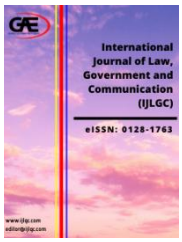
International Journal of Law, Government and Communication
EISSN : 0128-1763
Volume 5 Issue 20 (September 2020) PP. 100-111
DOI 10.35631/IJLGC.520008



INTERNATIONAL JOURNAL OF LAW, GOVERNMENT AND COMMUNICATION (IJLGC)
www.ijlgc.com

BURDEN OF PROOF OF CUSTOMS VALUATION DISPUTES IN INDONESIAN TAX COURT

Ardiansyah[1], Atma Suganda[2]

[1] Doctor of Law Program, University of Jayabaya, Indonesia
Email: ardiansyah@customs.go.id
[2] Doctor of Law Program, University of Jayabaya, Indonesia
Email: atma.suganda@gmail.com

Article Info:

Article history:
Received date: 01.08.2020
Revised date: 17.08.2020
Accepted date: 07.09.2020
Published date: 15.09.2020

To cite this document:

Ardiansyah., & Suganda, A. (2020). Burden of Proof of Customs Valuation Disputes in Indonesian Tax Court. International Journal of Law, Government and Communication, 5 (20), 100-111.

DOI: 10.35631/IJLGC.520008.

Abstract:

In applying the burden of proof of customs valuation disputes in the Indonesian tax court, some judges place the burden of proof to the importers, while others distribute the burden of proof to the customs administration. So, the legal problem that occurred in this study is regarding a different interpretation in applying the burden of proof. To solve that problem, it is necessary to research how the burden of proof applies in Tax Law through a comparative legal approach and research on how customs law regulates the burden of proof through a statute approach on WTO law and Indonesian customs law. The research results lead to one conclusion that the burden of proof can be shifted to companies or taxpayers if they cannot complete the evidence and documents required by tax or customs administration. However, the provision regarding the burden of proof for customs valuation is not clearly regulated in Indonesian Customs Law. Furthermore, the different interpretation in distributing the burden of proof among the judges is caused by the doctrine of freedom of proof based on tax court procedural law..

Keywords:

Customs Value, Evidence, Tax Court, Disputes

Introduction

Based on article 95 of Customs law (Law No. 10 of 1995 on Customs as amended by Law No. 17 of 2006), a person that has an objection to a Director General of Customs Excise (DGCE) decision may file an appeal to the Tax Court within sixty (60) days after the date of the DGCE's decision. A dispute between an importer and customs administration is a part of tax disputes as regulated in Article 1 number 2 of Law No.14 of 2002 concerning Tax Court. The provision defines taxes as all types of taxes levied by the central government including import duties and excise, as well as taxes levied by local governments, based on applicable laws and regulations.

International Journal of Law, Government and Communication
EISSN : 0128-1763
Volume 5 Issue 20 (September 2020) PP. 100-111
DOI 10.35631/IJLGC.520008

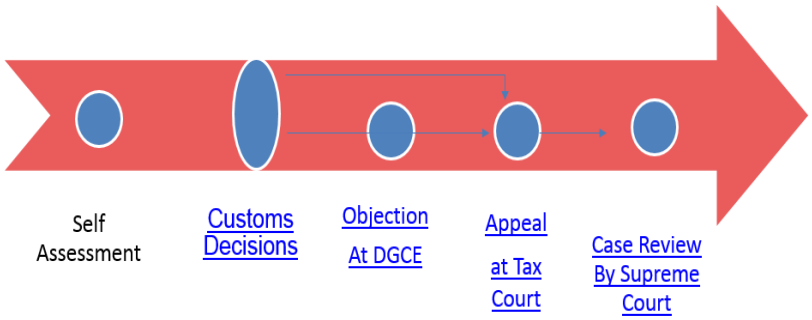


Figure 1: A Flow Chart Of Dispute Settlement On Customs Valuation Case

The most important process in dispute resolution is the verification process. The parties to the dispute try to prove their argument to convince the decision-maker. Proof aims to establish law between the two parties concerning a right in order to obtain a truth that has the value of certainty, justice, and legal certainty (Machmud, Syahrul, 2014).

