

# Establishment of Taxable Entrepreneurs (Pkp) Forretail Traders Based On Per-03/Pj/2022

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## ABSTRACT

Tax is one of the Government's sources of income to carry out development and for that the State imposes it on its people. One type of tax is Value Added Tax (PPN) where VAT is a tax imposed due to the delivery of Taxable Goods (BKP) and/or Taxable Services (JKP). One of the VAT subjects is a Retail Trader (PE), which is defined as carrying out a direct delivery transaction to the final buyer (*end-user*). Based on Tax Regulation Number PER-03/PJ/2022, the requirements to become a PE plus the submitted BKP/JKP are not used for production activities first. This study aims to find out whether the determination of the classification of PKP PE based on PER-03/PJ/2022 is in accordance with the VAT Law and the requirements for classifying PE have fulfilled the principle of fairness. This study uses a juridical-normative method with a statutory and conceptual approach. This research gives the result that the Directorate General of Taxes issues regulations based on the authority of a delegation from the Minister of Finance and its main task is to formulate and implement policies in the field of taxation. Related to the additional conditions for determining PE, it deviates from the VAT Law because it is not regulated in the VAT Law, while the position of PER-03/PJ/2022 based on State Administrative Law is a policy regulation (*beleidsregel*). Based on Article 8 of Law no. 12 of 2011, PER-03/PJ/2022 does not include legal rules that are recognized by the legal system in Indonesia but their existence is recognized because there is authority obtained (delegation) and when viewed from the principle of justice, the addition of these conditions has saved a sense of justice because it results in PE who should be included in the category are not classified as PKP PE so that they cannot enjoy the facilities as PKP PE based on the VAT Law.

**Keywords:** Retail Traders, PER-03/PJ/2022, tax justice

## 1. INTRODUCTION

Tax is one of the main sources of government revenue in carrying out state development. The role of taxes for the State in Indonesia is divided into two main functions, namely the budget function (*budgetair*) and the set function (*regulating*). In the budget function (*budgetair*), taxes are one of the sources of state revenue, to carry out routine tasks of the state and carry out development. Tax is an obligation that must be paid by the public, both private and corporate, from their income or income to the government which is intended for development activities in all fields. In this country there are also many types of taxes which of course this can increase state revenue and with so many types of taxes that exist in Indonesia, one of which is Value Added Tax (VAT) which is basically a consumption tax in the Customs Area of the Unitary Republic of the Republic of Indonesia. Indonesia, the imposition of VAT basically covers the entire delivery of goods and services. But based on considerations *social*, economy and culture whether or not to impose VAT on certain goods and services. This is intended to encourage economic activity and social stability.

VAT based on Law Number 83 of 1983 concerning Value Added Tax (UU PPN) the definition is a tax that is imposed due to the consumption and delivery of Taxable Goods (BKP) and/or Taxable Services (JKP) within the customs area.

Based on the explanation above, for transactions on BKP and JKP that occur in Indonesia, they are subject to VAT so that the territorial scope of VAT is the territory of the Republic of Indonesia which in taxation is referred to as the customs territory. The scope of areas that become customs areas based on the VAT Law are: 1) Indonesian land areas; 2) Indonesian territorial waters; 3) Air space over Indonesia; 3) Certain places in the Exclusive Economic Zone (EEZ) where the Customs Law applies; and 4) Continental Shelf in which the Customs Law applies.

In this case all categories of entrepreneurs are subject to VAT including retail traders, where the definition is entrepreneurs/traders who carry out trading activities by selling retail without a written order, or the transaction mechanism does not make *Purchasing Order* (P/O) first as in the Company and the consumer is the final consumer (*end-user*), for example market traders, online traders and others. Because in general, end-users are retail buyers whose tax status is unknown, PKP retail traders are given the convenience of making combined tax invoices (the terms of which are covered or recapitulated, right). Due to the complexity of the VAT treatment for retail traders, this study took the research subject as retail traders regarding the obligation to make VAT tax invoices. The criteria for retail traders based on SE-55/PJ/2021 itself are as follows:

