

Justice And Tax Benefits of Msmes In Government Regulation No. 23 of 2018

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ABSTRACT

Tax collection is a function that the state must carry out for the welfare of the people. Every tax levy must be based on law. Thus the tax must have a clear legal basis and its implementation should not be carried out without a legal basis. To achieve the target of state revenue, the government agreed to sign Government Regulation of the Republic of Indonesia No. 23 of 2018 (PP 23) concerning income tax on income from business received or obtained by Taxpayers with Certain Gross Circulation. Through this Government Regulation, entrepreneurs and SMEs who have income of less than Rp. 4.8 billion in one tax year can pay a tax of 0.5 percent of their gross turnover. The aspect of justice is one of the cons that is often highlighted considering that the PPH 23/2018 income tax is included in the final tax. This is the MSME tax which is final. Regardless of whether the final result of the taxpayer's business is profit or loss, as long as the taxpayer has a turnover, the taxpayer must pay taxes. The type of research in this research is normative juridical law research, which is research based on literature study. Found through a good arrangement, PP 23 of 2018 is a form of partisanship of the state in the field of taxation for the community. MSMEs are given leeway in calculating their taxes, which are half a percent of the gross turnover each month. In addition, PP 23 was made to encourage the public to participate in formal economic activities, by providing convenience and more justice to taxpayers. Government Regulation no.23 of 2018 is expected to be able to support Tax Collection and expand the taxation database, as well as support policies that strengthen the national economy.

Keywords: Tax, MSMEs, Government regulations, UUD.

1. INTRODUCTION

To become a sovereign and independent country, it takes a lot of money from the state to build. For this reason, the state must be present in every aspect of people's lives. For the success of this effort, the state requires a large amount of funding. If we look at the APBN, the income received by the state is obtained from two sources, namely Domestic Revenue and Foreign Aid. Domestic revenue can be obtained from Oil and Gas Revenue, Tax and Non-Tax Revenue. Given the limited number of sources of income from oil and gas, the state seeks financing through taxes. The scope of the tax is so wide, it includes Regency/City local governments (Regency/City Regional Taxes), Provincial Governments (Provincial Regional Taxes), Central Government (Central Taxes), Bilateral Taxes (*Tax Treaty*), and Regional Taxes and International Taxes. In this study will focus on the central tax (Purnawan et al., 2019).

In the midst of high expectations of income generation through taxes, there are at least five challenges to the tax situation in Indonesia :



1. Low tax compliance in Indonesia. In 2016, of the approximately 131 million workforce in Indonesia, there were only 38.6 million registered taxpayers and only 17.6 million who submitted SPT. In 2018, the level of compliance was in the range of 70.4%
2. The structure of Indonesia's tax revenue is less balanced and is dominated by revenues from VAT and Corporate Income Tax. In 2018, it contributed about 59% of the total tax revenue. The implication is that our tax revenue is vulnerable to macroeconomic factors because it is too dependent on the consumption sector (as the growth locomotive) and the commodity sector (because many corporations are engaged in commodities or have dependence on commodities) .
3. *Shadow Economy*, cannot be separated from the many sectors that are difficult to tax (informal sector, *black market*, SMEs, and so on). The *shadow economy* in Indonesia in the 2015-2015 period reached 26.6% of GDP
4. The capacity of the tax authorities is still considered weak, resulting in the suboptimal performance of services, supervision, and tax law enforcement
5. Tax leaks that arise due to the increasingly open economy Indonesian country. The existence of tax avoidance practices that result in the erosion of the tax base and the transfer of profits. Examples: *transfer pricing practices*, *treaty shopping*, excessive loan interest payments, *hybrid financial instruments* and so on. Or it could be through tax evasion across jurisdictions. This means that it is done by storing funds or assets abroad so that they are not reported to the tax authorities or their ownership is deliberately obscured.

During the administration of President Joko Widodo, the executive agreed to sign Government Regulation of the Republic of Indonesia No. 23 of 2018 concerning income tax on income from business received or obtained by Taxpayers with Certain Gross Circulation replacing PP 46 of 2013 which is effective July 1, 2018. Through According to the Government Regulation, entrepreneurs and SMEs who have income of less than Rp. 4.8 billion in one tax year can pay a tax of 0.5 percent of their gross turnover. In his consideration, this Government Regulation was made to encourage the public to participate in formal economic activities, by providing convenience and more justice to taxpayers. In addition, MSME actors who have not previously registered and reported their business results can be encouraged to register and start paying taxes on their business results as a form of contribution to the state (Lestary et al., 2021).