Empirical facts show that a significant number of disputes on customs valuation occurred in the appeal court (tax court) where the judges are in favor of importers. A case study on decisions of tax court shows that the reason for some judges to determine their decision depends on the proof provided by each party. On the other hand, some judges place the burden of proof to the importers, while others apply the burden of proof to the customs administration.

The researcher found that the reason for the Judges rejecting the appeal was because the Applicant could not prove the customs value that was declared as the actual transaction value. This consideration reflects 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 can prove the truth of the transaction value of the imported goods. However, the majority of judges only require evidence to the importer until proof of payment, the Panel of Judges does not ask to show evidence of accounting, recording, and sale of goods to domestic consumers and taxation data to prove the truth of transaction value.

So, the legal problem occurred is about the different interpretations regarding the burden of proof for customs valuation. Such a different application in placing the burden of proof among the judges will create uncertainty. As stated by Marzuki, the scope of legal problems includes: (1) the occurrence of multiple interpretations of a regulatory text; (2) the occurrence of a legal vacuum; and (3) different interpretations of facts (Peter Mahmud Marzuki, 2011).

To solve that legal problem, it is necessary to research how the burden of proof applies to Tax Law and customs law. In this paper, the analysis is only limited to the law of evidence in tax law and customs law including the law of evidence in the Tax Court which is part of administrative law, the branch of law governing the operation of administrative agencies (Jonathan Kim, 2017). Based on the above issue, so that the researcher raised a title about "Burden of Proof of customs valuation disputes in Indonesian tax court".

International Journal of Law, Government and Communication
EISSN : 0128-1763
Volume 5 Issue 20 (September 2020) PP. 100-111
DOI 10.35631/IJLGC.520008

Problem Statement

The problem statement for this paper revolves around the implementation of the burden of proof in tax law and customs law particularly regarding customs valuation, and then the position of judges in the tax court to place the burden of proof for settling customs valuation disputes.

Research Questions

Based on the research problems above, the research questions are as follows:

1. How the burden of proof applies in Tax Law
2. How customs law regulates the burden of proof based on WTO law and Indonesian customs law.
3. Why there is a difference in applying the burden of proof among the judges in the Indonesian tax court.

Objectives

To find out how the burden of proof of customs valuation should be applied. Furthermore, based on research on the proof aspects of customs valuation, steps are taken to reform the law substance, structure and culture. In the end, it is expected that the results of this study can solve the disputes of customs valuation and improve the quality of customs valuation decisions made by customs administration and tax court.

Methodology

This legal research is carried out with three approaches. Firstly, it uses the comparative law approach to find out the application of the burden of proof in Tax Law and Customs Law. Secondly, the statute approach to examine problems in the content of legal norms as the basis of the discretion of the Customs Administration and the Tax Court Judges. Thirdly, the case approach on court decisions to find out the reasons from each party to the dispute and consideration of the judges based on tax court decision number PUT-53536/PP/M.IXB/19/2014.

Results And Discussion

The Burden Of Proof In European Tax Law

General principles in determining the burden of proof applied by tax law are 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 states that: *"The Theory is that "the burden of proof should REST on the party that makes CLAIM which affects another party*".

This principle states that the burden of proof must lie with the party making claims that affect other parties. On the other hand, there are exceptions to applying a reversal of the burden of proof or shifting the burden of proof to companies or taxpayers if the company or taxpayers cannot complete the evidence and documents required by the Tax Administration (Gerard Meussen, 2011).

As mentioned in the report that a common feature amongst the reported countries is that the tax administration is authorized to make discretionary decisions. The capability to do so, i.e.

International Journal of Law, Government and Communication
EISSN : 0128-1763
Volume 5 Issue 20 (September 2020) PP. 100-111
DOI 10.35631/IJLGC.520008

the legal requirements for a discretionary decision to be made, does however differ. This is shown in the following.