1. PKP whose entire or one of their business activities or work is to deliver BKP and/or JKP to buyers of BKP and/or JKP recipients with the characteristics of final consumers, including in this case the delivery of BKP and/or JKP through Electronic Trading Systems ( PMSE).
2. Retail traders as referred to in number 1 are PKPs who in their business activities or work submit BKP and/or JKP in the following manner:
  - a. through a retail sale place or service delivery place, including through the internet media, or directly from one end consumer place to another end consumer place, which may include shops, kiosks, outlets, certain media, and online shops;
  - b. made without being preceded by a written offer, written order, contract, or auction, excluding written offers or written orders intended to provide information on goods and/or services, transaction settlement, delivery of goods, and other information regarding sale and purchase transactions, for example: leaflets , catalogs, proof of orders through PMSE, and proof of delivery of goods; And
  - c. in general, payments are made in cash, namely payments made by buyers with cash, debit cards, credit cards, electronic money, and/or other means of payment.

3. Retail traders as referred to in number 1 are not determined based on the classification of business fields, but based on the transaction method referred to in number 2 to the end consumers.
4. PKP retail traders can make a Tax Invoice for the delivery of BKP and/or JKP without including information about the identity of the buyer and the name and signature of the seller in the case of delivering the BKP and/or JKP to the final consumer.
5. The Tax Invoice as referred to in number 4 contains at least:
  - a. name, address, and Taxpayer Identification Number of retail traders who submit BKP and/or JKP;
  - b. the value of Value Added Tax or Value Added Tax and Sales Tax on Luxury Goods collected; And
  - c. code and serial number determined by the retailer himself, as well as the date of the Tax Invoice.
6. Tax invoices as referred to in number 5 may be in the form of cash receipts, sales invoices, cash register terms, tickets, receipts, or other similar proof of delivery or payment.

A backed tax invoice is a collection of sales invoices (for example bills, receipts, tickets or similar proofs) which are then used in one calculation to create a tax invoice and report it online, so that the entrepreneur does not need to make a standard tax invoice every time a transaction occurs, and for that it does not also require the identity of the buyer behind the name, NPWP or other data. To be able to use a backed tax invoice, there are criteria that must be met in relation to the delivery of Taxable Goods and Taxable Services, namely:

The issuance of tax invoices is borne solely to assist traders in carrying out VAT collection and reporting obligations because for retail buyers it is very difficult to ask for NPWP or NIK or even when shopping they do not carry the documents as intended, while the government requires VAT income as a contribution to country. The government's concern is manifested in the issuance of Regulation of the Director General of Taxes Number PER/03/PJ/2022 to be precise in Article 25 which stipulates that the final consumer in question is a direct consumer of BKP and/or JKP and the buyer does not use the BKP and/or JKP. for its business activities.

The criteria above are the problem in this research because it is not easy to find out whether the consumer is the final consumer or not, does the seller have to first ask what is the purpose of the buyer to obtain the Taxable Goods and/or Taxable Goods? Of course it is impossible, therefore the author raises the theme of this research, namely "Determination of Taxable Entrepreneurs (PKP) for Retail Traders Based on the Regulation of the Director General of Taxes Number PER/03/PJ/2022".

## 2. RESEARCH METHODS

This research uses

### Previous research

1. Research by (Hanifah, 2020), with the title Implementation of the Use of Total Tax Invoices for the Delivery of Taxable Goods by CV. "X" (case study on CV. X in KPP Microtax), where this research takes the object of research is the use of tax invoices totaled by Non-Retail Taxable Entrepreneurs.

The conclusions of the study are:

- In the tax regulations, tax invoices are backed up as tax invoices used by Retail Traders Taxable Entrepreneurs. However, in practice in the field, there are many PKP Non-Retail Traders who carry out retail transactions. One of them is CV. "X", this is because there are no rules that specifically regulate tax invoices that are used between PKP Retail Traders and non-Retail Traders.
- In practice in the field, PKP Non-Retail Traders who have a form of transaction such as PKP Retail Traders can use tax invoices that are backed. This is due to facilitate buying and selling transactions carried out to customers who are categorized as final consumers. In addition to transactions carried out as retail traders, PKP must still issue a tax invoice in accordance with Article 13 of the Law on Value Added Tax.

