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Application of the Load of Proof in Customs Value Disputes Reviewing From Customs Law and Tax Law (Analysis Of The Decision Of The Supreme Court Number 1965/B/PK/PJK/2018)

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Abstract

In clarifying the burden of proof of customs value disputes, there is a Supreme Court Decision ruling that documents and evidence that were not submitted by the importer at the objection stage and cannot be validated and show no good faith and cannot be believed to be true by the Supreme Court of Justice. The research was conducted on the application of the burden of proof in the Supreme Court's decision related to customs and taxation law. The study concludes that the Supreme Court's decision is in line with the norms of proof of transaction value both in national law and in WTO/GATT provisions as well as tax law. The importer is obliged to submit data and supporting evidence of the transaction value to customs. And the consequence if the request is not fulfilled is the determination of the customs value by the customs official.

Keywords
Customs value; evicence; tax court; dispute

I. Introduction

Based on the analysis of the decisions of the Tax Court in disputes over customs values, the judges' judgments in defeating DJBC were mostly due to the fact that the appeal applicant was able to prove the truth of the transaction value at trial based on documents supporting the transaction value such as Sales Contracts, Purchase Orders, proof of payments, and bookkeeping. However, if there is incomplete evidence or there are different values, the appeal is likely to be rejected. The reason the Panel of Judges rejected the appeal was because the Appellant could not prove the customs value that was notified was the actual transaction value or that should have been paid.

These considerations reflect the adoption of the principle of reversal of the burden of proof by the Panel of Judges, where the Panel of Judges requires that the importer or the applicant for appeal can prove the truth of the transaction value of the imported goods. From the author's observation, the majority of the Tax Court Judges accommodated data and evidence that were not submitted to the objection process as evidence that was considered in the appeal process.

However, there is a Judicial Review Decision of the Supreme Court of the Republic of Indonesia Number 1965/B/PK/PJK/2018 dated August 30, 2018 which essentially rejects the application for judicial review submitted by the Importer with the consideration: the transaction value with supporting evidence for the Purchase Order, Proforna Invoice , Packing List, B/L, SPPB, Cargo Insurance, Stock Card/Inventory Book, Ledgers are not submitted at the objection stage and cannot be validated and show no good faith and cannot be trusted by the Supreme Court of Justice and therefore the Appeal's correction (now the Respondent for Judicial Review) in the a quo case is maintained because it is in accordance with the provisions of the applicable legislation"

From the Supreme Court's decision, jurisprudence (applicability of the same law) can be drawn on documents/evidence that were not submitted by the Petitioner at the objection

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stage and could not be validated and showed no good faith and could not be believed to be true by the Supreme Court of Justice.

II. Research Method

The author uses normative juridical research methods in conducting research. Normative juridical research is research that is focused on examining the application of rules or norms in positive law. While what is meant by written law until now there is no definite definition, written law is not the same as written law. Jurisprudence, for example, is an unwritten law, even though its physical form is written, even printed.

In normative juridical research, the author conducts legal research on legal principles that are carried out on legal rules regulated in primary legal materials and which develop through discussions in secondary legal materials and those that can be found in tertiary legal materials. Normative legal studies will produce prescriptive research, which is trying to find a way out to overcome existing problems. The approach used in this research is a qualitative approach, which aims to understand the background of a legal concept.

III. Result and Discussion

3.1 The Concept of Burden of Evidence from a Tax Law Perspective

The general principle in determining the burden of proof applied by tax law is explained in The Burden of Proof in Tax Law (The final reports of the annual meeting of the European Association of Tax Law Professors (EATLP) held in Uppsala, Sweden from 2-3 June 2011) in the "General Report", it is stated that:

"The Theory is that "the burden of proof should REST on the party that makes CLAIM which affects another party"

The principle states that the burden of proof should rest on the party making the claim that affects the other party. However, there are exceptions to apply reversal of the burden of proof or shifting the burden of proof to the company or taxpayer as explained as follows:

"A common feature amongst the reported countries is that the tax administration is authorized to make discretionary decisions. The capability to do so, ie the legal requirements for a discretionary decision to be made, does however differ. This is shown in the following.