Although the perceived impact of taxes is real for a country, there is often reluctance when taxes become a topic of conversation for citizens. The aspect of justice is one of the cons that is



often highlighted considering that the PPH 23/2018 income tax is included in the final tax. Justice is the key word in the government's efforts to collect funds from the public (*transfer of resources*). One of the most commonly studied principles is the *Ability to Pay Principle Approach*. This principle seems more relevant to be the background of the tax collection system in Indonesia, because this principle suggests that the tax is charged to taxpayers based on their respective ability to pay. In this case the final MSME tax does not look at whether the final result of the taxpayer's business is profit or loss, as long as the taxpayer has a turnover, the taxpayer must pay taxes (Wijaya & Arumningtias, 2021).

Departing from this, this study will discuss the Fairness and Benefits of MSME Taxation in Government Regulation no.23 of 2018. Before this paper was written, there were several studies related to the application of MSME taxes in Indonesia (Amin et al., 2019). Among them: The application of taxes to MSMEs in Indonesia written by Elizabeth Hasian Halawa, Faculty of Law, Sriwijaya University (2019). Other research related to the analysis of the application of Government Regulation no. 23 of 2018 at the South Malang Tax Service Office, written by Ferry Irawan and Faizal Achmad Putra Erdika, State Finance Polytechnic (STAN) in 2021. From this research, it can be concluded that Government Regulation no. 23 of 2018 adds tax stalemate for the South Malang Tax Service Office. However, PP 23 of 2018 has not been fully utilized by taxpayers. Researchers used previous research as a comparison and complement to the implementation of Government Regulation no. 23 of 2018 (Sudarno et al., 2021).

2. RESEARCH METHOD

The type of research in this research is normative juridical law research, which is research based on literature study which includes primary legal materials, secondary legal materials and tertiary legal materials. Primary legal materials consist of binding legal materials. Secondary legal materials consist of documents or legal materials that provide explanations for primary legal materials. Tertiary legal materials consist of materials that provide instructions and explanations of primary and secondary legal materials. The research method used consists of various methods and activities carried out in order to collect the necessary data and materials. There are two approaches to the problem used in writing this thesis, namely the statute approach and the conceptual approach. The statute approach is an approach that is carried out by identifying and discussing the applicable laws and regulations, which are related to the issues discussed.

Then the conceptual approach is an approach by looking at the opinions of scholars contained in various literatures as a supporting basis. The legal materials used are primary legal materials and secondary legal materials. Primary legal materials include Law of the Republic of



Indonesia Number 6 of 1983 concerning General Provisions and Tax Procedures As has been amended several times, most recently by Law Number 7 of 2021 concerning Harmonization of Tax Regulations. In addition, Law of the Republic of Indonesia Number 7 of 1983 concerning Income Tax As has been amended several times, most recently by Law Number 7 of 2021 concerning Harmonization of Tax Regulations. As well as Government Regulation of the Republic of Indonesia No. 23 of 2018 concerning income tax on income from business received or obtained by a Taxpayer with a Certain Gross Turnover. Secondary materials are taken from journals, books, articles from online media related to the object under study.

3. RESULTS AND DISCUSSION

Justice and Benefit of PP 23/2018 in the Tax Sector

In the field of taxation, Indonesia has undergone reforms since 1983 by replacing the *official assessment* where the amount of tax owed was determined annually by the Government into a *self-assessment system* (Wijaya & Arumningtias, 2021). Where to calculate, pay, and report tax obligations. principle of *self-assessment* is universally adopted, namely the values of justice, convenience and efficiency of administration. The characteristics of the *Self Assessment* include:

- Determination of the amount of tax payable is carried out by the taxpayer himself.
- Taxpayers play an active role in completing their tax obligations, starting from calculating, paying, and reporting taxes.

The government does not need to issue a tax assessment letter, unless the taxpayer is late in reporting, late in paying the tax owed, or there is a tax that the taxpayer should have paid but not paid. The legal basis for *self-assessment* can be seen in Article 12 paragraph (1) of the KUP Law which states:

"Every taxpayer is obliged to pay the tax owed in accordance with the provisions of the tax laws and regulations, without relying on the existence of a tax assessment letter."