2. Penelitian and (Sabami, 2020), with the title Application of Tax Policy Related to Tax Invoices Paid on PT. SS, where in this study the research focus is on the application of tax invoices carried by PT. SS.

The conclusion in this study is that PT. SS has implemented a tax policy related to the issuance of tax invoices in accordance with Article 13 paragraph (5) of Law Number 42 of 2009. However, in practice there was an error made by the management of PT. SS related to the tax invoice was backed up in the February 2016 transaction resulting in the risk of underpayment and the appearance of a tax invoice from the Tax Office.

The results of the research above use the case study method with a focus on implementing tax invoice tax policies that are covered by companies, while research by researchers focuses on analyzing the PER-03/PJ/2022 rules as a basis for carrying out tax invoices that are supported by applicable legal theory. This is a differentiator between the research above and that of the researcher so that the originality requirements can be fulfilled and this research can be continued.

### Classification of End Consumers Based On Director General of Taxes Regulation Per-03/Pj/2022

### **Definition of Value Added Tax**

According to Law No. 42 of 2009 concerning the Third Amendment to Law Number 8 of 1983 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods, Value Added Tax (VAT) is "Tax on the consumption of goods and services in the customs area is collected in stages on each production and distribution line."

According to (Tiraada, 2013) PPN and PPNBM are taxes collected by the state based on domestic consumption (within the Customs Area), both consumption of goods and consumption of services.

According to Sukardji, the collection of taxes on consumption by individuals and entities, private and government, in the form of spending on goods or services is charged to the state budget. Based on the object subject to VAT is the consumption of goods and services, VAT can be freely interpreted as a tax for the added value of a good or service. Mathematically, the increase in value or added value of a good or service can be calculated from the sales value/price minus the purchase price/value, so that one element of added value is the expected profit (Huda, 2017).

According to Mardiasmo that when viewed from a historical angle that VAT is a substitute for Sales Tax where this is because Sales Tax is no longer able to accommodate community activities (citizens) and for that it has also not reached the target of development needs, among others to increase state revenues, encourage exports and the distribution of tax burden.

### **Legal Basis for Value Added Tax**

Since April 1, 1985, the Government of Indonesia has implemented a VAT collection system for the sale of taxable goods and services, while luxury goods sales tax (PPnBM) has also been added to luxury goods.

The legal basis for VAT is Law no. 8 of 1983 was later changed to Law no. 11 of 1994, and the last one was amended again by Law no. 18 of 2000 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods. Specialist rules for the last implementation are regulated in Law no. 42 of 2009 which took effect on April 1, 2010. On October 29, 2021, the Government together with the DPR promulgated Law no. 7 of 2021 concerning Harmonization of Tax Regulations, where in one law this concerns many things in the country's economic system, in this case including for VAT.

VAT is the official state withdrawal (tax) that is charged for the delivery of taxable goods/services in the customs area carried out by the manufacturer, main dealer or main agent, importer, patent/trademark holder of said taxable goods/services. Or VAT is the official withdrawal of the state for the consumption of goods or services in the customs area carried out by individuals or by entities.

VAT according to Wiston Manihuruk in the VAT book Principal Changes According to Law no. 42 of 2009 states that "VAT is a consumption tax on goods and services in the Customs area which is carried out in stages in each line of production and distribution".

What is meant by Customs Area is the sovereign territory of the Republic of Indonesia which includes space over land, sea and air as well as certain places in the Economic Zone and Continental Shelf that are subject to Customs Law.

VAT is a form of indirect tax, where the tax is paid by other parties (traders) who are not subject to tax or in other words, the taxpayer does not submit the tax borne directly.

### **Subject to Value Added Tax**

#### **a. Businessman**

In article 1 number 14 of the VAT Law that "People or entities stated in point 13 of the VAT Law which in their trade or professional activities produce, import, export, trade, process intangible goods from outside the customs area, run a service business or using services from outside the customs area.