According to Austrian law, a discretionary decision must always be based on all relevant facts. The tax administration can assess the tax base by estimation, if the taxpayer is unable to explain specifications made by him.

In Denmark, France and Finland, the tax administration has to prove the accuracy of the assumptions made in the estimate/discretionary decision. If the administration succeeds to do so, the taxpayer has to prove the inaccuracy of the decision.

According to German and Turkish law, a discretionary decision can be made if the tax administration cannot investigate or calculate the relevant facts. In these cases the estimation is based on a likelihood-standard.

Estimation-based assessments can be made, often by means of presumptions, according to Italian law. The presumptions can follow from either tax law, either from the judge's free evaluation.

In the Netherlands, a "reversal of the burden of proof" occurs if the taxpayer has failed to fill in the tax return, answer the tax administration's questions or fulfill the book-keeping liability. The tax administration's assessment will be held correct as long as the

taxpayer does not prove beyond reasonable doubt that the assessment is incorrect. The same principles apply according to Belgian law.

According to Norwegian law, a discretionary assessment can be made if the tax administration finds that another scenario than the one declared by the taxpayer is more probable. This implies that the tax administration, to a certain degree, may be subject to the duty to inspect. Also in Spain and Sweden, the tax administration has to make the estimation probable and justify the truthfulness of its assertions. If this requirement is fulfilled, it's up to the taxpayer to provide evidence that the estimation is incorrect. Furthermore, in Greece the. The tax administration bears the burden to prove its allegations concerning the inaccuracy of the taxpayers' tax statement."

Based on Burden's explanation regarding discretionary decisions on tax issues or regarding estimated assessments, it is known that the provisions for reversing the burden of proof or shifting the burden of proof to companies or taxpayers are adopted in various countries in europe. The provisions for reversing the burden of proof or shifting the burden of proof to the company or taxpayer are applied if the company or taxpayer is unable to complete the evidence and documents required by the Tax Administration

The provisions for reversing the burden of proof or shifting the burden of proof to the company or taxpayer have long been embraced in Indonesian Taxation Law. This can be seen in Article 14 paragraph (3) of the Income Tax Law of 1944. The law adheres to reverse proof (omkering van bewijslast). The contents of Article 14 Paragraph (3) of the Income Tax Law are: "A taxpayer who does not fulfill the obligations stipulated in Article 11 is obliged to prove the incorrect tax assessment imposed.

In this article, it is only determined who is obliged to prove and it is not at all determined which evidence can be used. In a contrario it can be said, if the taxpayer has fulfilled his obligations, namely entering a notification letter, providing further explanation, and showing the requested books or records (Article 11 UU P.Pd.), but the amount of tax to be paid is stipulated in the tax assessment letter deviating from that notified by the taxpayer, in this case the tax authorities are obliged to prove that the income of a taxpayer is the amount determined by the Financial Inspection and not the amount notified by the taxpayer. On the other hand, if the taxpayer does not fulfill one of the obligations as stipulated in Article 11,

Likewise, Law Number 6 of 1983 concerning General Provisions and Tax Procedures as last amended by Law Number 16 of 2009 (hereinafter referred to as UU KUP) adheres to the reversal of the burden of proof as stated in the Elucidation of Article 13 paragraph (1) UU KUP: "For Taxpayers who do not maintain books according to the provisions of Article 28 of this law or at the time of inspection do not fulfill the request according to Article 29 paragraph (2), so that the Director General of Taxes cannot know the actual business condition of the Taxpayer and resulting in the inability to calculate the amount of tax that should be payable, the Director General of Taxes is authorized to issue a tax assessment letter with an ex-officio calculation,namely tax calculations based on data that is not only obtained by taxpayers."

