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The Application of Ne Bis In Idem in Tax Disputes at the Tax Court in Indonesia

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Abstract: The principle of ne bis in idem prohibits a person from being tried or punished twice for the same case or act. This principle plays a pivotal role in safeguarding legal certainty and justice, and is accordingly recognized across multiple branches of law in Indonesia. Repeatedly filing disputes involving the same parties and the same object—directed at the same opposing party—poses serious issues for legal certainty and fairness (Hafiez, 2021). Law Number 14 of 2002 on the Tax Court does not explicitly codify ne bis in idem, prompting the question of whether it may be applied to resolve tax disputes before the Tax Court. This article presents a normative juridical analysis of the implementation of ne bis in idem in resolving tax disputes in Indonesia's Tax Court. The study has three main objectives: (1) to identify the legal basis for applying ne bis in idem; (2) to explain how it is practiced within Indonesia's judicial system; and (3) to evaluate its strengths and limitations in terms of justice, legal certainty, and utility. The proposed solution is to apply ne bis in idem to tax disputes that truly involve identical parties and objects and have reached permanent legal force, even where the legal grounds (*posita*) differ.

Keywords: ne bis in idem, tax disputes, legal certainty, Tax Court

INTRODUCTION

Literally, ne bis in idem means 'not twice for the same matter'. It is a general legal principle that bars a person from being examined or prosecuted again for an identical case already decided by a final judgment (Saputra, 2025; Desterbeck, 2019). The principle is essential in ensuring legal certainty and justice; once a case has obtained permanent legal force (*inkracht*), no further ordinary remedy may disturb the finality of that judgment (Badan Pembinaan Hukum Nasional, 2021).

The principle is recognized across Indonesia's legal system. In criminal law, Article 76(1) of the Criminal Code provides that—save through judicial review—a person cannot be prosecuted twice for the same act once a final judgment has been rendered. In civil law, Article 1917 of the Civil Code precludes re-litigation of the same case (identical subject, object, parties, and cause of action) once a final and binding judgment exists (Saputra, 2025).

The principle also operates alongside the ideals of simple, speedy, and low-cost justice to prevent repetitive litigation in the general courts (Mahkamah, 2019); and within the state administrative courts, it maintains the stability of administrative decisions that have become final (Mahkamah, 2021). In the international human-rights dimension, the ban on double jeopardy is reflected in the right to a fair and final trial (ICCPR, 1966).

Despite its universal character, the use of *ne bis in idem* in deciding tax disputes before the Tax Court remains limited. Doubts persist regarding its legal basis since the Tax Court Law does not explicitly regulate the principle. Recent developments—by 2025—show repeat filings by the same party concerning the same object despite the existence of a final and binding judgment. This situation generates legal uncertainty and is seen as incompatible with *ne bis in idem* and the principle of *electa una via non datur recursus ad alteram* (Suara Utama, 2025). In taxation, preventing repeated litigation on the same matter forms part of enforcing legal certainty and consistency of judgments (Sofyan, 2021). Historically and doctrinally, *ne bis in idem* functions as a safeguard against inconsistent judgments and unnecessary caseload (Sularno, 2015).

This article therefore explores more deeply the application of *ne bis in idem* in resolving tax disputes before Indonesia's Tax Court.

METHOD

This study employs a normative juridical approach. Primary legal materials comprise relevant legislation and court decisions related to *ne bis in idem*. Secondary materials—journal articles, textbooks, and expert commentaries—are used to elaborate the doctrine and theory of *ne bis in idem*. Data were collected through a literature study and analyzed qualitatively using deductive–inductive reasoning. The results are used to evaluate the application of *ne bis in idem* in resolving tax disputes before the Tax Court.

RESULTS AND DISCUSSION

The Legal Basis of *Ne Bis In Idem* in Indonesia

Ne bis in idem is embedded in Indonesia's legal system and affirmed through legislation and case law. Generally, the principle applies once a case has been decided by a court and has attained permanent legal force (*res judicata*) (Badan Pembinaan Hukum Nasional, 2021). The following outlines the legal basis of the principle across several branches of law.