In article 1 number 15 of the VAT Law, a Taxable Entrepreneur (PKP) is an Entrepreneur who delivers Taxable Goods (BKP)/Taxable Services (JKP) which are subject to tax based on the VAT Law, do not include Small Businesses whose criteria are stipulated by a Decree of the Minister of Finance, except for small entrepreneurs who voluntarily are confirmed as PKP.

#### **b. Small Entrepreneur**

- Based on the VAT Act,

Small Entrepreneur is

1. Individuals/legal entities submitting BKP/JKP within 1 fiscal year and gross revenue circulation of not more than IDR 600,000,000.
2. Even though the gross circulation in 1 financial year is not more than Rp. 600,000,000, - Small Entrepreneurs can choose to be confirmed as PKP.
3. Small Entrepreneurs who have exceeded IDR 600,000,000 in a tax period are obliged to ask to be confirmed as PKP, no later than the end of the month after this figure is reached.
4. If the report is not on time, then when the inauguration is at the beginning of the following month after the end of the following month, the entrepreneur must report the results of the business carried out.
5. If the PKP inauguration is carried out in a position, then the time of inauguration is the beginning of the following month after the business report is posted.

- According to PMK No. 197/PMK.03/2013





Small entrepreneurs are entrepreneurs who deliver Taxable Goods or Taxable Services (BKP/JKP) with total gross sales/receipts of up to Rp. 4,800,000,000.-. The amount of gross income is the number of BKP/JKP certificates submitted by the entrepreneur while running his business.

If an entrepreneur has been confirmed as a PKP but the total gross turnover and/or gross revenue in one financial year does not exceed IDR 4,800,000,000.00, the PKP can apply for the revocation of the confirmation as a PKP.

Small entrepreneurs do not need to report their business to be certified as PKP, and for this they do not need to collect, register and report VAT and PPnBM payments. Small entrepreneurs have a legal basis related to taxation which is regulated and discussed in PMK No. 68/PMK.03/2010 concerning Limits of Small Entrepreneurs.

As previously explained, that not all small entrepreneurs are PKP, but small entrepreneurs can register voluntarily to become PKP if they choose to be confirmed as PKP or fulfill the requirements as PKP. Small entrepreneurs are required to report their business and be confirmed as PKP if in a financial year the gross receipts have exceeded IDR 4,800,000,000.-.

Small entrepreneurs who have been confirmed as PKP are required to:

- Collecting VAT from consumers.
- Report Periodic VAT SPT for each tax period.

Small Entrepreneurs who register as PKP, generally are entrepreneurs who work with three parties as follows:

- Government treasurer as VAT collector.
  - SOEs as VAT collectors.
  - Private companies that want input tax from the results of transactions.
- c. Not a Taxable Entrepreneur (Non PKP)
1. Anyone who imports BKP;
  2. Anyone who uses BKP/JKP from outside the Customs Area within the Customs area;
  3. Whoever builds himself.

### **Value Added Tax Objects**

#### **a. Taxable Goods (BKP)**

BKP can be put into 2 categories: (1) Tangible Goods which according to their nature or law can be in the form of movable goods which are subject to VAT or Immovable Goods which are subject to VAT; (2) Intangible Goods subject to VAT. VAT is imposed on:

1. Submission of BKP within the Customs Area carried out by Entrepreneurs;

2. Import of Taxable Goods;
3. Submission of intangible BKP from outside the Customs Area within the Customs Area;
4. Utilization of intangible Taxable Goods from outside the Customs Area within the Customs Area;
5. Utilization of JKP from outside the Customs Area within the Customs Area;
6. Export of Taxable Goods by PKP;
7. Self-development activities not to engage in business/work activities by individuals/entities whose results are for the benefit of themselves or other parties;
8. Delivery of assets by PKP that are not used for trading as long as the VAT paid at the time of purchase can be credited.

b. Taxable Services (JKP)

JKP are all services based on agreements or legal actions that provide goods or facilities or rights, including services for making goods ordered or requested with materials and at the order of the customer, which according to law are subject to VAT and PPnBM.

