

Regulating Indonesian Tax Consultant Profession: is it Necessary?

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ABSTRACT

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The decision of the Constitutional Court of the Republic of Indonesia (MK RI) Number 63 / PUU-XV / 2017 encourages the formation of laws and regulations regarding tax consultants. However, when viewed in the minister of finance regulation, the tax consultant profession is not implicitly accommodated. This study analyzes the Tax Consultant profession's position in the Indonesian legal system and the future direction after the Constitutional Court Decision Number 63 / PUU-XV / 2017. This research was conducted through a combination of a normative and empiric juridical method. Interviews were conducted with the Directorate General of Taxes at the Ministry of Finance of the Republic of Indonesia and a professional tax consultant to strengthen the arguments. The analysis was carried out in a descriptive qualitative manner. The results showed that the regulation of the tax consultant profession is generally regulated in law. However, this provision does not provide a comprehensive and appropriate legal framework to organize a professional and independent tax consultant. For this reason, in order to provide legal certainty for Tax Consultants and Taxpayers, it is necessary to have a specific law regulating tax consultants in Indonesia. The Tax Consultant Law can serve as a legal umbrella for professional tax work. The government must comprehensively regulate, among others, the rights and obligations of a tax consultant, the scope of duties and powers of a tax consultant, as well as the establishment of a tax consultant organization.

1. INTRODUCTION

Indonesia relies primary state revenue on the tax sector. Even the State Budget data provided by the Ministry of Finance of the Republic of Indonesia below shows that taxes have contributed above 80 percent to the Indonesian domestic state revenues since 2016.¹ Therefore, the Indonesian Government has carried out various policies and made

¹ Faisal Basri, in *Seminar Nasional Prinsip-Prinsip Dasar Pengelolaan Spektrum Frekuensi Radio Sebagai Guideline Pembentukan Undang-Undang Spektrum Frekuensi Nasional*, Fakultas Hukum Universitas Gadjah Mada, Yogyakarta, 17 Oktober 2018.

adjustments to the taxation system to increase tax compliance and obtain payments from taxes according to the planned targets.

Table 1. Taxes as the primary sources of the state revenues

No	Years	Domestic State Income in Trillion IDR	Taxes Income	Non-Taxes Income
1	2015	1.793,6 T	1.380,0 T (77%)	410,3 T (23%)
2	2016	1.822,5 T	1.546,7 T (84,8 %)	273,8 T (15%)
3	2017	1.750,3 T	1,498,3 T (85,6%)	250,0 T (14,3%)
4	2018	1.894,7 T	1.618,1 T (85,4%)	275,4 T (14,5%)
5	2019	2.164,7 T	1.786,4 T (82,5%)	379,3 T (17,5%)

Sources: Summarized from the official website of the Ministry of Finance of the Republic Indonesia: <https://www.kemenkeu.go.id>

To encourage voluntary tax compliance and to increase domestic revenue, updating the existing taxation system with a system that gives trust to tax subjects to carry out their obligations and fulfill their rights in the field of taxation is necessary to be done.² A fundamental change in the taxation field occurred in 1983. The tax collection system was an official assessment system changed to a Self-Assessment System (SAS). Under SAS, the burden of assessing tax liability has been shifted from the tax assessors' shoulders (the *fiscus*) to the taxpayers.³ SAS gives the Taxpayer full trust to carry out tax obligations, starting from calculating their income and assessing tax liability, paying the tax debt due, and then reporting the fulfillment of tax obligations by himself.

These significant changes are bound to be complicated to implement because of Indonesia's vast population and vast territory. To comply with SAS voluntarily, taxpayers need to understand the tax laws, particularly the income tax laws and tax legislation changes. Notably, even in the developed country, such as Australia and the United Kingdom (UK), SAS's implementation was overwhelmed with various problems and criticisms at the beginning.⁴ Moreover, Most countries, namely Sri Lanka, Pakistan, Indonesia, Australia, New Zealand, and the United Kingdom, have implemented SAS and take advantage of future opportunities in this regard.⁵ Therefore, before this system change took effect, this system's concept had been tried to be applied in previous years. Abdul Hasri Harahap, in his book "The New Indonesian Taxation Paradigm: The Political

² Ming-Ling Lai and Kwai-Fatt Choong, *Self-Assessment Tax System and Compliance Complexities: Tax Practitioners' Perspectives* (UK: Oxford Business & Economics Conference Program, 2009); "Consideration of Letter c and Letter d of the Law Number 6 of 1983 on General Provisions on Taxation and Procedures," Pub. L. No. 6 (1983).

³ Ming-Ling Lai and Kwai-Fatt Choong, *Self-Assessment Tax System and Compliance Complexities: Tax Practitioners' Perspectives*.

⁴ Ming-Ling Lai and Kwai-Fatt Choong.

⁵ Ming-Ling Lai and Kwai-Fatt Choong.

Economy Perspective," explained that this system had begun to be implemented in 1967 through Law Number 8 of 1967 in conjunction with the Government Regulation Number 11 of 1967 concerning Tax Collection Procedures for Income Taxes, Corporate Taxes, and Wealth Tax, better known as the Calculating Self Tax/ Calculating People Tax (MPS/ MPO) System. However, in that year, the system failed to be implemented.⁶

SAS since 1983 after the issuance of Law Number 6 of 1983 concerning General Provisions and Tax Procedures came into effect. SAS's success will depend on the Taxpayer's voluntary compliance and the tax authorities' optimal supervision.⁷ Taxpayers calculate and pay their taxes, and the tax paid is considered correct until the Government proves otherwise. The self-assessment system places taxpayers as parties who actively carry out various tax obligations as regulated in taxation laws and regulations by placing the Government as the party obliged to provide guidance, service, supervision, and law enforcement to fulfill tax obligations outlined in the regulations tax laws.⁸

Article 23A of the 1945 Constitution regulates, "Taxes and other levies that are coercive which are regulated by law." This provision indicates that taxes are coercive. For this reason, their implementation must be regulated by Law so that tax collection is based on the principles of excellent and fair taxation. The tax applied must be based on rules and regulations to avoid robbery in the State against its citizens.⁹ Caused, with its authority, the Government issues both tax policies and regulations and changes them according to the circumstances.