Criminal Law

Law No. 1 of 1946 on Criminal Law (*Wetboek van Strafrecht*). Chapter VIII – Extinction of the Authority to Prosecute and Execute Punishment. Article 76: (1) Except where a judgment may still be repeated, no person shall be prosecuted twice for an act adjudicated by an Indonesian court with a judgment that has become final. (2) If the final judgment originates from a foreign court, no prosecution shall be brought for the same offense where the defendant has been acquitted or discharged, or a conviction has been fully served, pardoned, or become time-barred.

In substance, Article 76(1) explicitly bars a second prosecution for the same offense, save where judicial review is possible (Neliti, n.d.). This means that following a final verdict (acquittal, discharge, or completed sentence), the defendant may not be prosecuted again for the same act (Organisation for Economic Co-operation and Development, 2024).

Law No. 1 of 2023 (new Criminal Code). Chapter IV – Extinction of the Authority to Prosecute and Execute Punishment: Article 132(1)(a): the authority to prosecute lapses when a final and binding judgment exists for the same case; Article 134: a person cannot be prosecuted a second time in the same case if a final and binding judgment has been rendered; Article 135: if the judgment is from a foreign court, no prosecution may be brought where the

defendant was acquitted or discharged, or a conviction has been fully served, pardoned, or become time-barred.

Civil Law

Article 1917 of the Civil Code provides that the authority of a final and binding judgment is limited to the matter decided; it may be invoked only where the new claim shares the same subject matter, cause of action, and parties in the same legal relationship. Accordingly, a subsequent claim re-litigating an identical dispute must be declared inadmissible in accordance with *ne bis in idem*.

M. Yahya Harahap notes that a positive civil judgment (granting or dismissing a claim), once final, carries *ne bis in idem*. However, if the earlier judgment was a declaration of inadmissibility (*niet ontvankelijk verklaard*) due to a formal defect, the case may be re-filed after curing the defect without violating the principle.

Administrative Law (State Administrative Court)

The State Administrative Court Law does not expressly codify *ne bis in idem*; the principle develops through jurisprudence. Supreme Court decisions have held that *ne bis in idem* applies not only when the parties are identical but also when the disputed object and its legal status are the same as in a prior case. For example, Supreme Court Decision No. 123 K/Sip/1968 states that even where the pleading (*posita*) differs, if the subject and object are the same and the legal status has been determined by a prior final judgment, the new case is *ne bis in idem* (Saputra, 2025).

Supreme Court

Supreme Court Circular No. 3 of 2002 on handling cases related to *ne bis in idem* defines the principle as the repetition of a case with the same subject and object already decided with permanent legal force across the general, religious, and administrative courts. Supreme Court Circular No. 7 of 2012 (Civil Chamber Meeting – item XVII) recognizes *ne bis in idem* even where the parties are not perfectly identical, provided they are substantially the same (including added parties) and the status of the object was determined in the prior case.

Constitutional Court

Law No. 8 of 2011 amending Law No. 24 of 2003 on the Constitutional Court, Article 60: (1) The same statutory provision may not be tested again once it has been reviewed; (2) An exception applies if the constitutional grounds invoked are different. Thus, the Constitutional Court applies a strict form of *ne bis in idem* to preserve the authority of its decisions, with a narrow exception for new constitutional grounds. In administrative law, the principle of *electa una via* is also recognized as a manifestation of *ne bis in idem* (Tobing, 2020).

Application Of Ne Bis In Idem In Tax Disputes Before The Tax Court

Ne bis in idem is a foundational legal principle of universal recognition. A case decided with final and binding force may not be re-examined when the identities of the parties and the object are the same. While historically protective of individuals against double jeopardy in criminal law, in taxation the principle may function to protect the state (the *fiscus*) from repetitive suits by taxpayers.

