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Implementation of the Principle of Fairness in the Settlement of Income Tax Disputes under Article 26 on Cross-Border Transactions

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Abstract: This study discusses the implementation of the principle of justice in resolving Income Tax Article 26 (PPh Pasal 26) disputes concerning cross-border transactions. International tax disputes often show a tension between procedural justice, which emphasizes formal compliance with legal rules, and substantive justice, which is oriented toward material truth and the economic substance of the transaction. Using a normative approach through philosophical, juridical, and sociological analysis, this study finds that MAP is more capable of realizing substantive justice compared to domestic litigation. Therefore, the optimization of MAP, the updating of digital taxation regulations, and judicial consistency in balancing procedural and substantive aspects are the main recommendations to strengthen the legitimacy and effectiveness of the Indonesian tax system. Domestic litigation channels in Indonesia tend to emphasize the procedural aspects, thereby potentially overlooking substantive justice for Non-Resident Taxpayers (WPLN). Conversely, the Mutual Agreement Procedure (MAP), regulated in Double Taxation Avoidance Agreements (P3B), offers a more collaborative, effective, and double taxation elimination-oriented resolution mechanism.

Keywords: Double Taxation 1, Income Tax Article 26 Dispute 2, Mutual Agreement Procedure (MAP) 3, Procedural Justice 4, Substantive Justice 5.

INTRODUCTION

The settlement of disputes under Article 26 of the Income Tax Law on cross-border transactions is a test for Indonesia's fiscal legal system in upholding substantive justice while maintaining tax sovereignty. Domestic litigation often gets caught up in procedural and legalistic formalities, failing to capture the economic substance of transactions and creating a gap between court decisions and the substantive justice expected by foreign taxpayers and domestic entities. This research is important for identifying the most effective mechanisms to bridge this gap and ensure that dispute resolution reflects substantive truth.

Several previous studies on the dispute over Article 26 of the Income Tax Law, particularly in relation to tax withholding and double taxation, have found that Article 26 of the Indonesian Income Tax Law regulates tax withholding on income sourced from Indonesia and received by foreign taxpayers who do not have a permanent establishment in Indonesia.

This provision plays an important role in maintaining state revenue and preventing double taxation through the implementation of Double Taxation Avoidance Agreements (DTAAs). However, determining the party that has beneficial ownership status and exercising the rights under tax treaties often pose significant challenges for companies and tax authorities. (Nabila Nasywa & Wa Ode Jeslin, 2025)

Other studies highlight the procedural complexity arising from dualism in the administration of the Tax Court, where technical supervision is under the Supreme Court while organizational management is carried out by the Ministry of Finance. This condition creates complexity in the governance and implementation of tax administration. The latest decision by the Constitutional Court to transfer the administration of the Tax Court to the Supreme Court aims to simplify the mechanism. (Rifandanu, 2024)

Another study highlights the Mutual Agreement Procedure (MAP), which is an international mechanism aimed at resolving double taxation disputes. Indonesia has taken positive steps in implementing MAP, in line with OECD BEPS Action 14 to improve its effectiveness. However, further development is still needed, including providing more detailed guidelines and a transparent digital administration system. (Defi, 2024) Hapsari then emphasized restorative justice, stating that its application in tax law enforcement could encourage increased compliance and peaceful dispute resolution. This approach focuses on reconciliation between parties and the creation of a more constructive compliance environment, thereby potentially reducing protracted legal conflicts. (Hapsari, 2024)

MAP is an effective mechanism for resolving international tax disputes, particularly those related to double taxation, through dialogue and consensus between countries. Unlike litigation, MAP emphasizes substantive justice and supports investment stability and legal certainty. (Regulation of The Minister of Finance of The Republic of Indonesia Number 49/PMK.03/2019 on Implementation Guidelines on Mutual Agreement Procedure, 2019) Indonesia and Thailand have adjusted their domestic regulations to align with international best practices, and in Indonesia, many MAP cases are resolved within 24 months as recommended. Various studies show that MAP is effective in handling disputes related to transfer pricing and tax treaty interpretation, by providing a structured, transparent, and beneficial resolution mechanism for both taxpayers and tax authorities. (Xavier, 2022)