**Retail Trader**

In this case all categories of entrepreneurs are subject to VAT including retail traders, where the definition is entrepreneurs/traders who carry out trading activities by selling retail without a written order, or the transaction mechanism does not make a Purchasing Order (P/O) earlier as in the Company. So in this case the consumer is the final consumer (*end-user*), for example market traders, online traders and others. Because in general, end-users are retail buyers whose tax status is unknown, PKP retail traders are given the convenience of making combined tax invoices (which the terms are covered or recapitulated, right).

The criteria for retail traders based on SE-55/PJ/2021 itself are as follows:

1. PKP whose entire business or one of them is in the form of providing BKP and/or JKP to buyers of BKP and/or JKP that have end user characteristics, including in this case BKP and/or JKP through Electronic Trading Systems (PMSE) or online.
2. Retail traders as referred to in number 1 are PKP who submit BKP and/or JKP in the following manner:
  - a. through a place of retail sale or place of service delivery, including those carried out through the internet media, which go directly to the final consumer or go directly from one place of the final consumer to another place of the final consumer, which may include shops, kiosks, outlets, certain media, and online shop;
  - b. made without being preceded by a written offer, written order, contract, or auction, excluding written offers or written orders intended to provide information on goods





- and/or services, transaction settlement, delivery of goods, and other information regarding sale and purchase transactions, for example: leaflets, catalogs, proof of orders through PMSE, and proof of delivery of goods; And
- c. in general, payments are made in cash, namely payments made by buyers with cash, debit cards, credit cards, electronic money, and/or other means of payment.
3. Retail traders as referred to in number 1 are not determined based on the classification of business fields, but based on the transaction method referred to in number 2 to the end consumers. This is confirmed through the Director General of Taxes Regulation No. PER-03/PJ/2022 (PER-03/2022), the determination of the category of retail traders is not based on Business Field Classification (KLU) and each KLU (type of business) can be categorized as a retail trader, as long as it meets the requirements.
  4. PKP retail traders can make Tax Invoices for the delivery of BKP and/or JKP without the identity of the buyer and the name and signature of the seller for the delivery of BKP and/or JKP to the final consumer.
  5. The Tax Invoice referred to in number 4 above contains at least:
    - a. Name, address and Taxpayer Identification Number (NPWP) of retail traders who submit BKP and/or JKP;
    - b. Value of Value Added Tax or Value Added Tax and Sales Tax on Luxury Goods collected; And
    - c. The code and serial number determined by the retailer themselves, as well as the date of the Tax Invoice.

Tax invoices as referred to in number 5 include but are not limited to: cash receipts, sales invoices, terms of cash registers, tickets, receipts, or other similar proof of delivery or payment. What is meant by "final consumers" are Buyers who directly consume goods and which are not used or used for production or commercial activities.

#### **PKP Category for Retail Traders**

PKP retail traders can be said to be divided into two, namely entrepreneurs who have met the requirements as PKP and entrepreneurs who actually do not meet the requirements to become PKP but choose to be confirmed as PKP.

PKP included in the category of entrepreneurs who have met the requirements to become PKP are medium/large companies, which carry out business activities in the delivery of BKP in retail. The most common line of business is supermarkets or large bookstores, whereby the delivery of BKP is carried out in retail.



Meanwhile, retail entrepreneurs who are not yet included in the PKP category but choose to be confirmed as PKP retail traders can take the form of shops selling retail. The reason for entrepreneurs who, although not yet in the PKP category, choose to be confirmed, is because with PKP status, these entrepreneurs are more flexible in making transactions, for example becoming PKP partners.

The legal basis for PKP for retail traders is Law Number 42 of 2009 or the VAT Law and Government Regulation (PP) Number 1 of 2012, which specifically describes the meaning of PKP for retail traders and the obligations attached to the PKP status for retail traders.

Meanwhile, regulations regarding tax reporting regarding the use of tax invoices for PKP retail traders are regulated in PER-58/PJ/2010 concerning Forms and Sizes of Forms and Procedures for Filling Information on Invoices for Retail Traders Taxable Entrepreneurs.