Meanwhile, the citizens must pay taxes voluntarily based on the devotion theory (*teori bakti*). Santoso Brotodihardjo says that this theory is based on understanding "*organische staatsleer*," that a state has the absolute right to collect taxes by nature. In contrast, people have an obligation as proof of their service to the State in tax payment.¹⁰

The tax regulation is becoming complicated and difficult for the taxpayers to follow the tax law development, which causes the tax consultant service is increased. To implement the Article 23A of the 1945 Indonesian Constitution, Article 32 paragraph (3) of UU KUP regulates: "An individual or entity may appoint a power of attorney with a special power to conduct rights and fulfill obligations following tax legislation."

The provisions of Article 32 paragraph (3) in the General Provisions of Taxation Law provide space and opportunity for Taxpayers to request assistance from other parties

⁶ Gunawan Setiyaji and Hidayat Amir, "Evaluasi Kinerja Sistem Perpajakan Indonesia," *Jurnal Ekonomi*, 2005, 5.

⁷ Martinus Robert Hutauruk, "The Impact Of Self-Assessment System On Tax Payment Through Tax Control As Moderation Variables," *International Journal of Scientific & Technology Research* 8, no. 12 (2019): 3255.

⁸ "The Constitutional Court Verdict Number 63/PUU-XV/2017," No. 63, 70 (2017).

⁹ "Article 23A of the 1945 Constitution Rules That All Kinds of Taxes and Levies That Coercive in Nature Must Be Regulated in a Law," Pub. L. No. 45 (1945).

¹⁰ Santoso Brotodihardjo, *Pengantar Ilmu Hukum Pajak (Introduction to Tax Law)* (Bandung: PT Eresco, 1984).

who understand taxation issues as a representation, for and on their behalf, to help implement the taxation rights and obligations of the Taxpayers. It opens an intermediary role between the Tax Fiscus and the Taxpayer. Then, Article 49 paragraph (2) of the Government Regulation Number 74 of 2011 concerning Procedures for the Implementation of Rights and Fulfillment of Tax Obligations further confirm that what is meant by a power of attorney includes a tax consultant and not a tax consultant.

A tax consultant is an excellent professional and is generally involved in the scope of taxation. The tax consultant was known since 1965 where Indonesia implemented a tax amnesty policy based on the Presidential Decree No. 5 of 1964 concerning Tax Amnesty Regulations. Specific arrangements regarding the Tax Consultant are regulated in the Minister of Finance Regulation Number 22 / PMK.03 / 2008, which has been updated with the Regulation of the Minister of Finance of the Republic of Indonesia Number 229 / PMK. 03/2014 concerning Requirements and Implementation of Rights and Obligations of Power of Attorney. It was also regulated in the Minister of Finance Regulation No. 485/KMK.03/2003 as amended lastly by the Minister of Finance Regulation No. 111/PMK.03/2014.

Those Minister of Finance Regulations were issued based on the Article 32 paragraph (3a) of Law Number 28 the Year 2007 concerning the Third Amendment to the Law Number 6 of 1983 concerning General Provisions and Tax Procedures. These Ministerial regulations are becoming operational rulings for the existence of the tax consultant profession. These regulations are classified as delegated legislation, i.e., legislation based on the higher legislation's order.¹¹The Law on Tax Provisions delegates the Minister of Finance to regulate further on requirements and implementation of rights and obligations of a power of attorney.

However, the role of a power of attorney besides tax consultant profession to provide legal assistance for taxpayers in a case has been rejected by the Tax Service Office Indonesia with the argument that the Minister of Finance Regulation Number 229 / PMK.03 / 2014 dated December 18, 2014, does not allow it. This rejection has caused constitutional and material losses to the attorney's power since he could not carry out his duty as the Taxpayer attorney. (This case was the foundation of the lawsuit for the change of the rule. Even though only one point, it was the most important) Moreover, giving the Minister of Finance authority to regulate the requirements, rights, and obligations of a power of attorney or tax consultant has placed the taxpayers and their representatives in a dispute against the Fiscus (Government) are not equal. The tax enforcer (Fiscus) becomes superior to the taxpayers and their representatives (tax consultant). While the original intent of Article 23A of the 1945 Constitution to require regulating of any kind

¹¹ "A Delegated Legislation Has It Legal Basis in in Article 8 Paragraph (2) of the Law Number 12 of 2011 on Legislation Making Procedures," Pub. L. No. 12 (2011).

of tax imposition in Law is to ensure equal position between the Government and the governed before the Law and to ensure legal protection of taxpayers from abuse of power by the Government.¹²

In its development, the Constitutional Court of the Republic of Indonesia (MK. RI) has issued its decision Number 63/PUU-XV/2017 in a constitutional review case proposed by Advokat Petrus Bala Pattyona towards the constitutionality of Article 32 paragraph (3a) of the Law Number 28 of 2007 concerning the Third Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures as amended lastly with the Law Number 16 of 2009 concerning Establishment of Government Regulation instead of the Law Number 5 of 2008 concerning the Fourth Amendment to the Law Number 6 of 1983 concerning General Provisions and Tax Procedures (UU KUP).