This research is very important because it aims to examine and encourage the application of the most effective dispute resolution instruments in upholding the Principle of Justice, which is the main focus of this article. There are three main factors underlying the urgency of this research. First, there is a conflict between Procedural Justice and Substantive Justice in Domestic Litigation. This research is necessary because the settlement of Article 26 Income Tax disputes through domestic litigation still focuses on legal formalities (procedural justice) and ignores the economic substance of cross-border transactions. As a result, substantive justice for taxpayers is neglected, such as when tax authorities classify management fees as hidden dividends to impose higher tax rates without considering the operational purpose of these costs. Second, it relates to the efficiency and effectiveness of MAP in finding Material Truth. This research is important because MAP offers a flexible, negotiation-based dispute resolution mechanism between the tax authorities of two countries to reach a fair agreement based on the principles of fairness and business norms. OECD data shows that the MAP success rate reaches 75% with only 2% of cases without agreement, confirming its effectiveness in achieving material justice for foreign taxpayers. Third, it minimizes legal uncertainty and the risk of double taxation. This research is important because disputes over Article 26 Income Tax have the potential to result in double taxation, while domestic litigation only resolves disputes from one jurisdiction. MAP, which is regulated in P3B, is designed to eliminate double taxation as a condition of international fiscal justice. Without MAP, foreign taxpayers could be taxed twice, whereas through MAP, both countries can agree on adjustments so that taxes are only imposed once fairly.

Income Tax (PPh) Article 26 is an important component in the national taxation system that ensures income from Indonesian territory, regardless of the recipient's domicile, contributes fairly to the state, based on the principle of source-based taxation to assert fiscal sovereignty and protect the tax base from the effects of globalization. In its application, Income Tax Article 26 is imposed on income received by Non-Resident Taxpayers (WPLN) other than Permanent Establishments (BUT) paid by domestic parties such as government agencies, domestic taxpayers, event organizers, and BUT in Indonesia. (Sitorus & Risya, 2025)

Article 26 of the Income Tax Law applies the principle of source-based taxation, whereby income from Indonesian territory is taxed regardless of the recipient's domicile, ensuring that foreign entities contribute to state revenue. Challenges arise in the digital economy era due to the absence of physical presence of business actors, prompting the government to strengthen regulations and utilize tax withholding mechanisms to generate revenue, including from digital platforms such as YouTube, where foreign creators earn income from users in Indonesia. However, the current legal framework does not fully regulate tax withholding on such digital transactions, necessitating a revision of the Income Tax Law to create legal certainty and fiscal justice. (Pangaribuan et al., 2024) Income tax, including that regulated in Article 26, is one of the main contributors to national income, accounting for more than 70% of total state revenue. This revenue plays a vital role in financing public services and national development programs. The government continues to strive to improve tax collection efficiency and expand the tax base in order to promote economic growth and improve public welfare. (Amalia et al., 2025)

The application of Income Tax Article 26 covers the obligation to withhold tax on income paid by domestic parties to foreign taxpayers. This provision covers payments such as service fees, royalties, and other forms of income, to ensure that foreign entities that derive economic benefits from Indonesia contribute to the national tax base. (Sovita & Firsta, 2019) Income Tax Article 26 plays an important role in Indonesia's taxation system, but faces challenges in the digital economy era that make traditional collection methods less effective. The government continues to update tax regulations to remain fair and able to reach all sources of income efficiently. The objects of Income Tax Article 26 include various types of income such as dividends, interest, royalties, rent, and service fees, which are often received by non-resident taxpayers without a physical presence in Indonesia. Therefore, the withholding tax system is crucial, whereby payers in Indonesia deduct and deposit taxes directly to the state treasury. This mechanism, which imposes tax on gross income, aims to prevent cost manipulation and maintain fiscal fairness for the country.

The digital economy poses unique challenges to the taxation system because many transactions take place without a physical presence in the source country. To address this, Indonesia has imposed VAT on foreign suppliers to ensure that digital transactions are taxed proportionally. This step is in line with global trends, with countries such as India, France, and Australia also developing digital taxation frameworks. These efforts aim to address the impact of digitalization and ensure that all economic activities contribute fairly to state revenue. (Suwardi et al., 2020) Cross-border payments such as dividends, interest, royalties, and service fees are subject to withholding tax in Indonesia. This mechanism serves to prevent tax avoidance practices and ensure that income sourced from within the country is taxed proportionally. Withholding on gross income, rather than net profit, is also intended to prevent manipulation through cost reduction, thereby protecting the tax base and ensuring fair tax collection. (Wafikhoh, 2022) The implementation of tax withholding systems in the digital economy era faces various challenges, including legal uncertainty and the need for international collaboration. The OECD BEPS Action 1 report highlights this issue, suggesting that the implementation of VAT could be a temporary solution while waiting for the development of more comprehensive policies. (Putra, 2024)