Neither Law No. 14 of 2002 on the Tax Court nor the taxation statutes expressly codify *ne bis in idem*. Nonetheless, its spirit is reflected in Article 42(3) of Law No. 14 of 2002, which states that a claim that has been withdrawn cannot be re-filed even if the merits have not yet been examined.

This provision was upheld by the Constitutional Court in Decision No. 51/PUU-XIX/2021, which rejected a constitutional challenge to Article 42(3). The Court affirmed its constitutionality, observing that the matter concerned the application of the norm;

it also recognized *ne bis in idem* as a fundamental principle used by judges to ensure fair adjudication and law enforcement.

The use of *ne bis in idem* in tax cases has sparked debate. Opponents assert that the Tax Court Law contains no explicit codification and that applying the principle could impair fairness and restrict taxpayers' rights, effectively protecting the fiscus. Supporters argue that access to justice is not an unlimited license to file endless suits, but the right to one fair hearing before a competent court leading to a final and binding judgment. Viewing robust *ne bis in idem* as an obstacle to justice is misplaced; its core function is to guarantee legal certainty—especially crucial in tax disputes that demand simple, speedy, and inexpensive resolution.

The principle ensures that a case decided with permanent legal force (*inkracht*) cannot be re-tried if the identities are the same. This aligns with the maxim *litis finiri oportet*—disputes must come to an end—for reasons of: (i) legal certainty (clarifying rights and obligations), (ii) fairness (preventing double jeopardy and duplicative litigation), and (iii) utility (conserving judicial resources, expediting resolution, avoiding conflicting judgments on the same object, and preserving judicial authority).

Article 77(1) of Law No. 14 of 2002 affirms that Tax Court judgments are final and binding; paragraph (3) allows judicial review to the Supreme Court. Consequently, identical cases may not be re-examined except through judicial review. Appeals or lawsuits that replicate an object and grounds already decided with permanent legal force must be declared inadmissible or beyond jurisdiction in view of the prior final judgment. The binding effect of final judgments (*res judicata pro veritate habetur*) serves as a legal bridge for applying *ne bis in idem*, encompassing both formal binding force (no ordinary remedies remain) and material binding force (the substance decided binds the parties for the same object and grounds).

In practice, *ne bis in idem* is applied where the following elements are satisfied:

- 1) Identity of the parties (*eadem personae*): the same applicant/appellant versus the same respondent/defendant; verified, *inter alia*, through the taxpayer identification number (NPWP).
- 2) Identity of the object (*eadem res*): the same administrative tax decision—e.g., SKPKB/SKPKBT/STP or an Objection Decision with the same number, date, tax period, and tax type.
- 3) *Causa petendi* (*eadem causa petendi*): in tax disputes, differences in legal arguments (*posita*) are not decisive. So long as the subject and object are identical, the case is repetitive (*ne bis in idem*). For lawsuits, the court examines the entire authority and procedure for issuing the disputed decision even if not expressly pleaded; for appeals, the judgment encompasses the full material contents of the decision under appeal, while matters not disputed are deemed correct.

Once these three elements are present, it must also be verified that the prior case has been decided with permanent legal force. Under Article 77(1) of Law No. 14 of 2002, Tax Court judgments are final and binding.

CONCLUSION

Consistent application of *ne bis in idem* in tax disputes before the Tax Court has important implications for legal certainty, judicial efficiency, and public trust in the tax-law system. Both the tax authority and taxpayers must respect the outcome of litigation without pursuing repetitive avenues. This encourages thorough preparation from the outset because there is no 'second chance' for the same object of dispute.

It is recommended to issue technical guidelines for Tax Court judges concerning the application of *ne bis in idem*, notwithstanding existing Supreme Court circulars. Such guidance is necessary in light of procedural specificities and the special channels for bringing

disputes to the Tax Court (Article 23(2) and Article 27(1) of Law No. 6 of 1983 on General Provisions and Tax Procedures, as last amended by Law No. 7 of 2021 on the Harmonization of Tax Regulations, in conjunction with Article 31(2) and (3) of Law No. 14 of 2002).