MK RI has decided that the delegation of authority by law to the Minister of Finance to regulate further the "exercise of rights and fulfillment of prosecutors' obligations" as referred to in Article 32 paragraph (3a) of Law no. 28/2007 is contradictory to Constitution of the Republic of Indonesia conditionally and has no binding legal force in so far as it is not meant only about matters of a technical-administrative nature and not the limitation and expansion of the rights and obligations of citizens

This study examines the laws and regulations concerning the tax consultant profession's position in the current Indonesian legal system and its Regulation's direction going forward after the Constitutional Court of the Republic of Indonesia (MKRI) ruled its verdict Number: 63/PUU-XV/2017.

2. RESEARCH METHOD

This research uses a combination of normative and empirical legal research. Legal materials used in normative legal research are primary and secondary legal materials. This research's primary legal material is the Constitutional Court Decision Number 63 / PUU-XV / 2017 and all laws and regulations related to the tax consultant profession. Secondary legal materials consist of legal books and journals. Empirical legal research data were obtained from field studies through interviews with several resource persons from the Directorate General of Taxes, Ministry of Finance of the Republic of Indonesia, and tax consultant professionals. All data collected will be analyzed through descriptive qualitative methods. The approach used in this study uses a statutory approach, a conceptual approach, and a comparative approach.

¹² "The Constitutional Court Verdict No. 63/PUU-XV/2017,p.8," Mahkamah Konstitusi § (2017).

3. RESULTS AND DISCUSSION

3.1. *The Existence of Tax Consultant in the Current Laws and Regulations*

Taxpayers, individuals, and entities in fulfillment of taxation obligations are given leeway to appoint a power of attorney who understands taxation with an extraordinary power of attorney to exercise their rights and fulfill their duties following tax legislation provisions.¹³ The provisions of Article 49 paragraph (2) the Government Regulation Number 74 of 2011 concerning Procedures for the Implementation of Rights and Fulfillment of Tax Obligations further confirm that what is meant by an attorney includes a tax consultant and non-a tax consultant. As one of the corporate taxpayers, the curator can represent the bankrupt entity and is required to make a settlement.¹⁴

Furthermore, the Minister of Finance is delegated to regulate further on requirements and implementation of the rights and obligations of the Taxpayer's representation in a Minister of Finance Regulation.¹⁵ Based on this provision, the Minister of Finance issued Regulation of the Minister of Finance of the Republic of Indonesia Number 22 / PMK.0 / 2008 concerning Requirements and Implementation of Rights and Obligations of Lawyers. This Regulation has been amended with the Regulation of the Minister of Finance Number 229/PMK.03/2014 concerning Requirements and Implementation of the Rights and Obligations of an Attorney. The Minister of Finance of the Republic of Indonesia also issued Regulation of the Minister of Finance Number 111 / PMK.03 / 2014 concerning Tax Consultants.

In the Regulation of the Minister of Finance of the Republic of Indonesia Number 229 / PMK.03 / 2014, it is explained that a lawyer is defined as a person who receives a special power of attorney from a taxpayer to exercise rights and fulfill certain tax obligations. A taxpayer follows the provisions of laws and regulations in the field of taxation.¹⁶ An attorney includes (a) Tax Consultant; (b) Taxpayer employee.¹⁷ In this sense, it can be understood that a Tax Consultant is one form of an attorney as meant by the Regulation of the Minister of Finance who has the role/position as executor of the rights and obligations of a Taxpayer besides Taxpayer's employee.

¹³ Article 32 Paragraph (3) of the Law No. 6 of 1983 on General Provisions and Taxation Procedures as Amended Lastly by the Law Number 16 of 2009," Pub. L. No. 6 (1983).

¹⁴ Article 32 paragraph (3) of the Law No. 6 of 1983 on General Provisions and Taxation Procedures as amended lastly by the Law Number 16 of 2009.

¹⁵ "Article 32 Paragraph (3a) of the Law Number 28 of 2007 Concerning the Third Amendment to Law Number 6 of 1983 Concerning General Provisions and Tax Procedures as Amended Lastly with the Law Number 16 of 2009 Concerning Establishment of Government Regulation concerning the Fourth Amendment to the Law Number 6 of 1983 concerning General Provisions and Taxation Procedures ," Pub. L. No. 28 (2007).

¹⁶ "Article 1 Point 1 of the Regulation of the Minister of Finance Number 229/PMK.03/2014 Concerning Requirements and Implementation of the Rights and Obligations of a Attorney" (2014).

¹⁷ "Article 2 Paragraph (4) of the Regulation of the Minister of Finance No. 229/PMK.03/2014 on Requirements and Implementation of Rights and Duties of an Attorney" (2014).

Specific arrangements regarding a Tax Consultant is regulated in the Minister of Finance Regulation No. 111/ PMK.03/2014 concerning Tax Consultant. In this Regulation, a Tax Consultant is defined as someone who provides tax consulting services to a Taxpayer in the context of exercising his rights and fulfilling his tax obligations based on statutory regulations.¹⁸ At the same time, the Tax Consultant's responsibility is to provide consulting services to the Taxpayer in exercising his rights and fulfilling his obligations.¹⁹

Based on the above explanation, the Tax Consultant profession's basic idea is to provide taxpayers' taxation services in "exercising their rights and fulfilling their tax obligations." It is necessary to understand that the scope of carrying out the Taxpayer's rights and fulfilling the Taxpayer's obligations in the taxation process flow in Indonesia are: (a) conducting a self-assessment; (b) registering as a Taxpayer; (c) calculating, paying and reporting tax obligations. In a tax dispute, the Tax Consultant's rights and obligations are to accompany the Taxpayer in conducting: (a) objection; (b) reduction or cancellation of tax assessments. The process of applying judicial review to the Supreme Court is completed by the Tax Attorney, whose arrangement is based on the provisions of the prevailing laws and regulations that do not have to be done by a person who has a profession as a Tax Consultant.²⁰ For another reference, a tax consultant is mentioned tax advocate as well. Tax advocates know that tax professionals are bound by professional standards to advocate for favorable tax positions within statutory boundaries.²¹

Besides the Tax Consultant, taxation services can also be carried out by the public accounting profession. It explained that public accountants could provide other accounting, finance, and management services, including taxation services stated in the Elucidation of Article 3 paragraph (3) of Law No. 5 of 2011 concerning Public Accountants.