Although Article 26 of the Income Tax Law aims to create legal certainty and efficiency, its application in cross-border transactions often faces obstacles due to differences in legal

interpretations regarding rates, taxable objects, and tensions between national laws and international agreements. PPh Article 26 stipulates a 20% withholding tax rate on gross income that can be reduced through a Double Taxation Avoidance Agreement (DTAA) as *lex specialis* to prevent double taxation, encourage investment, and resolve disputes arising from payments that are not classified according to economic substance. Based on the UN and OECD models, DTTs avoid double taxation through exemption and credit methods, providing legal certainty and dispute resolution mechanisms through the Mutual Agreement Procedure (MAP), although the potential for MAP deadlocks has sparked discussion on the establishment of an International Arbitration Body to improve the effectiveness of tax dispute resolution. Tax authorities sometimes reclassify certain types of payments as dividends in order to impose higher tax rates, even though this does not reflect the true economic substance of the transaction. Such practices have the potential to violate the objectives of the P3B by ignoring the true nature of the income received. (Hakim & Khalimi, 2022)

The classic taxation system applied in Indonesia has the potential to cause economic double taxation, especially on dividends, because profits are taxed twice, first at the company level and second at the shareholder level. This is in contrast to the dividend exemption system adopted in several countries to create a more attractive and competitive investment climate.

P3B regulates taxation provisions on cross-border payments such as dividends, interest, royalties, and service fees. By providing relief, this agreement can reduce the burden of domestic tax withholding and encourage the smooth flow of international finance. Although its impact on foreign investment is not always immediately apparent in the short term, in the long term, P3B provides benefits through legal protection and the facilitation of information exchange, which helps to curb tax avoidance practices and has the potential to increase state revenue. (Yusuf et al., 2023). Although P3B brings benefits, its implementation faces challenges such as income reclassification that causes disputes and reduces the effectiveness of agreements, as well as the impact of foreign investment that is not always immediate; therefore, continuous negotiations and adjustments to P3B are needed to keep up with the dynamics of international taxation.

In disputes over Article 26 income tax, there is a conflict between procedural and substantive justice, whereby the tax authorities emphasize formal compliance through strict rules and audits, while taxpayers consider this to ignore the economic substance of transactions; the courts then play a role in balancing legal certainty with the search for material truth to resolve the tension between legal form and economic reality. Therefore, the principle of equality challenges the formalistic approach by asserting that the law needs to be adjusted when its application results in injustice, making the balance between rules and principles essential in tax law. (Filipczyk, 2022)

The role of judicial institutions is crucial in maintaining a balance between procedural justice and substantive justice. This is reflected in various court decisions that emphasize the importance of considering both the formal provisions and normative objectives of the law. The court serves as a forum for assessing the harmony between procedural compliance and substantive justice, as seen in the practice of the Constitutional Court, which seeks to combine formal and substantive legal considerations in order to achieve fair decisions. (Simanjuntak & A.L.W., 2022) Although procedural justice is important for legal certainty, a formalistic approach has limitations, so substantive justice that emphasizes the economic substance and purpose of transactions is also crucial; the judiciary plays a role in balancing the two so that tax decisions are fair, maintaining trust in the tax system, and protecting the rights of taxpayers.

This study is based on three main dimensions. Philosophically, it is based on the theory of justice that distinguishes between procedural and substantive justice, and covers commutative, distributive, and legal aspects in the context of taxation. Legally, this study is supported by a strong legal basis, such as the Income Tax Law, the Tax Court Law, and P3B as *lex specialis*, reinforced by court jurisprudence. Sociologically, this study views tax disputes as

a relationship between the state and citizens within the framework of the welfare state, where taxes are a form of public service, and the state has an obligation to realize justice that is not only formal, but also substantive and felt by the community. Philosophically, justice in the taxation system requires harmony between procedural justice, which focuses on compliance with formal rules, and substantive justice, which emphasizes truth and material justice. John Rawls' ideas, particularly through the principles of equal liberty and difference, form the basis for the application of distributive justice in taxation, in order to create a more equitable and equitable system.(Delmendo, 2024)