REFERENCES

- Badan Pembinaan Hukum Nasional. (2021). Pembatasan ne bis in idem dalam pengujian undang-undang. *Rechtsvinding*.
- Butarbutar, E. N. (2018). Asas ne bis in idem dalam gugatan perbuatan melawan hukum (Analisis Putusan MA No. 65/Pdt.G/2013/PN-RAP). *Jurnal Yudisial*, 11.
- Desterbeck, F. (2019). Ne bis in idem and tax offences: How Belgium adapted its legislation to the recent case law of the ECtHR and the CJEU. *eu crim – The European Criminal Law Associations' Forum*, 2019(2), 135–141.
- Hafiez, F. A. (2021, 24 November). Gugatan terhadap UU Pengadilan Pajak ditolak MK. *Medcom.id*.
- Hidayat, M. F., Arintonang, R. V. D., & Lavea, H. (2024). Analisis asas ne bis in idem dalam hukum acara pidana Indonesia. *Jurnal Kajian Hukum dan Kebijakan Publik*, 1.
- Saputra, A. R. A. (2025, 15 Agustus). *Yurisprudensi: Penerapan ne bis in idem dalam perkara perdata*. MariNews Mahkamah Agung.
- ResearchGate. (2023). The legal view of out of court mediation agreements becomes the object of ne bis in idem in court.
- ICCPR. (1966). International Covenant on Civil and Political Rights, Article 14(7). United Nations.
- Kitab Undang-Undang Hukum Perdata.
- Kitab Undang-Undang Hukum Pidana.
- Mahkamah Agung Republik Indonesia. (2019). Surat Edaran Ketua MA No. 2 Tahun 2019 (asas litis finiri oportet dalam penegakan hukum pajak).
- Mahkamah Konstitusi Republik Indonesia. (2021). Putusan MK No. 51/PUU-XIX/2021 (pengujian Pasal 42 ayat (3) UU Pengadilan Pajak).
- Neliti. (n.d.). Ne bis in idem dalam KUHP dan KUHAP (kompilasi).
- OECD. (n.d.). Fighting tax crime – The ten global principles: Country chapters (Indonesia). Organisation for Economic Co-operation and Development.
- Sofyan, A. (2021). Eksistensi asas ne bis in idem dalam peradilan pidana internasional. *Jurnal Legislasi Indonesia*, 18(2).
- Suara Utama. (2025, 3 Oktober). Ne bis in idem di persimpangan: Mengkritisi tumpang tindih sanksi dalam UU KUP. *SuaraUtama.id*.
- Sularno, A. (2015). Prinsip ne bis in idem dalam hukum pidana internasional. *Jurnal Hukum Internasional*, 12(2), 209–221.
- Tobing, G. C. (2020, 17 April). Interaksi tindak pidana pajak dan tindak administrasi pajak. *DDTC News*.
- Undang-Undang Republik Indonesia Nomor 14 Tahun 2002 tentang Pengadilan Pajak. Lembaran Negara Republik Indonesia Tahun 2002 Nomor 27.
- Undang-Undang Republik Indonesia Nomor 6 Tahun 1983 tentang Ketentuan Umum dan Tata Cara Perpajakan, sebagaimana telah diubah terakhir dengan Undang-Undang Nomor 7 Tahun 2021 tentang Harmonisasi Peraturan Perpajakan.
- Undip Law Journal. (n.d.). Pengertian sengketa pajak dan hubungan WP–fiskus. *Masalah-Masalah Hukum (MMH)*.
- Yahya Harahap, M. (n.d.). Hukum acara perdata: Gugatan, persidangan, pembuktian, dan putusan pengadilan. (Res judicata and ne bis in idem).