Even in some countries, several professions receive power to provide taxation services, including (1) Germany: persons recognized as Tax Consultants include lawyers, accountants, auditors. (2) America: lawyers, certified public accountants, registered tax consultants, registered pension agents, other people who represent taxpayers before the Internal Revenue Service (IRS). (4) Japan: Zeirishi (Public Tax Accountant), lawyer, Certified Public Accountants (CPAs), (5) English: accountant, tax practitioner. (6)

¹⁸ "Article 1 Point 1 of the Regulation of the Minister of Finance No. 111/PMK.03/2014 on Tax Consultant" (2014).

¹⁹ "Article 23 Letter a of the Regulation of the Minister of Finance No. 111/PMK.03/2014 on Tax Consultant" (2014).

²⁰ "Problem Inventory List (DIM) of Tax Consultant Bill, p. 35" (n.d.).

²¹ Donna D. Bobek, Amy M. Hageman, and Richard C. Hatfield, "The Role of Client Advocacy in the Development of Tax Professionals' Advice," *Journal of the American Taxation Association* 32 (2010): 25, <https://doi.org/10.2308/jata.2010.32.1.25>.

Netherlands: tax consultants, accountants, lawyers. (7) Spain: tax consultants, lawyers, economists.

The Tax Consultant Bill Article 15 paragraph (2) confirms that the Tax Consultant is the only party entitled to obtain a power of attorney from the Taxpayer in exercising his rights. This provision differs from the practice in some countries that provide many professional tax servants' tax services.²² This Bill defines a Tax Consultant as a person who provides taxation services to the Taxpayer in the context of exercising their rights and fulfilling tax obligations by tax legislation.²³ The taxation services include (a) tax consulting services; (b) services for managing tax rights and responsibilities; and (c) representation services and taxpayer advisory services in the context of tax audits, objection effort, appeal effort in the Tax Court, effort to review to the Supreme Court, an examination of preliminary evidence, and investigation of criminal acts in the field of taxation.²⁴

Based on the description above, the definition and scope of the Tax Consultant's authority in the Tax Consultant Bill is more widespread compared to the Minister of Finance Regulation as a derivative of Law Number 6 of 1983 concerning General Tax Provisions and Procedures for Taxation as last amended by Law Number 16 The year 2009. The expansion of the definition and authority of tax consultants is presented in Table 2.

Table 2. Comparison of Considerations, Definition, and Scope of Authority of Tax Consultant between the Minister of Finance and the Bill of Tax Consultant

No	Law	Considerations	Tax Consultant Definition	Authority
1.	Regulation of the Minister of Finance of the Republic of Indonesia Number 229 / PMK.03 / 2014 concerning Requirements and Implementation of the Rights and Obligations of an Attorney.	Article 32 paragraph (3) of the Law No. 6 of 1983 concerning General Provisions and Procedures for Taxation as amended lastly by Law Number 16 of 2009	Anyone receives an extraordinary power of attorney from the Taxpayer to run certain rights and obligations on taxation based on the prevailing tax legislation.	taxpayers must exercise their rights and obligations related to 1 (one) type of tax for 1 (one) Tax Year, or 1 (one) part of the Tax Year, or 1 (one) / several Tax Periods, unless the implementation of rights and fulfillment of tax obligations is

²² Article 14 Paragraph (2) the Bill of Tax Consultant (n.d.).

²³ Article 14 paragraph (2) the Bill of Tax Consultant.

²⁴ Article 14 paragraph (2) the Bill of Tax Consultant.

No	Law	Considerations	Tax Consultant Definition	Authority
2.	Bill on Tax Consultant	Article 23 A of the 1945 Constitution of the Republic of Indonesia	Any person who provides taxation services to Taxpayer in the context of exercising his rights and fulfilling their tax obligations based on tax legislation	carried out for several types of taxes as a unit (a) tax consulting services; (B) services for managing tax rights and responsibilities; and (c) representative services and Taxpayer's advisory services in the context of tax audits, objection effort, appeals in the Tax Court, an effort of review to the Supreme Court, preliminary examination of evidence, and investigation of criminal acts in the field of taxation.

If the Bill on Tax Consultant is passed and enforced, some weaknesses interfere with the system. The Law No. 6 of 1983 concerning General Provisions and Procedures for Taxation as amended lastly by Law Number 16 of 2009 states that the power in taxation is regulated further in legislation at the Minister of Finance Regulation level. Meanwhile, Article 33 of the Bill of Tax Consultant states that the provisions governing Tax Consultant other than those stipulated in this Law are declared invalid. However, the Bill on Tax Consultants does not regulate the existence of articles concerning technical arrangements. An amendment regarding the content of UU KUP is needed if the Tax Consultant Act is passed. Besides, Taxpayer's employees who are regulated as an attorney is erased.