From a legal perspective, the tax law system is based on legislation such as the Income Tax Law and the Tax Court Law, and is reinforced by international agreements such as the P3B, which functions as *lex specialis*. The implementation of the self-assessment system in Indonesia reflects a legal approach that gives responsibility and trust to taxpayers, while maintaining the principles of compliance and fairness in the settlement of tax disputes.(Dinda Anna Zatika, 2023) Court decisions play a significant role in shaping tax jurisprudence, ensuring that the application and interpretation of tax laws are in line with the underlying principles and standards of justice. From a sociological perspective, taxation is a key pillar of the welfare state, in which the state has a responsibility to protect and provide for the welfare of its citizens through the fair distribution of resources. In the Indonesian context, the Theory of Devotion emphasizes the moral and legal obligations of the state towards its people, so that tax collection is considered legitimate as an instrument for achieving collective welfare. The tax system must be in line with the reality of justice as imagined in the minds of citizens, adapting to changes in social and economic conditions in order to maintain legitimacy.

Tax studies from the perspective of fairness emphasize the importance of integrating philosophical, legal, and sociological dimensions to balance legal certainty and public perceptions of fairness, in order to build a legitimate and effective taxation system for the welfare of society. This study shows that although domestic litigation provides a formal mechanism, the tension between procedural and substantive justice makes the Mutual Agreement Procedure (MAP) a more equitable and efficient alternative for resolving cross-border income tax disputes under Article 26.

METHOD

The research question focuses on the application of procedural and substantive justice in tax court decisions, using a qualitative approach with a normative legal method and a statute approach (Rifandanu, 2024), involving philosophical, legal, and sociological analysis, supplemented by a case study approach. The aim is to understand how these principles are applied in the settlement of tax disputes, particularly in the context of Indonesian tax courts.

This study uses secondary data, including laws, court decisions, and scientific articles, to provide a comprehensive understanding of justice in tax dispute resolution. The case approach involves an in-depth examination of tax court and Supreme Court decisions to identify the application of substantive justice and legal policy in real-world tax dispute resolution. For example, Supreme Court Decision No. 4686/B/PK/PJK/2022 highlights the importance of judicial consideration in producing fair decisions for individual taxpayers who are designated as Taxable Entrepreneurs.(Kusumo & Rasji, 2024)

To understand the concept of fairness in the taxation system, this study refers to several basic theories. One of them is the Four Canons of Taxation proposed by Adam Smith in his work *The Wealth of Nations* (1776). Smith introduced four main principles that form the foundation of the modern taxation system, namely the principles of equity, certainty, convenience, and economy.(Alam, 2021)

Adam Smith's principle of equality emphasizes that taxes must be commensurate with the ability to pay and proportional to the benefits provided by the state, which is relevant in disputes such as Income Tax Article 26. The principle of certainty demands clear, fair, and non-arbitrary

tax rules that protect the rights and provide legal security for taxpayers. The principle of convenience and efficiency emphasizes easy, non-burdensome, and low-cost tax collection so as not to exceed the income earned, thereby encouraging compliance. Adam Smith highlighted the dangers of inefficiency and potential abuse in the tax collection process, so he encouraged the implementation of a taxation system capable of generating maximum net revenue for the state without waste.(Rahmawati, 2024) Adam Smith's principles of taxation provide a solid foundation for the formulation of tax policy, but economic dynamics and advances in modern technology have presented new challenges to their application. The development of e-commerce, globalization, and digital transactions require adjustments to the taxation system to address issues such as tax avoidance and profit shifting by multinational companies.