1. *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 sufficiently explain specifications made by him.*
2. *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.*
3. *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 mere likelihood-standard.*
4. *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.*
5. *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 a reasonable doubt that the assessment is incorrect. The same principles apply according to Belgian law.*
6. *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.*
7. *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.*
8. *Furthermore, in Greece, the tax administration bears the burden to prove its allegations concerning the inaccuracy of the taxpayers' tax statement."*

Based on the above report, it is concluded that the application of a reversal of the burden of proof to a company or taxpayers is adopted in various countries in Europe. Provisions for reversing the burden of proof or shifting the burden of proof to companies or taxpayers are applied if the company or taxpayers cannot complete the evidence and documents required by the Tax Administration.

The Burden Of Proof In Indonesian Tax Law

Reversing the burden of proof or shifting the burden of proof to companies or taxpayers have long been followed in Indonesian Tax Law. This can be seen in Article 14 paragraph (3) of the 1944 Income Tax Law. The law adheres to reverse proof (*omkering van bewijslast*). The contents of Article 14 Paragraph (3) of the Income Tax Law are:

"*Taxpayers who do not meet the obligations specified in Article 11 are obliged to prove the incorrect tax provisions that are imposed".*

In this article, it is only determined who is obliged to prove and at the same time, it is not determined which evidence can be used. On the contrary, it can be said if the taxpayer has fulfilled his obligations, namely entering the notice, giving further explanation, and showing

International Journal of Law, Government and Communication
EISSN : 0128-1763
Volume 5 Issue 20 (September 2020) PP. 100-111
DOI 10.35631/IJLGC.520008

the books or records requested (Article 11 of the 1944 Income Tax Act), but the amount of tax that must be paid stipulated in the tax assessment letter deviates from what was notified by the taxpayer, in this case, the taxpayer is obliged to prove that the income of a taxpayer is the amount set by the Financial Inspection and not the amount notified by the taxpayer. But on the contrary, if the taxpayer does not fulfill one of the obligations as regulated in Article 11, the relevant taxpayer must prove it (Mahdi Syahbandir, 2005).

Likewise in Law Number 6 of 1983 as amended by Law Number 28 of 2007 concerning the Third Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures (the Law of General Provisions and Tax Procedures) adheres to the reversal of the burden of proof as stated in Elucidation of Article 13 paragraph (1) of the Law of General Provisions and Tax Procedures:

> "*For taxpayers who do not keep books according to the provisions of Article 28 of this law or when examined do not fulfill the request according to Article 29 paragraph (2), so that the Director-General of Taxes cannot know the business conditions, Actual taxpayers, with the result of not being able to calculate the amount of tax that should be owed, the Director-General of Taxation has the authority to issue a Tax Assessment Letter in a position calculation, that is tax calculation based on data not only obtained by the Taxpayer. As a consequence, the burden of proof on the description of the calculation which is used as the basis for the calculation of position by the Director-General of Taxes is placed on the Taxpayer. Examples given include:*
>
> 1) *accounting as referred to in Article 28 paragraph (4) is incomplete, so the calculation of profit or loss is unclear;*
> 2) *bookkeeping documents are incomplete so the numbers in the bookkeeping cannot be tested;*
> 3) *from the series of researches and facts that are known to be suspected of hiding documents or other evidence in a certain place so that from this attitude it is clear that the Taxpayer has not shown his good intention to help the smooth running of the examination."*

The burden of Proof in WTO Customs Valuation Agreement

Research on customs valuation is highly connected to international trade law ruled by the WTO. Garcia said that international trade law must be formulated to protect the moral equality of all individuals affected by international trade (Frank J Garcia, 2003). In line with Garcia's statement, today, the rules for valuing imports for purposes of assessing customs duties are well settled. They are defined in the WTO Customs Valuation Agreement (the formal name of which is the Agreement on Implementation of Article VII of the GATT), a system that is designed to promote fairness, neutrality, and uniformity in customs duty assessment, and which is used by more than 150 WTO Member countries worldwide (Sheri Rosenow, Brian J. O'Shea, 2012).