3.2. *Position Setting of Tax Consultant*

The Law, as a product of legislation formed by the House of Representatives with the President's joint agreement, has an extensive range of regulations. Various aspects of life and the State, Government, society, and individuals' activities can be reached to be regulated by Law²⁵. Maria Farida Indrati Soeprato quoted A. Hamid S. Attamimi argued that there were nine items contained in the Act, namely:

- a. Explicitly ordered by the Constitution and the Decree of the People's Consultative Assembly;
- b. Regulate further the provisions of the Constitution;
- c. Regulate human rights;
- d. Regulate the rights and obligations of citizens;
- e. Regulate the distribution of state power;
- f. Regulate the leading organizations of the highest/ high state institutions;
- g. Regulate the division of regions/regions of the country;
- h. Regulating who becomes a citizen and obtaining/losing citizenship as regulated in law is regulated by law.²⁶

According to Bagir Manan and Kuntana Magnar stated, the material for the Law's contents was:

- a. Stipulated in the Constitution;
- b. It was stipulated in the previous rule;
- c. Named to revoke, add or replace the old Law;
- d. Concerning fundamental rights or human rights,
- e. It concerns people's interests or obligations.²⁷

Various opinions regarding the Law's contents have been accommodated in the provisions of Article 10 paragraph (1) of Law Number 12 the Year 2011 concerning the Formation of Laws and Regulations: a. Further arrangements regarding the provisions of the 1945 Constitution of the Republic of Indonesia; b. Order an Act to be regulated by law; c. The ratification of certain international agreements; d. the follow-up to the Constitutional Court's decision, and or e. fulfillment of legal needs in society.

3.3. *Tax Consultant Bill as A Further Provision of The Constitution*

The inclusion of Article 20 and Article 21 of the 1945 Constitution of the Republic of Indonesia as the legal basis for forming a Law comes from the DPR (Regional Representative Council). Apart from Article 5 paragraph (1) and Article 20 of the 1945

²⁵ King Faisal Sulaiman, *Teori Peraturan Perundang-Undangan Dan Aspek Pengujiannya (Theory of Legislation and Its Testing Aspects)* (Yogyakarta: Thafa Media, 2017).

²⁶ Maria Farida Indrati Soeprato, *Ilmu Perundang-Undangan: Dasar-Dasar Dan Pembentukannya (Legislation Science: Basics and Its Formation)* (Yogyakarta: Kanisius, 2007).

²⁷ Bagir Manan dan Kuntana Magnar, *Beberapa Masalah Hukum Tata Negara Indonesia (Some Indonesian Constitutional Law Issues)* (Bandung: Alumnus, 1997).

Constitution, the law source for forming laws comes from the President. The basis for forming regulations that arise from the DPR and DPD can only be done if there is a direction from the constitution.

Meanwhile, the inclusion of Article 23A of the 1945 Constitution in the "remembering" (legal consideration) section as the regular basis for the establishment of the Tax Consultant Act is inappropriate and seems to be enforced because this Article 23A does not contain further instructions governing the Tax Consultant profession by Law. Article 23A of the 1945 Constitution of the Republic of Indonesia states, "Taxes and other levies that are coercive for the State are regulated by law." Concrete manifestations of further Regulation of Article 23A of the 1945 Constitution are in various existing Laws on Taxation, such as the Law No. 6 of 1983 concerning General Provisions and Procedures for Taxation as amended lastly by the Law Number 16 of 2009; the Law No. 36 of 2008 concerning the Fourth Amendment to the Law No. 7 of 1983 concerning Income Tax.

Based on the description above, it can be concluded that the formation of the Law on Tax Consultant is not an order or further Regulation of the provisions contained in the 1945 Constitution and the inclusion of Article 23A of the 1945 Constitution as the legal basis for the establishment of a Tax Consultant Law is baseless and irrelevant.

3.4. *Should Law regulate tax Consultant Profession?*

There are no provisions in the previous Law, including in the tax law, which mandates further Regulation of the Tax Consultant profession in the Act. Based on the Tax Consultant Bill, the ideal system for regulating the Tax Consultant profession is in the form of law. Like other professions of an equal level, the Advocate profession as an analogy is very irrelevant, considering that the Advocate profession is in the form of a Law because of the Law's torture.

Law Number 18 of 2013 concerning Advocates was born from the Law order. The provision of Article 38 (1) of the Law No. 48/2009 on Judicial Power confirms, "(1) Besides the Supreme Court and the judiciary bodies beneath and the Constitutional Court, there are other bodies whose functions are related to judicial power". Article 38 paragraph (3) further confirms, "Provisions regarding other bodies whose functions are related to judicial power are regulated in law." What is meant by "other bodies" in Article 38 paragraph (1) and paragraph (3) of the Act is explained in the Elucidation of Article 38 (1) which states explicitly that "other bodies" includes the police, attorney's office, advocate, and correctional institution? To implementation Article 38 paragraph (3) of Law Number 48 the Year 2009, it must be regulated by Law primarily related to the advocate profession.

Meanwhile, there are no provisions in the previous Law that instructed that Law further regulate the Tax Consultant profession. Provisions in Article 32 paragraphs (3)

and (3a) of the Law Number 28 the Year 2007 concerning the Third Amendment to the Law Number 6 the Year 1983 concerning General Provisions and Tax Procedures, implicitly instructing the profession of Legal Consultants to be regulated by the Minister of Finance Regulation. The provisions of Article 32 paragraph (3) of the Law Number 28 the Year 2007 states, "An individual or entity can appoint an attorney with a special power of attorney to exercise his rights and fulfill obligations based on prevailing legislation." Meanwhile, Article 32 paragraph (3a) are regulated by or based on a Regulation of the Minister of Finance."

Based on the provisions of Article 49 paragraph (2) Government Regulation Number 74 of 2011 concerning Procedures for Implementing Tax Rights and Obligations, it is clear that the legal attorney whom taxpayers can appoint with an extraordinary power of attorney is a tax consultant and not a tax consultant".

To carry out the order of Article 32 paragraph (3a) of Law No. 28/2007 above, the Minister of Finance has issued the Regulation of the Minister of Finance Number 111/PMK.03/2014 concerning Tax Consultants and Regulation of the Minister of Finance Number 229/PMK.03/2014 concerning Requirements and Exercise of the Rights and Obligations of a Power of Attorney. The question that arises is whether those Minister of Finance Regulations is adequate in providing recognition and protection and regulating the Tax Consultant profession's existence in Indonesia? The Academic Paper of the Tax Consultant Bill does not conduct an evaluation and analysis of the Minister of Finance Regulation regarding the Tax Consultant profession and the Requirements and Execution of Rights and Obligations of a Power of Attorney taxation field.