RESULTS AND DISCUSSION

Analysis of Tax Litigation and Jurisprudence: Procedural versus Substantive Justice

Income Tax Article 26 is imposed on the income of Foreign Taxpayers from sources in Indonesia through a withholding tax mechanism, with the payer acting as the withholding agent, depositor, and reporter. Deposits must be made no later than the 10th and reports must be submitted by the 20th of the following month. The general rate is 20% of gross income, but may be lower if there is a Double Taxation Avoidance Agreement (DTAA), which functions as *lex specialis* to prevent double taxation and support cross-border investment.(Hidayah et al., 2025) The tax withholding system in Indonesia is a vital part of tax collection, ensuring that taxes are collected directly from the source of income. This system applies to various types of income, including Article 26 for non-residents who earn income from Indonesia. This mechanism requires payers to withhold taxes and deposit them with the authorities, thereby increasing compliance and reducing the risk of avoidance.(Salsabila Mahirah, 2022) The Double Taxation Avoidance Agreement (DTAA) aims to prevent double taxation on the same income, support international trade and investment with legal certainty and tax relief, and as *lex specialis*, prioritize the provisions of the DTAA over domestic law to reduce tariffs and encourage cross-border economic activity.

The challenge of substantive justice arises from rigid and legalistic laws, because mere compliance is not enough; true justice must reflect a sense of rightness, uphold the truth, and provide benefits and redress, beyond the formalities of positive law. Judges play a key role in realizing substantive justice, with the ability to interpret the law while considering social and moral values in their decisions. The progressive legal paradigm encourages judges to make decisions based on conscience and broader impact, rather than merely adhering to formal legal procedures.(Budiono et al., 2022). The importance of balancing procedural and substantive justice because an imbalance between the two causes the legal system to fail in upholding true justice. An approach that integrates both aspects is needed to produce fair decisions. The legal system needs to be reformed to be more flexible and take into account non-legal factors, including moral and ethical values, in judicial decision-making. The concept of natural law, which is based on reason and morality, can be a guide to achieving substantive justice by setting standards of value beyond the boundaries of formal law.(Tang, 2024)

Modern legal philosophy emphasizes the need to balance the rigidity of positive law with substantive justice, which demands sensitivity to context and human values. This approach encourages legal professionals to interpret rules with wisdom, empathy, and universal moral considerations. In legal practice, legal professionals need to develop a sense of justice as a human virtue, going beyond the mere application of norms. Empathy and humanity are key to realizing effective and tangible justice for society.(Herbas, 2018) Leslie Green rejects the notion that strict adherence to the rules automatically implies justice. He argues that the law must always be evaluated from the perspective of justice, and that judges play an important role in

ensuring this. The relationship between law and justice is not only formal, but also involves a deep assessment of the substance of the law and its impact on society.(Green, 2023)

Procedural justice emphasizes the fairness and transparency of legal processes, while substantive justice highlights truth and moral values. These two forms of justice often do not go hand in hand, and sociological and humanistic approaches, such as restorative justice, are recommended for handling cases involving underprivileged communities. Restorative justice is considered a tool for realizing substantive justice by balancing the interests of society, perpetrators, and victims. This approach emphasizes a holistic interpretation of the law, including social values, so that its application within the legal framework can guide legal professionals to uphold substantive justice through anticipatory and teleological interpretation.(Wahid, 2022) Substantive justice, which is often hindered by rigid adherence to formal law, can be strengthened through a restorative approach that emphasizes reconciliation, forgiveness, and community participation, viewing the law as a tool for restoration and harmony that integrates human and moral values, thereby encouraging a shift toward a progressive legal paradigm that balances the interests of all parties and addresses the root causes of disputes.

Progressive law emphasizes the adaptation of law to social and moral changes, prioritizing human welfare and justice over procedural compliance. This approach encourages legal practitioners to act flexibly when laws fail, making the legal system more dynamic and responsive, with the integration of moral and ethical considerations to achieve substantive justice. This includes recognizing the law as a means to promote ethical coexistence, as well as ensuring that legal decisions reflect social values and moral principles.

A. Formal Stages and Procedures

Tax dispute resolution through litigation in Indonesia takes place in stages, beginning with the submission of an objection to the DGT within 3 months after the SKP is issued. If rejected, taxpayers can file an appeal with the Tax Court within 3 months by attaching the Objection Decision and proof of payment of 50% of the tax owed. The Tax Court hearing includes examination of evidence and witnesses, with a maximum decision period of 12 months from the date the complete file is submitted. If still dissatisfied, the parties may file for a Review to the Supreme Court once, with the process generally taking more than 12 months. The Tax Court holds a hearing to assess the evidence and arguments of both the taxpayer and the tax authorities. The court's decision is based on legal considerations and the facts of the case, with the aim of providing a fair resolution to the dispute.(Basri & Muhibbin, 2022) The final stage in litigation is a Review (PK) at the Supreme Court, which is an extraordinary legal remedy that can be filed if there is a significant legal error or new evidence that could potentially affect the outcome of the case. The Tax Court acts as a supervisor to ensure that PK petitions meet formal requirements before being forwarded to the Supreme Court. The Supreme Court's decision is final and binding, becoming the final resolution for tax disputes.(Enna Budiman et al., 2025)