### **Regulation of the Director General of Taxes Number PER-03/PJ/2022 Is a Policy Regulation (*Policy rule*)**

Beleidsregel is a deviation from the administrative authority of the state, part of the government's free authority (*free discretion*). Where *free discretion* in German comes from the word *free* which means free, loose, not bound, and independent. *free* means free people, not bound and independent. Whereas *discretion* means considering, assessing, guessing and estimating. *free discretion* means people who have the freedom to judge, suspect and consider something (Lukman, 1996).

When connected to our country, *free discretion* emerged simultaneously with the assignment of tasks to the government to realize the goals of the state as stated in the fourth paragraph of the opening of the 1945 Constitution, which emphasized "to form an Indonesian state government, which protects the entire Indonesian nation and all of Indonesia's bloodshed, and to promote general welfare, educate the lives of nation and participate in carrying out world order based on freedom, lasting peace and social justice."

However, when referred to law in Indonesia, policy regulations will not be found, both in Law no. 12 of 2011 concerning the Formation of Legislation as well as in Law no. 30 of 2014 concerning Government Administration (APEM Law). The absence of formulating the meaning of policy regulations within the framework of positive law, has sufficiently explained that policy regulations (*policy rule*) is not an interesting and quite important legal issue for legislators in Indonesia.

Because the main task of government in the conception *welfare state* If it provides services for citizens, then the principle arises "the government may not refuse to provide services to the

community on the grounds that there are no laws governing it." It should be the duty of the Government to find and provide a solution according to principle *free discretion* given to him.

Even though the government is given free authority or *free discretion* without normative rules, but in a country the laws of use *free discretion* this must be within the limits permitted by applicable law. Use *free discretion* must be limited so that the state does not become arbitrary towards the people, these restrictions are (Basah, 1997).

1. Must not conflict with the applicable legal system (positive legal rules).
2. Only intended for the public interest.

Sajran Basah<sup>[7]</sup> stated that implementation *free discretion* must be able to be morally accountable to God Almighty, uphold the dignity and degree of human dignity, as well as the values of truth and justice, prioritizing unity and oneness, for the common good. So for that then the relationship between regulation and policy *free discretion* like the relationship between a child and a mother. Or it can be said that policy regulations are a species form of embodiment policy *free discretion*.

*free discretion* Law itself was born consciously by the makers of laws and regulations because they could not regulate it thoroughly and precisely, so that the state administration was given freedom to determine for themselves what should be done. if so, *free discretion* itself cannot be categorized as statutory regulations, moreover policy regulations cannot really be called part of and form statutory regulations.

In the provisions of Article 1 number (9) of the APEM Law, it only formulates the meaning of discretion, in fact, it is a concept *free discretion* (discretion) actually has a broader meaning than policy regulations. Discretion is *genus* of policy regulations and vice versa policy regulations are *species* from discretion. The existence of policy regulations because of previous discretion or policy regulations born as a result of the use of discretionary authority. In other words, the existence of discretionary authority does not depend on policy regulations but vice versa. As mentioned above, discretionary authority does not only produce policy regulations, it can also produce concrete forms of government action (*actual actions*) or laws and regulations. As *species* from *discretion* then the field of enforcement of policy regulations is in the field of 'management' (*management area*) and the limits are within the legal framework (Mutalib, 2017).

It has been stated that policy regulations do not originate from a legislature's authority (*legislator*) and if formal criteria are used it is not included in statutory regulations. Indroharto said that the content of the policy regulations is the implementation or elaboration of further policies of discretionary authority that has and must be carried out by TUN bodies or officials as government officials, therefore it is called policy regulations (*policy rule*). With regard to the emergence of



policy regulations, Ridwan said that the emergence of policy regulations was caused by several possibilities, namely:

“Consideration of the various possibilities (*the balancing of interests*), the absence of legislation (*no legal requirements exist*), discovery of facts (*determination of facts*), explanation of laws and regulations (*Of explanation of legal requirements*), and interpretation of the law (*law interpretation*).”

Currently, some policy regulations are pure regulations and generally apply, and some are not in the form of pure regulations and are not too general in nature, but only institutional in nature and apply internally.

