the tax consultant profession to be regulated under the statute.

Some experts argue that Indonesia lacks of tax officers and tax consultants. The data of some experts stated, within 246 million of the citizen, 24.42 million people are registered as a taxpayer, 4.5 thousand people are registered tax consultant, and 32 thousand of people are the tax officer.⁷ They play a big role in the state's revenues. The tax consultant can be effective in the case of educating taxpayers about taxation, tax imposition, and tax collection. Besides, the relationship between the tax consultant and the taxpayer can be seen as supply and demand. The tax consultant is the subject of supply, and the taxpayer is on the demand sides who have a duty to comply with the tax payment.

On the need for a new regulation about the tax, the consultant is arising as the partner of General of Taxes regarding with tax collection. Many

⁷ Op.Cit. P. 4

experts expect the role is important to maintain the tax revenue within a firm regulation, to qualify better tax consultancies and to prevent the illegal and unprofessional tax consultancies which perform tax evasion. The bill of Tax Consultant has been agreed under the plenary meeting of House of Representative on 26 July 2018 as the bill on the initiative of House of Representative. It is developed until the Constitutional Court which delivers the verdict number No. 63/PUU-XV/2017 about the constitutional condition Article 32 paragraph (3a) of General Requirements and Tax Procedure, the taxpayer representatives can proceed through another profession beyond the tax consultant. In national legislation program, the Bill of Tax Consultant been arranged as 5 years' plan, as the part of national legislation program in 2018, as stated under the Minutes of Plenary Session of House of Representative on December 5, 2017.⁸

The writer is hoping for a better discussion about the prevailing regulation of tax consultant in Indonesia since the issue and problems of tax consultant profession arise. Regarding tax reformation of Indonesia through self-assessment system in 1983, we attempt to compare it with Australia (self-assessment system in 1986) and the United States (self-assessment system in 1984) development of tax consultant regulation, since they are having a close gap of year in self-assessment system.

⁸ Tok! DPR Setujui 50 RUU Jadi Prolegnas 2018. <https://news.detik.com/berita/d-3755282/tok-dpr-setujui-50-ruu-jadi-prolegnas-2018> accessed on 20 Oktober 2018.

B. Research Problem

1. How are the legislations pertaining to the tax consultant profession in Indonesia?
2. What are the similarities and differences of tax consultant law Indonesia compared to Australia and The United States?

C. Objectives of Research

The objectives of this research are:

1. To understand some of the prevailing regulation concerning the Tax Consultant in Indonesia
2. To compare the Tax Consultant regulation in Indonesia, Australia, and the United States

D. Benefit of Research

1. Theoretical aspect:

The research would give the theoretical understanding of Tax Consultant (working environment, ethics, correlation with the client and state).

2. Practical Aspect:

To propose the recommendation for a better regulation regarding the Tax Consultant in Indonesia.