B. Case Studies of Judgments and Challenges to Substantive Justice.

The pursuit of substantive justice in tax litigation is often hampered by high caseloads, lengthy proceedings, and complexity, especially in cross-border transactions. Nevertheless, case law shows a trend toward prioritizing economic substance, such as reclassifying expenses as disguised dividends, to ensure fairness for taxpayers, while still facing systemic challenges. Tax cases, particularly those involving international aspects such as transfer pricing, require in-depth examination of evidence, thereby prolonging the process and adding to systemic delays in dispute resolution.(Rennó & Carvalho, 2022) Tax Court Decision No. PUT-53796/PP/M.IIA/13/2014 and similar cases show that courts tend to emphasize substantive justice by assessing the economic substance and validity of transactions, rather than merely formal compliance, in line with the principle of *summum ius summa injuria*. Legal uncertainty in audits, especially regarding transfer pricing, often triggers unilateral corrections that undermine taxpayer confidence, making legal certainty,

accuracy, professionalism, and proportionality key to fair tax administration. Strengthening regulations and standardizing audit methods is recommended to improve fairness and accountability in the tax audit process. (Marthayori et al., 2025) Globally, the determination of appropriate transfer pricing remains a matter of debate, as courts often lack clear guidelines for determining arm's length prices. This international case emphasizes the importance of balancing legal provisions with economic conditions to ensure fair taxation practices. The European Court emphasizes the importance of the principle of proportionality and gives taxpayers the opportunity to explain the economic basis for deviations from standard pricing models.

Based on the attached court decisions, the panel of judges emphasized Substantive Justice by upholding material truth over formalities. Decisions such as No. 5911/B/PK/Pjk/2024 and 4361/B/PK/Pjk/2024 rejected tax corrections without strong evidence, while other decisions (e.g., 845/B/PK/Pjk/2024, 846/B/PK/Pjk/2024, 871/B/PK/Pjk/2024) demonstrate appropriate consideration of facts and legal aspects, affirming the principle of substance over form. In addition, decisions related to Income Tax Article 26 emphasize taxpayer protection and international compliance through the application of P3B (e.g., 4419/B/PK/Pjk/2024, 4335/B/PK/Pjk/2024), preventing double taxation, and avoiding arbitrary treatment. Other rulings (e.g., 5001/B/PK/Pjk/2024, 4895/B/PK/Pjk/2024, 4089/B/PK/Pjk/2024) reject unfounded corrections and affirm the principle of fairness in transfer pricing, thereby maintaining a balance between taxpayer rights and state interests. Although the panel of judges' considerations emphasized substantive aspects, the achievement of Substantive Justice also reflects the fulfillment of Procedural Justice, as seen in the application of the *lex specialis* principle and legal certainty (e.g., 4335/B/PK/Pjk/2024, 4112/B/PK/Pjk/2024), attention to taxpayer rights by rejecting corrections without a strong basis (e.g., 5911/B/PK/Pjk/2024), and proportional assessment of evidence and facts (e.g., 3983/B/PK/Pjk/2024), which together uphold a fair process and legal certainty.

In the context of PK, the procedures at the Supreme Court as the final level of tax legal remedies show that the Supreme Court's consistency in rejecting PK and affirming pro-substantive considerations reflects the proper fulfillment of procedures and substance, both through the Tax Court's assessment and the Supreme Court's own corrections. Overall, the Supreme Court's PK Decision affirms the paradigm of tax adjudication oriented towards Substantive Justice, with the panel of judges prioritizing material truth, economic reality, and protection of taxpayer rights, while still upholding legal certainty; the application of P3B, the principle of substance over form, and the rejection of corrections without strong evidence demonstrate a systematic effort to achieve the true truth in tax disputes.