The WTO Customs Valuation Agreement is based on a “positive” as opposed to a “normative” economic principle: what the value of the goods is, rather than what the value of the goods should be, is taken as the correct customs value. Thus, the Agreement’s primary basis of valuation is “transaction value” which is “the price actually paid or payable” by the buyer for the imported goods. If the sale was freely negotiated (and the Agreement contains rules for

International Journal of Law, Government and Communication
EISSN : 0128-1763
Volume 5 Issue 20 (September 2020) PP. 100-111
DOI 10.35631/IJLGC.520008

valuation of sales that are not), the price the buyer pays the seller can be said to best represent the actual, market value of the product, and should be used for customs purposes. In other words, it is the buyer and seller, each acting in their own self-interest to maximize their profit, who will determine the customs value of the imported goods (Sheri Rosenow, Brian J. O'Shea, 2012).

The early practical concerns about transaction value are that "The price involved may be fictitious. What is known as 'double-invoicing' for Customs purposes is a common example? Such a price, if it were declared to be the actual price under [the transaction value method], would not be rejected by the Customs unless they were in a position to prove its falsity by establishing the true actual sale price. No Customs Administration could accept the burden of such proof (Customs Co-operation Council, Different Systems of Valuation and their Comparative Advantages and Disadvantages, 18 (1963). The general concern was that the GATT Valuation Code placed too great a burden on customs to prove that a declared price was false before it could reject the transaction value, particularly in cases where importers and their suppliers acted in collusion to hide the fraud (Sheri Rosenow, Brian J. O'Shea, 2012).

As explained in the ASEAN Customs Valuation Guide, 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 (e.g. 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 (*ASEAN Customs Valuation Guide*, 2012).

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 6.1based 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 Agreement to clarify the intent of the original valuation provisions" (De Wulf, Luc., and Sokol, Jose B., 2005).

When upon examining the declared value, Customs has reason to doubt the truth or accuracy of the particulars or of documents produced in support of this declaration, Customs may ask the importer to provide further explanation, including documentary 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 of the Agreement (*ASEAN Customs Valuation Guide*, 2012).

For the implementation of Decision 6.1, TCCV (Technical Committee on Customs Valuation) World Customs Organization (WCO) has published Case Study 13.1, "Application of Decision 6.1 of the Committee on Customs valuation" that provides an example of one such situation." Based on Case Study 13.1, the procedure of determining customs value should be done in the following steps:

1. carry out a test value of the price based on data of identical goods,
2. carry out data requests, and consultations with importers,

International Journal of Law, Government and Communication
EISSN : 0128-1763
Volume 5 Issue 20 (September 2020) PP. 100-111
DOI 10.35631/IJLGC.520008

3. Utilize data exchange with exporting countries (if possible),
4. conduct an audit to the company to check local sales data, accounting records, bookkeeping, and financial reports,
5. analyze the company's profit compared to the resale price, and
6. determine customs value if there is reasonable doubt about the truth or accuracy of the transaction value based on an objective and quantified evidence.

Based on the WTO Valuation Agreement, ministerial decision 6.1 and case study 13.1, the researcher found that the burden of proof can be shifted to the importer If at the time of inspection to the declaration, the importer does not fulfill the customs administration request to submit all information, documents, and/or statements needed. As a result, the transaction value of imported goods declared by the importer cannot be accepted so alternative methods to determine customs value are applied.

The Burden Of Proof In Indonesian Customs Law

The provision regarding the customs valuation is specifically formulated in Chapter III concerning Tariffs and Customs Valuation, Part Two concerning Customs Valuation. It is said that the customs value for the calculation of import duty is the transaction value of the imported goods. This is as regulated in Article 15 paragraph (1) of the Customs Law: "*Customs Value for calculation of import duties is the transaction value of the relevant imported goods*". Noticing the formulation of the seven paragraphs in Article 15 of the Customs Law which regulates customs valuation, those articles do not contain any provision regarding the rule of evidence especially the burden of proof for customs valuation purposes.