As a consequence, the burden of proof on the description of the calculation which is used as the basis for the calculation in ex officio by the Director General of Taxes is placed on the Taxpayer. Examples are given include:

1) The bookkeeping as referred to in Article 28 paragraph (4) is incomplete, so that the calculation of profit and loss or circulation is not clear;
2) The accounting documents are incomplete so that the figures in the books cannot be tested;

3) From a series of research and known facts, it is suspected that documents or other evidence are hidden in a certain place, so that from such an attitude it is clear that the Taxpayer has not shown his good faith to assist the smooth running of the audit."

In the provisions of Article 13 paragraph (1) of the KUP Law, there is a provision for reversing the burden of proof. If at the time of the inspection the Taxpayer does not submit the books and documents, then based on the provisions of Article 13 (1) of the KUP Law in the explanation section it is determined that the Tax is calculated on an Position basis.

Likewise, Article 29 paragraph (3b) of the KUP Law regulates the provisions for reversing the burden of proof if the taxpayer being audited does not meet the provisions of Article 29 paragraph (3), namely: 1. Show and/or lend books or records, etc..., so, the application of reversal of the burden of proof as stated in Article 29 paragraph (3b) which reads as follows:

"In the event that an individual Taxpayer who carries out business activities or independent work does not meet the provisions as referred to in paragraph (3) so that the amount of taxable income cannot be calculated, the taxable income can be calculated on an ex-employment basis in accordance with the provisions of the tax laws and regulations. "

Furthermore, the provision of evidence at the objection stage is regulated in Article 26A paragraph (4) of the KUP Law: "Taxpayers who disclose books, records, data, information, or other information in the objection process that are not provided at the time of examination, in addition to data and information which at the time the audit has not been obtained by the Taxpayer from a third party, the books, records, data, information, or other information referred to are not considered in the settlement of the objection."

3.2 The burden of proof of customs value based on Customs Law

Sources of law governing the determination of customs value are the Customs Law and Minister of Finance Regulation Number 160/PMK.04/2010 concerning Customs Value for Calculation of Import Duties as well as the WTO Valuation Agreement and the WCO Valuation Compendium. Judging from the formulation of the seven paragraphs in Article 15 of the Customs Law which regulates customs value, it does not at all mention the provisions for proving the transaction value of imported goods. However, the evidentiary provisions can be traced from the articles relating to the authority of the Customs and Excise Officer/Director General in determining the customs value. In the Customs Law there are provisions for reversing the burden of proof or shifting the burden of proof to importers or exporters as stated in Article 84 of the Customs Law and the explanations are as follows:

In the Elucidation of Article 84 of the Customs Law, it is stated that: "In the event that the request of the customs and excise official as referred to above is not fulfilled, the customs and excise officer will determine the customs tariff and/or value based on the existing data". The formulation of the explanation of Article 84 is provisions for reversing the burden of proof or shifting the burden of proof.

In the Regulation of the Minister of Finance Number 160/PMK. 04/2010 concerning Customs Value for Calculation of Import Duties (PMK 160/2010) there are also provisions for the burden of proof, namely Article 28 and Article 31. Based on Articles 28 and 31 of PMK 160/2010, there is a provision for shifting the burden of proof to the importer. The provision states that if at the time of inspection of customs notification the importer does not fulfill the request of the customs and excise official or the Director General to submit all information, documents, and/or statements needed in the context of determining the customs value, the Customs and Excise Official shall determine the customs value based on the transaction value of the goods identical to the repetition method according to the

hierarchy of use and the Director General may use the data available in the Customs Area to re-establish the customs value.

The norms of evidence in the objection process based on the provisions of the Laws and Regulations are as follows:

Article 93 paragraph (1) of the Customs Law: “People who object to the stipulation of a customs and excise official regarding tariffs and/or customs value for calculating import duty may file an objection in writing only to the Director General within 60 (sixty) days from the date of stipulation by submitting a guarantee equal to the invoice to be paid.”