Litigation Challenges and the Effectiveness of the Mutual Agreement Procedure (MAP)

Although litigation provides a formal mechanism, systemic obstacles such as high caseloads and lengthy processes often undermine substantive justice. The backlog of tax disputes, particularly lawsuits or appeals to the DGT, prolongs resolution to 12 months or more, plus additional time at the Supreme Court's PK stage. Delays in resolving tax disputes are triggered by the large number of cases and the complexity of the law. For example, in Brazil, the average tax litigation process takes more than 2,300 days with 370,000 cases pending, while in India, the ITAT experiences delays due to complex procedures and variations in case resolutions. In Indonesia, the tax objection process is considered inefficient, with bureaucracy prolonging the resolution to 21 months from the start of the audit to the final decision. Simplifying the objection procedure, as recommended, could reduce these delays. (Marmiyati et al., 2025) Complex tax dispute processes, such as transfer pricing, prolong legal proceedings, undermine legal certainty, burden taxpayers, and reduce public confidence. Cross-border complexities and administrative barriers further slow down case resolution. Normative

complexities and administrative barriers prolong tax disputes in court, reducing the sense of justice and legal certainty. Mediation offers a faster, simpler, and more cost-effective alternative to resolution. This approach has the potential to reduce the number of disputes that must be brought to litigation while increasing the overall efficiency of tax dispute resolution. (Afiyati et al., 2022)

The Mutual Agreement Procedure (MAP) is an alternative to litigation for international tax disputes, enabling negotiations between the tax authorities of partner countries and preventing double taxation. The MAP is regulated in Article 25 of the OECD and UN Model Tax Convention, providing a structured procedure for dispute resolution, while the update to PMK 172/2023 demonstrates Indonesia's efforts to improve efficiency and compliance with international standards, although there are still implementation challenges. Some MAP frameworks include mandatory arbitration clauses, which guarantee binding resolutions within a certain period if the competent authorities fail to reach an agreement. BEPS Action 14 OECD aims to improve the effectiveness of MAP by ensuring timely resolution and strengthening transparency and predictability in the application of tax treaties. Indonesia has aligned its MAP procedures with international practices, successfully resolving many cases within the recommended 24-month period, and utilizing digitalization to improve efficiency and transparency. (Defi, 2024) The Mutual Agreement Procedure (MAP) effectively resolves international tax disputes, particularly double taxation, with a success rate of around 75%. This mechanism emphasizes negotiation between tax authorities and the substance of the dispute, rather than procedural formalities, thereby supporting substantive justice.

CONCLUSION

This study concludes that the Mutual Agreement Procedure (MAP) is more effective in achieving substantive justice than domestic litigation in Article 26 income tax disputes involving cross-border transactions. Domestic litigation tends to focus on formal compliance and ignore economic substance, so that justice for cross-border taxpayers is often neglected. In contrast, the MAP, as regulated in the Double Taxation Avoidance Agreement (DTAA), offers a consensus-based collaborative approach that emphasizes the achievement of material truth through dialogue between tax authorities. The MAP approach serves to eliminate double taxation, reduce fiscal injustice, and strengthen investment stability and legal certainty in accordance with the principles of fairness and business norms. This mechanism places the interests of both countries within a framework of fair international cooperation, rather than in an adversarial position as in litigation. Thus, MAP provides space for a more rational and proportional resolution for cross-border taxpayers.

Empirically, the effectiveness of MAP is reflected in its solution-oriented and collaborative nature, with a success rate of around 75%, while only 2% of cases fail to reach an agreement. This mechanism is also in line with OECD BEPS Action 14, which encourages fair and efficient resolution of double taxation. In Indonesia, most MAP cases can be resolved within 24 months, indicating that this mechanism is more efficient and oriented towards substantive justice than conventional litigation.

To strengthen the legitimacy and effectiveness of Indonesia's taxation system, it is necessary to maintain consistency in the judiciary in balancing procedural and substantive justice, so that decisions not only uphold legal certainty but also reflect material truth. Optimizing the Mutual Agreement Procedure (MAP) is important through more detailed guidelines, capacity building of officials, and the implementation of a transparent digital administration system so that the dispute resolution process is more efficient and accountable. In addition, tax regulations, particularly the Income Tax Law (PPH Law), need to be updated to keep pace with developments in the digital economy and cross-jurisdictional business practices. With the strengthening of the MAP mechanism and regulatory reform, Indonesia's taxation

system is expected to be able to guarantee substantive justice, reduce double taxation, and increase legal certainty and public trust in the tax authorities.

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