Nevertheless, in Article 17 and 86A of the Customs Law, it can be concluded that the Customs Law regulates the burden of proof on the Director-General of Customs and Excise. The Director-General is the party who bears the burden of proof on customs valuation because it is the Director-General who submits claims for the incorrect calculation of the customs value that had previously been declared in the import customs declaration.

In contrast to article 17 and 86A of the Customs law, in article 84 of the Customs Law and its elucidation, there is a provision for reversing the burden of proof or shifting the burden of proof to importers or exporters as stated, as follows:

Article 84 paragraph (1) Customs and excise officials are authorized to ask importers or exporters to submit books, records, correspondence related to imports or exports, and take samples of goods for inspection of customs notifications

In the elucidation of Article 84 of the Customs Law it is stated that: "In the event that the request of customs and excise officials as referred to above is not fulfilled, customs and excise officials will determine tariffs and/or customs values based on existing data".

Observing the formulation of Article 84 of Customs Law, it reflects a provision for reversing the burden of proof or shifting the burden of proof. Provisions for reversing the burden of proof or shifting the burden of proof to importers or exporters are applied if the importers or exporters cannot complete the evidence and documents required by the Customs Administration. So that customs will determine tariffs and/or customs values based on existing data.

International Journal of Law, Government and Communication
EISSN : 0128-1763
Volume 5 Issue 20 (September 2020) PP. 100-111
DOI 10.35631/IJLGC.520008

So the researcher found that there is still an unclear regulation in customs law regarding the burden of proof for customs valuation. It occurs because there is a contradiction between the burden of proof in articles 17 and 86A compare with article 84 of the customs law.

The Burden Of Proof In The Tax Court

The type of evidence adopted in tax court procedural law is mentioned in article 69 paragraph (1) of Law Number 14 of 2002 on the Tax Court as follows:

a. Letter or writing;
b. Testimony of expert;
c. Testimony of witness;
d. Recognition of parties; and/or
e. Knowledge of judge

Elucidation of Article 69 paragraph (1) states as follows:

> *"The Tax Court adheres to the principle of freedom of proof. The Panel or the Sole Judge wherever possible tries to obtain evidence in the form of letters or writings before using other evidence*."
>
> And in article 76, it is mentioned that: "*The judge determines what must be proven, the burden of proof as well as the assessment of the evidence and for the validity of the proof required at least 2 (two) kinds of evidence as referred to in Article 69 paragraph (1)*"

According to the above rules, tax court procedural law applies freedom of proof principle in the settlement of tax disputes. As stated by Muhammad Djafar Saidi, in the case of application of the burden of proof, the reversal of proof is not explicitly ruled in the Tax Court Law, but it is also not prohibited to apply (Muhammad Djafar Saidi, 2013).

With regard to the principle of freedom of proof, a Judge is able to determine for himself who should be burdened with proof. According to Suparto Wijoyo, the Judge can apply the reversal burden of proof or the distribution of burdens in accordance with the wisdom of the judge (Suparto Wijoyo, 1997).

In addition, Sudikno Mertokusumo concluded that the doctrine of freedom of proof is the doctrine or theory that does not require the existence of provisions binding to the Judge, how the proof is carried out, it depends on the Judge discretion. Why the doctrine of freedom of proof is applied, because the examination process at the court hearing on State Administrative Dispute stipulated in Law No.5 of 1986 juncto Law No 9 of 2004 juncto Law No. 51 of 2009, according to the legislators, is intended to obtain substantive truth and not only formal truth (Sudikno Mertokusumo, 1988).

On the other hand, the Director-General as the party that bears the burden of proof at the hearing stage in the Tax Court can be seen from the existence of the obligation of the Director-General to be present at the hearing so that the Director-General can state the facts or other matters that become evidence of the claims he made in the Customs Valuation. This is as stipulated in the elucidation of Article 76 of the Tax Court Law: *"Appellant or plaintiff must not be present at the hearing. therefore, new facts or new things that are submitted by the defendant must be notified to the applicant or the plaintiff to be given an answer."* (Pudyatmoko, Y. Sri. 2009).