Elucidation of Article 93 Paragraph (1) of the Customs Law: “The provisions in this paragraph are intended to guarantee legal certainty and as a manifestation of the principle of justice which gives customs service users the right to file objections to the decisions of customs and excise officials. The period of 60 (sixty) days given to the user of this customs service is considered sufficient for the person concerned to collect the necessary data for filing an objection to the Director General.”

Article 15 paragraph (1) letter b and paragraph (2) of the Regulation of the Minister of Finance number 51/PMK.04/2017 (hereinafter referred to as PMK No.51/2017) concerning objections in the Customs and Excise Sector regulates the applicant's obligation to submit data and/or supporting evidence in filing an objection.

Article 15 paragraph (1) letter b PMK No. 51/2017: "In the process of resolving objections, the Director General may: ask the person who filed an objection to provide evidence and information related to the disputed material by submitting a letter requesting evidence and information"

Article 15 paragraph (2) PMK No. 51/2017: "People must fulfill the request for borrowing as referred to in paragraph (1) letter a, request for evidence and information as referred to in paragraph (1) letter b, and/or request for information or evidence related as referred to in paragraph (1) letter c.”

Article 16 letter (a) PMK No. 51/2017: "The Director General may receive explanations, data, and/or additional evidence from a Person who submits an objection within a maximum period of 40 (forty) days from the date the objection is received."

Referring to the provisions of the WTO/Article VII GATT, the decision of the official who does not receive the customs value from the importer when doubting the notification still refers to the WTO Valuation Agreement in the General Introductory Commentary, Paragraph 2 which requires a consultation process between the Customs party and the importer in terms of value customs cannot be determined based on the provisions of Article 1 (transaction value cannot be accepted as customs value). In the Uruguay Round negotiations it was decided to adopt the "Decision regarding cases where customs administrations have reasons to doubt the truth or accuracy of the declared value” (Decision 6.1 under Article 17).

This Decision 6.1 aims to answer problems that arise in certain situations where customs and excise have reasons to doubt the truth and accuracy of the declared value. If at the time of determining the customs value, customs and excise have reasons to doubt the truth and accuracy of the value notified, then customs and excise must inform the importer of the reasons why he doubts the truth of the value notified. Importers should also be given sufficient opportunity to provide their feedback. Then if after the importer has given his response, the customs and excise still doubt the truth of the value notified, then customs and excise may decide that the customs value of the goods concerned cannot be determined using the methods in accordance with Article 1 or the transaction value method. In the Decision 6.1, if the customs still has reasonable doubts, namely, it is considered that the customs value of the goods cannot be determined based on the transaction value, and thus

proceeds to use an alternative valuation method from the WTO Valuation Agreement, which must be followed strictly in order.

In line with Article 17 of the WTO Valuation Agreement and Ministerial Decision 6.1 which discusses the provisions regarding the "burden of proof" it clearly states that for purposes related to customs value, customs and excise administrations are allowed to request information or ask questions related to the truth or accuracy of any statement, document or notice given to customs and excise. If when examining a customs value notified, customs and excise have doubts about the veracity of certain information contained therein or the documents included to support such information, customs and excise may ask the importer concerned to provide a more complete explanation or provide other additional documents or evidence. .

What is meant here is so that the importer is able to prove that the customs value that he is notified is really the total amount paid or that should be paid and has also complied with the provisions regarding additional costs as stated in Article 8 of the WTO Valuation Agreement. If the importer does not provide the required additional explanation or after receiving the additional explanation, customs and excise still have doubts about the correctness of the notified customs value, then customs and excise can make a decision that the customs value of the imported goods cannot be determined by the provisions stipulated by Article 1 of the WTO. Valuation Agreement.

Before a final decision is made, customs and excise must notify the importer (perhaps even in a written notice if so requested) the reasons for doubting certain information in the notification or the accompanying supporting documents. In this regard, the importer will be given time to provide feedback. And finally customs and excise must inform the importer of its final decision and the reasons on which the decision was made.