It should also be considered here that, in reality, not all professions are regulated in the Law. There are several professions based on legal arrangements under the direction, including:

- a. Capital Market Legal Consultant is regulated by the Financial Services Authority Regulation Number 66 /POJK.04/2017 concerning Legal Consultants Conducting Activities in the Capital Market.
- b. Intellectual Property Rights Consultant is regulated by the Government Regulation Number 2 of 2005 concerning Intellectual Property Rights Consultants.
- c. Curators and Caretaker are regulated by the Minister of Law and Human Rights Regulation Number 18 of 2013 concerning Terms and Procedures for Curator and Caretaker Registration.
- d. Public Appraiser is regulated by the Minister of Finance Regulation Number 56/PMK.01/2017 concerning Amendment to Minister of Finance Regulation Number 101/PMK.01/2014 concerning Public Appraiser.
- e. Land Deed Making Officials are regulated by the Government Regulation Number 24 of 2016 concerning Amendment to the Government Regulation Number 37 of 1998 concerning the Position of Land Deed Making Officials.

- f. Bidding Officer is regulated by the Minister of Finance Regulation Number 189/PMK.06/2017 concerning Class II Auction Officers
- g. Capital Market Arbitrator is regulated by the Indonesian Capital Market Arbitration Board Decree No. Kep-03 / BAPMI / 11.2002 concerning BAPMI Arbitrators.

3.5. *Is There an International Covenant Requiring a Ratification or Decision of the Constitutional Court Ordering the Establishment of a Tax Consultant Act?*

Five alternative matters might be regulated in Law based on provisions in Article 10 paragraph (1) of Law Number 12 of 2011 concerning legislation. Suppose there is no provision in the 1945 Constitution ordering further arrangements regarding Tax Consultants in the form of a law. It is necessary to see whether there is an order of a previous law to regulate the Tax Consultant profession by Law. Suppose there is no order of the prior Law to regulate the Tax Consultant profession with the Act. In that case, it is also necessary to see the existence of an international agreement related to the Tax Consultant which must be ratified in the form of a law or the presence of a Constitutional Court ruling which the Government and the Parliament must follow up by forming a law about Tax Consultants.

So far, there is no international agreement related to the Tax Consultant profession that must be ratified in the form of Law. There is also no Constitutional Court decision related to this profession that must be followed up with law formation.

By not fulfilling one of the four juridical clauses regarding the material content of the Law as referred to in the provisions of Article 10 paragraph (1) of Law Number 12 of 2011 concerning the Establishment of the Law, the only reason that can be used in the formation of the Law regarding Tax Consultants to fulfill legal needs in society. Therefore, explanations regarding how important and urgent the legal requirements in society are related to the Tax Consultant profession that Law must regulate need to be found and strengthened if the Tax Consultant profession is held in a Law.

3.6. *The urgency of Tax Consultant Professional Arrangements by Law*

The formation of legislation must have a strong background to be accepted by the community to provide benefits. With the aim of the law of justice, benefit and certainty. Formation of the Law on Tax Consultants must be based on the spirit of compliance with the Law in the community to meet the intended benefits. The basis of "meeting legal needs in society" was the main background until the Draft of this Law is formed due to the failure of fulfilling juridical clauses (mandates of the Constitution, orders from parallel Laws, and the existence of international agreements) regarding the content of the Law in Article 10 paragraph (1) of Law Number 12 of 2011 concerning Formation of Legislation.

Therefore, sociological analysis is needed to support the establishment of the Law on Tax Consultants. In the last four decades, tax reform policies' decisive reason was to

increase the State revenue from the tax sector because taxes are the State's backbone. Taxes play a significant role in the budgetary function.

Compared with Law no. 18/2003 concerning Advocates and Law no. 5/2011 concerning Public Accountants. The Tax Consultant Bill failed to provide a sociological basis in its consideration. Meanwhile, the only reason for regulating tax consultancy in the form of a Law referred to in Article 10 of Law Number 12 the Year 2011 is to fulfill the community's demands and interests. Comparison between the Law No.18 / 2003 on Advocat, the Law No.5 / 2011 on Public Accountant and the Bill of the Law on Tax Consultant is presented in Table 3.

Table 3. Comparison of the Consideration of the Law No.18/2003 on Advocat, the Law No.5/2011 on Public Accountant and the Bill of the Law on Tax Consultant

No	Consideration	Law No. 18 of 2003 concerning Advocates	Law No.5 of 2011 concerning Public Accountants	Draft Law on Tax Consultants
1.	Letter a	Whereas the Unitary State of the Republic of Indonesia as a constitutional state based on Pancasila and the 1945 Constitution of the Republic of Indonesia aims to create a prosperous, safe, peaceful, and just nation.	That sustainable national development requires a healthy and efficient national economy and meets the principles of transparent and accountable management to create a just and prosperous society by Pancasila and the 1945 Constitution of the Republic of Indonesia.	Whereas taxes and other levies as sources of state revenue carried out by the Government to carry out state administration and sustainable national development to realize a just and prosperous society by Pancasila and the 1945 Constitution of the Republic of Indonesia
2.	Letter b	That the judicial power which is free from all interference and influence from outside requires a free, independent, and responsible Advocate profession, for the	That public accountant services are services that are used in economic decision making and have broad influence in the era of	Realize to governance state and support government policies, a professional, free, independent,