From the description above, formal law regulates the rights and obligations of the government and taxpayers in carrying out *self-assessment*. Apart from being formal, material law related to taxes continues to evolve with the times (Susanto et al., 2020). Material law in taxes concerns norms that explain the circumstances, actions, legal events that are taxed (tax objects), parties subject to tax (tax subjects), the amount of tax imposed (tax rates), everything related to the emergence and elimination of taxes. tax debts, as well as the office of sanctions in the legal relationship between the government and taxpayers. Each type of tax is regulated in each - each Act. Examples of material tax laws include income tax (PPh), Value Added Tax (PPN), and Sales



Tax on Luxury Goods (PPN and PPnBM), Land and Building Tax, Stamp Duty, Customs, Excise. In addition, through Government Regulation no.23 of 2018.

The definition of Government Regulation according to the Law of the Republic of Indonesia no.15 of 2019 concerning Amendments to Law no.12 of 2011 concerning the formation of laws and regulations article 1 paragraph (5) is Regulation Invitation law appointed by the President for carry out the law properly (Rachmawan et al., 2020). In preparing the Draft Government Regulation, the initiator forms an inter-ministerial committee and/or non-ministerial government agency. Government Regulations are statutory regulations stipulated by the President to carry out the Act as it should not deviate from the material regulated in the relevant Law.

In order to achieve justice, humans are not only obliged to organize themselves, but also must organize society and the state which is regulated by law. The existence of public legal awareness as an effort to seek the validity of the law is a consequence of various problems that arise in its application. Justice is the key word in the government's efforts to collect taxes from its citizens. This must be done so that every right and obligation can be carried out in a balanced manner. But the problem is basically justice is a relative concept. The Musgrave brothers argue that it is fair to say that the greater the income, the greater the tax to be paid (Rachmawan et al., 2020). This is called vertical justice or *vertical equity*. Agreeing with this, according to Langen, put forward the theory of carrying power where everyone is obliged to pay taxes according to their respective carrying capacity. The criticism raised by this theory is not actually a theory to justify tax collection, but is a basis for collecting fair taxes. Low-income taxpayers are protected, while high-income taxpayers pay higher taxes (HARDININGSIH et al., 2022).

Through Government Regulation of the Republic of Indonesia No. 23 of 2018 concerning income tax on income from businesses received or obtained by Taxpayers with a certain Gross Circulation, the State of Indonesia provides facilities for imposing a final income tax rate of only 0.5% of gross income to taxpayers . In this case the MSME tax which is final does not look at whether the final result of the taxpayer's business is profit or loss, as long as the taxpayer has a turnover, the taxpayer must pay taxes. Government Regulation no.23 of 2018 Supports Tax Collection and expands the taxation database, as well as supports policies that strengthen the national economy.

Business Entities and MSMEs in Indonesia The

Contribution of MSMEs to the Indonesian economy includes the ability to absorb 97% of the total workforce and can collect up to 60.4% of the total investment (Candraningrat et al., 2021). In the field of Taxation, while utilizing the rates of Government Regulation no.23 of 2018 entrepreneurs still need to strive to learn how to carry out tax administration according to the norm



and the implications of tax obligations on the running of the business. Government Regulation no.23 of 2018 is in accordance with the *presumptive regime* described by the world bank (Yustianti & Roesli, 2018). *The presumptive regime* itself is a form of tax imposition approach that is applied in the economy, where the perpetrators still have limited administrative and bookkeeping capabilities. In addition to *presumptive regime*, there are other models in which several developed countries apply the *standard regime* by simplifying tax forms, payment procedures, or by reducing tariffs.

Micro, small and medium enterprises (MSMEs) are included in a special cluster in the Omnibus Law on Job Creation, specifically in Chapter V on the convenience, protection, and empowerment of cooperatives and MSMEs. In that chapter, the government also includes points of legal protection for MSMEs. Law of the Republic of Indonesia Number 11 of 2020 chapter V cluster Ease, Protection and Empowerment of Cooperatives, Enterprises, Micro, Small and Medium Enterprises has changed the provisions of Law Number 20 of 2008 concerning Micro, Small and Medium Enterprises (Rosmadi et al., 2019). It is further explained that Article 87 of the Job Creation Law, Part Three Criteria for Micro, Small, and Medium Enterprises amends Article 6 regarding the criteria for MSMEs in Law Number 20 of 2008 concerning Micro, Small and Medium Enterprises (State Gazette of the Republic of Indonesia of 2008 Number 93) to:

(1) Criteria for Micro, Small and Medium Enterprises can contain business capital, turnover, net worth indicators, annual sales results, or investment value, incentives and disincentives, application of environmentally friendly technology, local content, or the number of workers in accordance with with the criteria of each business sector (Rizky, 2019).