In implementing the provisions of Article 17 of the WTO Valuation Agreement above, customs and excise have the right to ask for full cooperation from the importer when conducting an investigation into the truth or accuracy of any statement, document or notification submitted.

Regarding the procedure for implementing ministerial decision 6.1, the Technical Committee on Customs Valuation issued a case study 13.1. Case Study 13.1 of the Technical Committee on Customs Valuation is one guide that governs its implementation. WCO has provided technical guidance (best practice) in conducting the customs value process based on Case Study 13.1.

Based on the provisions of the WTO Valuation Agreement, ministerial decision 6.1 and case study 13.1, it is possible to apply a reversal of the burden of proof or shifting the burden of proof to the importer. If at the time of inspection of the customs notification, the importer does not fulfill the request for customs and excise to submit all information, documents, and/or statements required in the context of determining the customs value, the transaction value of the imported goods notified by the Applicant cannot be accepted, so an alternative method is used.

3.3 The burden of proof in the Supreme Court's decision is in accordance with the legal norms of evidence

Decision of the Supreme Court of the Republic of Indonesia Number 1965/B/PK/Pjk/2018 dated 30 August 2018 which essentially rejects the application for judicial review submitted by the Importer with the following considerations: “…the transaction value with supporting evidence for Purchase Order, Proforna Invoice, Packing List, B/L, SPPB, Cargo Insurance, Stock Cards/Inventory Books, Ledgers are not submitted at the objection stage and cannot be validated and show no good faith and

cannot be trusted by the Supreme Court of Justice and therefore the Appeal's correction (now the Respondent for Review Again) in the a quo case, it is maintained because it is in accordance with the provisions of the applicable legislation…"

From the Supreme Court's Decision, jurisprudence (applicability of the same law) can be drawn on documents/evidence that were not submitted by the Petitioners at the objection stage and could not be validated and showed no good faith and could not be believed to be true by the Supreme Court of Justice.

The following is a further analysis of the MA aquo decision.

1. The Supreme Court's decision is in line with the norms of proof of transaction value both in national law and in international law (WTO/GATT), where the importer is obliged to submit supporting data/evidence of transaction value to customs and the consequence if the request for data is not fulfilled is a customs value determination. by customs officials.

In line with the Supreme Court's decision above, the norm of proving the value of transactions both in national law and in international law (WTO/GATT) does provide firm and clear arrangements for the imposition of proof of transaction value to the importer, in which the importer is obliged to submit data/evidence supporting the value of the transaction. The transaction to customs and the consequence if the request for data is not fulfilled is that the customs value is determined by the customs official.

In national law, it is regulated in Article 84 of the Customs Law and Articles 28 and 31 of PMK 160/2010 provisions for reversing the burden of proof or shifting the burden of proof to the importer. The provision states that if at the time of inspection of customs notification the importer does not fulfill the request of the customs and excise official or the Director General to submit all information, documents, and/or statements needed in the context of determining the customs value, the Customs and Excise Official shall determine the customs value based on the transaction value of the goods identical to the method of repetition according to the hierarchy of use.

Likewise, the norms for proving the value of transactions based on the provisions of the WTO and WCO are as follows:

Article17 the WTO Agreement on Customs Valuation states that: "Nothing in this agreement shall be construed as restricting or calling into question the rights of customs administrations to satisfy themselves as to the truth or accuracy of any statement, document or declaration presented for customs valuation purposes".

Furthermore, point 6 of Annex III of the WTO Agreement on Customs Valuation states that "Article 17 recognizes that in applying the Agreement, customs administrations may need to make inquiries concerning the truth or accuracy of any statement, document or declaration presented to them for customs valuation purposes. The Article thus acknowledges that inquiries may be made which are, for example, at verifying that the elements of value declared or presented to customs in connection with a determination of customs value are complete and correct"