No	Consideration	Law No. 18 of 2003 concerning Advocates	Law No.5 of 2011 concerning Public Accountants	Draft Law on Tax Consultants
		implementation of an honest, fair, and legal certainty for all justice seekers in upholding the Law, truth, justice, and human rights	globalization, which has an essential role in supporting a healthy and efficient national economy and increasing transparency and quality of the information in the financial sector.	and responsible tax consultant role is needed in providing legal certainty for the general public and taxpayers in particular
3.	Letter c	Advocates should, as a free, independent, and responsible profession in upholding the Law, it needs to be guaranteed and protected by the Law to implement law enforcement efforts.	That until now, there has not been a law that regulates explicitly the public accounting profession that provides protection and legal certainty for the public and the public accounting profession	Whereas to provide direction, foundation, and legal certainty in the provision of taxation services, it is necessary to regulate Tax Consultants
4.	Letter d	That the prevailing laws and regulations governing lawyers are no more suitable for the needs of the society	That based on considerations as referred to in letter a, letter b, and letter c, it is necessary to form a Law concerning Public Accountants	Based on reviews referred to in letter a, letter b, and letter c, it must establish a Law on Tax Consultants.
5.	Letter e	That based on considerations as referred to in letter a, letter b, letter c, and letter d, it is necessary to		

No	Consideration	Law No. 18 of 2003 concerning Advocates	Law No.5 of 2011 concerning Public Accountants	Draft Law on Tax Consultants
		establish a law on advocates		

The sociological foundation is a consideration or reason that illustrates that regulations are formed to meet the community's needs in various aspects. The real sociological foundation involves empirical facts about the development of problems and community needs. Victor Thuronyi confirms that:²⁸

"The necessity of providing a rough balance between supply and demand for tax advice is of decisive importance in deciding (1) whether or not to regulate the profession, and (2) how to regulate the profession and more specifically what the qualifications should be for admission to the profession and whether the profession should be granted a monopoly on some or all aspects of tax practice."

Meanwhile, in the Inventory List of Problem of the Draft Bill on Tax Consultants, it is stated that the lack of an existing number of Tax Consultants is the background of the presence of the Bill on Tax Consultants. It is estimated that the number of tax consultants in Indonesia in 2017 was 3500. While Indonesia's population in 2017 was 257 million, the ratio between tax consultants and population is 1 in 73,429. So with this background, the Government takes a role in the Regulation of tax consultants to ensure tax competency standards and increase the number of tax consultants that are ideal or proportionate to the population so that they are by the needs. However, the Manuscript of the Academic Study of the Bill on Tax Consultants does not support empirical data on an ideal number of tax consultants needed by society to cope with the problem tax they face. The only data in that manuscript is the number of appeal cases in 2012, while the Bill was present in 2018.

Moreover, the Manuscript of Academic Study to support the Bill has just provided the data on tax ratio, tax compliance ratio, number of tax officials, and the total population of Indonesia that were taken in 2016 only. While in fact, tax ratio and tax compliance ratio have several influencing factors. Those factors and the relevant policies that the Government took and the correlation of each other and the role of Tax Consultant within to be studied and considered in preparing the Bill on Tax Consultant. Indonesia has undergone several policy changes in taxation, including the 1983 Tax Reform and the implementation of the Sunset Policy I and II in 2000, and the existence of Tax Amnesty. Whether these policies influenced tax ratio and tax compliance and the tax consultant

²⁸ Luz Yolanda Toro Suarez, *Tax Law Design and Drafting*, ed. Victor Thuronyi (Washington D.C: Internationality Monetary Fund, 1996).

profession's role in these processes are needed to be studied in more depth to obtain sociological-based data and as evidence of public needs for Tax Consultants law.

3.7. Future Regulation of Tax Consultant

Friedman said that the legal system is bounded by the relevant work of lawyers, judges, police, legislators, administrators, notaries, and others. If the Law is what the lawyers and other institutions do, a society without lawyers and other professionals and other legal institutions is a society without Law.²⁹ Based on that opinion, it can be understood that, since Tax Consultant provides tax services, hence he plays a significant role in the legal tax system. Tax Consultants are part of the taxation system and have an important position; Tax Consultants are intermediaries between the Government (Fiscus) and taxpayers. If the State does not formally recognize the Tax Consultant, it is difficult for the Tax Consultant to play a role as intermediaries in the tax law system.³⁰

In the dynamics of taxation in Indonesia, both policies to meet tax targets and policies in building taxpayer compliance that is no less important are the laws and regulations governing Tax Consultants. In the above explanation, it can be seen that there are changes regarding the legal products handling the Tax Consultant. This change from the hierarchy of Ministerial Regulations to the Act's level, whether regulated in the Act, the Tax Consultant becomes more professional and more credible. There is no positive correlation between countries that have laws that are good countries in regulating taxes. That means that many developed countries do not hold tax consultants at the law level but have good tax regulation performance. Lest we need is a useful substance, transparent and essential, to become an excellent legal umbrella.³¹

Arrangement of Tax Consultants in the legal system, the formulation is arranged in a systematic, simple, and standard manner while Tax Consultants independently become part of the legal system. The Tax Consultant should be a legal system that must reflect a standard set of techniques from the existing legal system. The Draft Law on Tax Consultants does not remember how to become a professional Tax Consultant, becoming a Tax Consultant who is part of the tax system in Indonesia because the Draft Law on Tax Consultants does not talk about the role of the Tax Consultant, which does not guarantee professionalism. In the sense that it only regulates oneself or the interests related to the Tax Consultant from the Tax Consultant's point of view. Tax Consultant's

²⁹ Lawrence M. Friedman, *The Legal System: A Social Science Perspective* (New York: Russel Sage Foundation, 1987).

³⁰ "Interview with Bapak Yustinus Prastowo, Executive Director of CITA (Center for Indonesia Taxation Analysis)," July 25, 2019.