International Journal of Law, Government and Communication
EISSN : 0128-1763
Volume 5 Issue 20 (September 2020) PP. 100-111
DOI 10.35631/IJLGC.520008

Based on tax court decision number PUT-53536 / PP / M.IXB / 19/2014, in applying the burden of proof, the judge is still divided into two methods of proof. Some judges place the burden of proof to the importer, while the other judges distribute the burden of proof to the Customs administration.

The majority of the Judges stated the considerations in the decision as follows:

> *"Based on the description above, the Panel concludes that the appellant cannot prove that the customs value declared in import declaration is the actual transaction value or should be paid".*

This consideration reflects the adoption of the reversal burden of proof by the majority panel of judges. The majority of judges require that the importer or the appellant shall prove the truth of declared transaction value.

In contrast to Majority Judges, a dissenting judge places the burden of proof to Customs Administration or appellee. The consideration of judgment is as follows: " *the Appellee cannot prove by law the rules that violated by the Appellant's so that the customs value rejected or not accepted based on Article 15 paragraph (1) of Law No. 10 of 1995 concerning Customs as amended by Law No. 17 of 2006 and Law No. 7 of 1994 and Article 7 paragraph (1) Ministry of Finance Regulation Number: 160 / PMK.04 / 2010 (provision to decline the transaction value in the event of a relationship between the seller and buyer is affecting the price).*

On the other hand, the Customs administration uses the principle of reversal of the burden of proof in examining customs value. This is reflected in their argumentations as follows: "... *during the objection process the importer did not complete evidence of the transaction (including sales contract, transfer payment and bookkeeping/recording related to the importation of the goods in case), so the price of the declaration could not be deemed as transaction value".*

The legal basis for implementing a reverse proof system is as explained in the above decision as follows:

(1) *Article 17 WTO Agreement on Customs Valuation: "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";*

(2) *Paragraph 6 Annex III WTO Agreement on Customs Valuation: "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, aimed at verifying that the elements of value declared or presented to customs in connection with a determination of customs value are complete and correct".*

(3) *Ministerial Decisions 6.1 WTO Agreement on Customs Valuation: "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*

International Journal of Law, Government and Communication
EISSN : 0128-1763
Volume 5 Issue 20 (September 2020) PP. 100-111
DOI 10.35631/IJLGC.520008

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);

(4) *Whereas in implementing the provisions of Article 17 WTO Agreement on Customs Valuation and Ministerial Decisions 6.1 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, the WCO Technical Committee on Customs Valuation Instruments, Case Study 13.1, and the ASEAN Customs Valuation Guide;*

Observing the argumentations and legal bases proposed by the appellee (Director-General), it is concluded that customs administration has implemented the reversal burden of the proof system based on WTO and WCO provisions. The WTO Agreement has been ratified in the WTO Establishment Act. But as the researcher has mentioned earlier that Customs Law is still unclear to regulate the reversal burden of proof for customs valuation.

All of all, the researcher found that, having examined the burden of proof as stipulated in the tax court law, the difference in applying the burden of proof among the judges is caused by tax court procedural law which applies freedom of proof principle in the settlement of tax disputes. The application of the reversal burden of proof is not explicitly regulated in the Tax Court Law, but it is also not prohibited to apply. On the other hand, the Director-General as the party that bears the burden of proof at the hearing stage in the Tax Court can be seen from the existence of the obligation of the Director-General to be present at the hearing.

Conclusion

Based on the previous description, it can be concluded as follows:

Provisions of reversal of the burden of proof or shifting the burden of proof to a company or taxpayers are adopted both in tax law and customs law. Those provisions are applied if the company or taxpayers cannot complete the evidence and documents required by the Tax Administration.