Ministerial Decisions 6.1 WTO Agreement on Customs Valuationstated that "When a declaration has been presented and where the customs administration has reason to doubt the truth or accuracy of the particulars or of documents produced in support of this declaration, the customs administration may ask the importer to provide further explanation, including documents or other evidence, that the declared value represents the total amount actually paid or payable for the imported goods, adjusted in accordance with the provisions of Article 8. If, after receiving further information, or in the absence of a response, the customs administration still has reasonable doubts about the truth or accuracy of the declared value, it may, bearing in mind the provisions of Article 11, be deemed that

the customs value of the imported goods cannot be determined under the provisions of Article 1 (transaction value method);

Whereas in implementing the provisions of Article 17 of the WTO Agreement on Customs Valuation and Ministerial Decisions 6.1 of the WTO Agreement on Customs Valuation as mentioned above, to test whether "the declared value is realistic in the light of commercial practices of industry and identical or similar goods", then the “comparative price” parameter is used as described in the World Customs Organization (WCO) Handbook of Customs Valuation Control, WCO Technical Committee on Customs Valuation Instruments, Case Study 13.1, and ASEAN Customs Valuation Guide”

Further explanation regarding the proof of transaction value referring to the rules of the WTO Valuation Agreement can be found in the Technical Information on Customs Valuation, as available on the WTO website at http://www.wto.org/english/tratop_e/cusval_e/cusval_info_e.htm# 6 which states the provisions regarding proof of sale as follows:

“The customs value is the transaction value if all of the following conditions have been fulfilled:

Evidence of sale: There must be evidence of a sale for export to the country of importation (ie commercial invoices, contracts, purchase orders, etc.).

The evidence of sale provisions are derived from the provisions of the World Trade Organization (WTO) Valuation Agreement regarding the terms of transaction value that can be used as customs value in Articles 1.1 (a) to (d) of the WTO Valuation Agreement, which are as follows:

Article 1 paragraph (1): "The customs value of imported goods is the transaction value, namely the price actually paid or should be paid for the goods sold for export to the importing country.

In the ASEAN Customs Valuation Guide. Explained:

“In applying Article 17 of the Agreement, Customs has the right to expect the full co-operation of importers in inquiries concerning the truth or accuracy of any statement, document or declaration.

(In implementing the provisions of Article 17 of the WTO Valuation Agreement, customs and excise have the right to request the full cooperation of the importer when conducting an investigation of the truth or accuracy of any statement, document or notification submitted.

“The problem for many Customs administrations in making inquiries is in establishing a reason to doubt the truth and accuracy of the value declared through particulars or the documents. There is wide latitude in this area. No parameters are established within the Agreement. Discretion would therefore rest with the Customs to decide through its own risk assessment criteria to what extent further inquiry is warranted. A reason to doubt could be, for example, based on a comparison of known prices observed in previous importations. By comparing the value declared with the prices obtained from other sources (eg database of historical data obtained from any number of sources), one may observe that there are significant differences in the value declared. Such differences may warrant further investigation. TCCV Case Study 13.1,

These differences may require further investigation. TCCV Case Study 13.1, “Application of Decision 6.1 of the Customs Assessment Committee”, provides an example of one such situation)

Described by De Wulf, Luc. And Sokol, Jose B. 2005. Customs Modernization Handbook, Washington, DC: The World Bank. p.158:

“The Uruguay Round negotiations led to the adoption of the “Decision regarding cases where customs administrations have reasons to doubt the truth or accuracy of the declared value” (Decision 6.1 based on Article 17, see annex 8.A). That decision came to be known as the SBP (shifting the burden of proof) and was appended to the ACV to clarify the intent of the original valuation provisions”

(“The Uruguay Round of negotiations led to the adoption of the “Decision concerning cases where the customs administration has reason to doubt the truth or accuracy of the declared value” (Decision 6.1 under Article 17, see Annex 8.A). The decision came to be known as the SBP (shift in burden of proof) and added to the ACV to clarify the true intent of the customs value provision “)

Based on the description above, in accordance with the provisions of the WTO Valuation Agreement, ministerial decision 6.1 and case study 13.1, it is possible to implement a reversal of the burden of proof or shifting the burden of proof to the importer. If at the time of inspection of the customs notification, the importer does not fulfill the request for customs and excise to submit all information, documents, and/or statements required in the context of determining the customs value, the transaction value of the imported goods notified by the Applicant cannot be accepted, so an alternative method is used.