(2) Further provisions regarding the criteria for Micro, Small, and Medium Enterprises shall be regulated in a Government Regulation.

Further rules regarding the provisions of MSMEs based on Government Regulations are stated in Government Regulation (PP) Number 7 of 2021 concerning Ease, Protection, and Empowerment of Cooperatives and MSMEs. In Paragraph I of the Criteria for Micro, Small and Medium Enterprises Article 35 states:

(1) Micro, Small, and Medium Enterprises are grouped based on the criteria for business capital or annual sales results. (2) The criteria for working capital as referred to in paragraph (1) are used for the establishment or registration of business activities. (3) The criteria for working capital as referred to in paragraph (2) consists of:

a. Micro Business has a business capital of up to a maximum of Rp. 1,000,000,000.00 (one billion rupiah) excluding land and buildings for the place of business; b. Small Business has a business capital of more than Rp. 1,000,000,000.00 (one billion rupiah) up to a maximum of Rp.



5,000,000,000.00 (five billion rupiah) excluding land and building for the place of business; and c. Medium Enterprises have a business capital of more than Rp. 5,000,000,000.00 (five billion rupiahs) up to a maximum of Rp. 10,000,000,000.00 (ten billion rupiahs) excluding land and buildings for business premises. (4). For the provision of facilities, protection, and empowerment of Micro, Small, and Medium Enterprises other than the criteria for business capital as referred to in paragraph (2), the criteria for annual sales results are used. (5). The criteria for annual sales results as referred to in paragraph (4) consist of: a. Micro Business has annual sales of up to a maximum of Rp. 2,000,000,000.00 (two billion rupiah); b. Small Business has annual sales of more than Rp2,000,000,000.00 (two billion rupiah) up to a maximum of Rp15,000,000,000.00 (fifteen billion rupiah); and c. Medium Enterprises have annual sales of more than Rp. 15,000,000,000.00 (fifteen billion rupiahs) up to a maximum of Rp. 50,000,000,000.00 (fifty billion rupiahs).

Micro, Small and Medium Enterprises (MSMEs) have a very important function in the national economy (Ali, 2014). Moreover, the increasingly uncertain economic conditions and global geopolitical tensions place MSMEs as the backbone of the Indonesian economy (Purwandari et al., 2019). MSMEs are considered very important, especially as a policy instrument to reduce poverty levels. So many efforts have been made by the government to support and grow MSMEs. Every person and/or business entity can do business. The business entity can be in the form of a legal entity or non-legal entity. Legal entities can be in the form of cooperatives, foundations or limited liability companies. Non-legal entities can be in the form of trading businesses (UD), individual businesses, firms and limited partnerships (*commanditaire venno chap*). This is in accordance with Government Regulation (PP) Number 7 of 2021 concerning Ease, Protection, and Empowerment of Cooperatives and MSMEs where Micro, Small and Medium Enterprises can be in the form of individuals or business entities.

Meanwhile , corporate taxpayers who meet the MSME criteria will still receive a 50% discount on PPh rates in accordance with Article 31E of the Income Tax Law. This tax support is expected to increase the resilience and competitiveness of MSME businesses in Indonesia.

4. CONCLUSION

Government Regulation no. 23 of 2018 is the government's step in supporting a conducive business climate for the community. This Government Regulation is made to encourage the public to participate in formal economic activities, by providing convenience and more justice to taxpayers. In addition, PP 23 of 2018 is a form of partisanship of the state in the field of taxation



for the community. MSMEs are given leeway in calculating their taxes, which are half a percent of the gross turnover each month.

Second conclusion PP 23 of 2018 is in accordance with the tax reform agenda in Indonesia. The government through the competent Ministry (in this case the Ministry of Finance) is the first doorstep for state revenues. As part of the global community, Indonesia faces the challenge of being able to increase revenue by expanding its tax base. Government Regulation no.23 of 2018 is a step for the government to expand its tax base. Incentives are directed at strengthening MSMEs that encourage employment and increase investment power in Indonesia.

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