Provisions for reversing the burden of proof are also stated in the WTO Valuation Agreement, namely Article 17 and WTO Ministerial Decision 6.1 which has been ratified by Law No.7 of 1994 concerning Ratification of the WTO.

There is still an unclear regulation in customs law regarding the burden of proof for customs valuation. It occurs because there is a contradiction between the burden of proof in articles 17 and 86A compare with article 84 of the customs law.

The difference in applying the burden of proof among the judges is caused by tax court procedural law which applies freedom of proof principle in the settlement of tax disputes. The

International Journal of Law, Government and Communication
EISSN : 0128-1763
Volume 5 Issue 20 (September 2020) PP. 100-111
DOI 10.35631/IJLGC.520008

reversal of proof is not explicitly regulated in the Tax Court Law, but it is also not prohibited to apply. Furthermore, Customs Law is still unclear to regulate the reversal burden of proof for customs valuation.

Recommendation

The Customs Law must be amended by including the provisions of the reversal of the burden of proof as to the legal basis for the application of the reversal of the burden of proof for customs valuation. It can make a clear and certain legal basis for importers and customs officials and also the Tax Court in settling customs valuation disputes.

Customs administration must find sufficient evidence to determine the customs value by conducting data requests and consultations with importers so that the decision meets the provisions of the Customs and WTO Laws.

Judges must be more active in exploring the law in various sources of law in the field of customs to make fair decisions based on the law.

The judge should be able to apply the burden of proof to the importer to prove the truth of the transaction value of imported goods because it is in line with the WTO customs valuation agreement even though it has not been clearly regulated in the Customs Law. But the judge has the authority to find the law (*Rechts vinding*) so that he can explore the law, which is still unclear, especially in positive legal sources regarding customs valuation.

References

De Wulf, Luc., and Sokol, Jose B. (2005) *Customs Modernization Handbook.* Washington, D.C: The World Bank.

Frank J Garcia, (2003) *Trade, Inequality, and Justice: Toward a Liberal Theory of Just Trade*. New York: Transnational Publishers.

Gerard Meussen. (2011) *The Burden of Proof in Tax Law (T*he final reports of the annual meeting of European Association of Tax Law Professors (EATLP) held in Uppsala, Sweden from 2-3 June 2011.

Jonathan Kim, June 2017. *Administrative law* [Online]. Available: https://www.law.cornell.edu/wex/administrative_law

Kaczorowska, Alina. (2002) *Public International law*. London, 2002

Mahdi Syahbandir. (2005). *Eksistensi Pengadilan Pajak Dalam Sistem Peradilan Di Indonesia Dalam Kaitannya Dengan Negara Hukum. Disertasi Program Doktoral Ilmu Hukum Universitas Padjajaran. Bandung*

Machmud, Syahrul, (2014). *Hukum Acara Khusus pada Pengadilan Hubungan Industrial,* Yogyakarta: Graha Ilmu.

Muhammad Djafar Saidi, (2013) *Hukum Acara Peradilan Pajak.* Jakarta: Raja Grafindo Persada.

Peter Mahmud Marzuki. (2011) *Penelitian Hukum.* Jakarta: Kencana.

Pudyatmoko, Y. Sri. (2009) *Pengadilan dan Penyelesaian Sengketa di Bidang Pajak,* Jakarta: Gramedia Pustaka Utama.

Sheri Rosenow, Brian J. O'Shea, (2012) *A Handbook on WTO Customs Valuation Agreement.* UK: Cambridge University Press.

Sudikno Mertokusumo, (1988) *Hukum Acara Perdata Indonesia.* Yogyakarta: Penerbit Liberty.

International Journal of Law, Government and Communication
EISSN : 0128-1763
Volume 5 Issue 20 (September 2020) PP. 100-111
DOI 10.35631/IJLGC.520008

Suparto Wijoyo, (1997) *Karakteristik Hukum Acara Peradilan Administrasi*. Jakarta: Penerbit Airlangga University Press.

World Trade Organisation, Agreement on Implementation of Article VII of GATT 1994.