³¹ "Interview with Bapak Yustinus Prastowo, Executive Director of CITA (Center for Indonesia Taxation Analysis)."

main issue has held at the low level or not the Law, but how is the Tax Consultant arranged to become a professional and credible.³²

However, to become equal, Regulation is needed at the legal level. According to Justin Pratowo, Tax Consultants Need to be regulated at the Law level. There are two articles in the Law on General Taxation Provisions that underlie a Tax Consultant Regulation concerning the standard product level is under article 32 paragraph 3a and article 35 (KP is asked for information). However, in terms of structural substance, it must be strengthened first because the representation of this vision is generally in the Law on General Tax Provisions. However, structurally it must be strengthened first because the representation of the vision, in general, is in the Law on General Tax Provisions. It is related to substance.³³

While structurally, the translation that how they have integrity, is accountable, should be reflected in the Act or regulation of the minister who will regulate. According to competence, there are three channels in other countries that become Tax Consultants (advocate, public accountant, and lawyer). For example, we do not need to study accounting from a lawyer, but as a tax competency lawyer needed to pass the certification. So there is no compulsion to study law, study accounting, but the Tax Consultant to have its certification. For the Public accountant background, other countries are also given space to act as Tax Consultant. In our country, it is limited that those who can become Tax Consultants have brevet certificates. The consequence is that even a person who has a doctorate in tax law, economics, accounting cannot practice in Indonesia. Substantially, To become a Tax Consultant, there is certification. In contrast, structurally, the translation is how they have integrity and are accountable and must be reflected in the laws or ministerial regulations that will regulate. According to competence, there are three channels in other countries that become Tax Consultants (advocate, public accountant, and lawyer).³⁴

Tax Consultants' role in the tax process flow is distinguished: Public accountants have positions ranging from calculating taxes, making fiscal reconciliation reports, filling SPP, auditing. The lawyer is the context for assistance in dispute, objection, appeal, and submission to the Supreme Court. At the same time, economists play a role in understanding fiscal understanding economic policies. The most important context is the

³² “Interview with Bapak Yustinus Prastowo, Executive Director of CITA (Center for Indonesia Taxation Analysis).”

³³ “Interview with Bapak Yustinus Prastowo, Executive Director of CITA (Center for Indonesia Taxation Analysis).”

³⁴ “Interview with Bapak Yustinus Prastowo, Executive Director of CITA (Center for Indonesia Taxation Analysis).”

existence of certification if, in this case, there is one person who has the competence of all three things that can be accepted as long as he passes the certification.³⁵

Simplify the Tax Consultant profession; a material test is carried out in article 32 of the KUP. This standard is not too limited, so the bar should be logical and substantial. It is not a limitation of people to practice, but as a fence to get a competent tax consultant. FMD 229 tends to limit people from being robust, too narrow.

An exciting finding regarding the Regulation, the Tax Consultant, is where the ongoing improvement of the PMK itself and by the DPR is in the process of legislation. Both are two independent processes and are not interrelated. The KP Bill must also cover the spirit of the Constitutional Court's decision. This KP Bill should depart from the Government's initiative (based on discussions with professional associations), not from the DPR.

There are still several bills on taxation other than KP. (PPh Bill, VAT Bill) that will be prioritized for discussion, so this KP Bill is not a priority. It is one reason for the inappropriate submission. The Government said earlier that there should be a discussion of professional associations in brainstorming and deliberation.

In the KUP Bill, it was necessary to amend the Draft Bill that the changes were to be made again. The KP is an inseparable part of Indonesia's taxation system. The KUP Bill has not become a priority because it is considered not important enough to be discussed, on the contrary, if the KP's role here can be seen and felt significant enough for the state's interests or the public interest in the taxation sector.

The law must be able to regulate fair KP rules following the portion of the tax obligations of the taxpayers, for example:³⁶

1. There must be a peer review. A KP can be a consultant of taxpayers client within the specified period. When the power is delegated to the other KP, the objective can be accounted for according to competence and does not exceed the State's provisions' limits.
2. For example, in Japan, the Government gives honorariums to KPs to help fill WP SPT for free without being charged. This effort will bring objectivity in serving the SPT and minimize errors in loading the SPT because competent parties in their fields supply it and understand the updated tax regulations.
3. Follow the competency test periodically and temporarily pass the requirements that must be updated state Examinations, seminars.

³⁵ "Interview with Bapak Yustinus Prastowo, Executive Director of CITA (Center for Indonesia Taxation Analysis)."

³⁶ "Interview with Bapak Yustinus Prastowo, Executive Director of CITA (Center for Indonesia Taxation Analysis)."

It becomes a discourse that the profession's Regulation is regulated in Law, either the teacher profession, the doctor profession, or other professions. It is creating equality between one profession and another. Besides, it is also more effective and efficient.

4. CONCLUSION

Arrangement regarding the Tax Consultant Profession has been regulated generally in the Act on General Provisions and Taxation Procedures. However, the current general Regulation does not cover existing needs, making adjustments to comply with the Constitutional Court No. 63/PUU-XV/2017. Technical arrangements also need to be adjusted to ethics, technical appointment, and technical implementation of the profession: the material and the laws and regulations required to depend on the social scope, substance, and legal structure. The formulation of legislation concerning the Tax Consultant for the future should be regulated in law. Arrangement of Tax Consultants in an Act will become a legal umbrella for the implementation of this profession. The Tax Consultant Law must comprehensively regulate, among other things: the rights and obligations of the Tax Consultant, the scope of duties and authority of the Tax Consultant, and the establishment of the Tax Consultant organization. Various policy choices need to be made based on long-term considerations. Suppose this is done so that the Tax Consultant Law will have an extended validity and will not change frequently. Specifically, the tax consultant regulation's practice impact is the tax consultant with an ethics trial previously to get into the case. Thus, not only does the tax consultant become immune from the law. However, the tax consultant has fair in law and professional reason

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