Based on the provisions for proving the value of the transaction as stated above, it is clear and unequivocally the obligation of the importer to fulfill the request for data and evidence to prove the truth of the transaction value, and the consequence is that the data and evidence are not satisfied the transaction value cannot be determined by method I (the transaction value is void).

2. The Supreme Court's decision is in line with the customs law which has provided legal certainty and a manifestation of the principle of justice for customs service users to file an objection to the decision of customs and excise officials and the 60 (sixty) days given to the customs service user is considered sufficient for the person concerned. to collect the necessary data for filing an objection.

Elucidation of Article 93 Paragraph (1) of the Customs Law: “The provisions in this paragraph are intended to guarantee legal certainty and as a manifestation of the principle of justice which gives customs service users the right to file objections to the decisions of customs and excise officials. The period of 60 (sixty) days given to the user of this customs service is considered sufficient for the person concerned to collect the necessary data for filing an objection to the Director General.”

Thus, the Supreme Court's decision in line with the Customs Law has provided legal certainty and a manifestation of the principle of justice to customs service users to file an objection to the decision of customs and excise officials and the 60 (sixty) days given to customs service users is considered sufficient for those who concerned to collect the data needed for filing an objection, so it is reasonable and very reasonable if the Supreme Court declares legal considerations “…the value of the transaction supporting evidence for Purchase Order, Proforna Invoice, Packing List, B/L, SPPB, Cargo Insurance, Stock Card/Book Inventories, Ledgers are not submitted at the objection stage and cannot be validated and show no good faith and cannot be trusted by the Supreme Court of Justice”

3. Referring to the study of legal principles, the a quo Supreme Court Decision is correct and should be used as a reference by the Tax Court Judges as the Equality Before the Law Principle or the principle of equal treatment before the law.

The principle of Equality before the Law is a foreign term in English to mention the principle of equal treatment before the law. In Latin, the term to mention the principle

according to the author is to use the term similia similibus. The Similia Similibus principle means that the same (similar) cases must be decided equally or similarly (For details see: Supreme Court Decision Number 369 K/TUN/2011, p. 13).

IV. Conclusion

Based on the results of the study, the following conclusions were presented:

1. From the perspective of tax law, both applicable in European and national countries, it is concluded that there is a provision for reverse proof (omkering van bewijslast) or a shift in the burden of proof (shifting the burden of proof) to the company or taxpayer. If the taxpayer is unable to complete the evidence and documents required by the Tax Administration, the official's determination is considered correct. Furthermore, it is regulated in the KUP Law that in addition to data and information which at the time of the audit has not been obtained by the Taxpayer from a third party, books, records, data, information, or other information which is not submitted during the audit are not considered in the settlement of objections.
2. In customs law, based on the Customs Law and WTO provisions, it is possible to apply reversal of the burden of proof or shifting the burden of proof to the importer. The provision states that if at the time of inspection of customs notification the importer does not fulfill the request of the customs and excise official or the Director General to submit all information, documents, and/or statements required in the context of determining the customs value, the Customs and Excise Official shall determine the tariff and customs value based on the data available and the consequences can be detrimental to the importer.
3. Analysis of the determination of the burden of proof in Supreme Court Decision No. 1965/B/PK/PJK/2018 concluded that it was in line with the evidence norms in tax law and customs law both nationally and internationally. The decision is also in line with the customs law which has provided legal certainty and a manifestation of the principle of justice for customs service users to file objections to the decisions of customs and excise officials. According to the Customs Law, the 60 (sixty) days given to users of customs services is considered sufficient for the person concerned to collect the necessary data for filing an objection, so it is reasonable and reasonable for the Supreme Court to state such legal considerations.

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