J.H. Van Kreveld argues, the main characteristics of policy regulations are (Lukman, 1996).

1. The formation of policy regulations is not based on strict provisions originating from the attribution or delegation of laws.
2. Its formation can be written or unwritten, which originates from the free-form authority of government agencies or is only based on provisions of laws and regulations that are general in nature which provide discretionary space for administrative bodies or officials to on their own initiative take public legal actions that are regulatory or determination.
3. The editorial content of the regulations is flexible and general without explaining to the community members how government agencies should exercise their free authority over the community members in situations determined (subject to) a regulation.
4. Editors of juridical policy regulations in the Netherlands are formed according to the usual statutory format, and are announced officially in government periodicals, even though their preamble does not refer to a law that authorizes the establishment of the relevant government agency.
5. The juridical format can also be determined by officials or state administrative bodies who have the discretion for it.

It is the existence of these characteristics that distinguishes policy regulations from pure laws and regulations which are clearly, expressly, and clearly ordered to be formed by higher level laws and regulations (attribution and delegation in nature). Even though policy regulations are different from pure laws and regulations, in practice legally they are enforced and implemented as usual laws and regulations. According to Belinfante, that policy regulations are not statutory regulations, but in many cases policy regulations also have the character of statutory regulations such as being generally binding where the public has no other choice but to obey them.

Next is (Lubis & Maswandi, 2022), illustrates that in terms of form and format, policy regulations resemble statutory regulations complete with an opening in the form of "considering"



preambles and a "remembering" legal basis, the body of which is in the form of articles, parts of chapters and closings.

Ideal policy regulations are only those that are limited in character to state administration such as Work Guidelines, Implementation Guidelines (Juklak), Technical Instructions (Juknis), Circular Letters (SE), announcements only apply internally institutionally, so it is hoped that they will not disrupt the structure and hierarchy of statutory regulations existing invitations.

Hamid Attamimi argued that laws and regulations are one of the powerful methods and instruments available to regulate and direct people's lives towards the expected goals.<sup>[16]</sup> In practice, this is exactly what legislators do, because now the power to form laws is primarily to provide direction and indicate the way for the realization of the ideals of national life through the laws they form.

Article 7 paragraph 4 of Law no. 10 of 2004 can be used as a basis for determining a forum for making laws outside the hierarchy of statutory regulations, and in the end it is classified as pure statutory regulations or classified as policy regulations. (*policy rule*).

Policy regulations originate from *free discretion* which has the core of free action of state administration and is necessary in accordance with the demands of life and the needs of society. But on the other hand it is very dangerous for the continuity of the rule of law if it is used excessively and does not get supervision and control in its application. Conditions like these are to be maintained so that the existence of the Indonesian rule of law is not threatened by the presence of policy regulations, which in practice governance is really needed.

Government organs or administrative bodies that formulate their discretion (*discretion*) in written form will generally become a policy regulation. It is said in general because it is not always the government's actions on the basis of discretion that produce policy regulations. Can only government action based on discretion (*discretion*) gave birth to laws and regulations.<sup>[17]</sup> or produce the form of real actions of the government (*actual actions*). government organs are given discretionary authority to dynamize the implementation of laws that are general and abstract in nature, which do not always thoroughly regulate the problems that arise, then lead to a legal vacuum (*gaps*). All of these can be completed and answered by policy regulations (*policy rule*). In fact, policy regulations do not only fill legal voids and guarantee flexibility in administering government, but also act as instruments for fulfilling citizens' rights in order to realize social welfare within the framework of a rule of law.

Policy regulations do not originate from a legislature forming authority (*legislator*) and if formal criteria are used it is not included in statutory regulations. Related to this, Indroharto said that the content of the policy regulations is the implementation or elaboration of further policies of



discretionary authority that has and must be carried out by TUN bodies or officials as government officials, therefore it is called a policy regulation (*policy rule*). Thus, the policy regulation (*policy rule*) cannot be seen as part of statutory regulations (*general binding regulation*), even though the content of the payload is general (*general purpose*) as is the case with ordinary laws and regulations.

That government organs or positions in carrying out their duties are attached to legislative authority (*delegated legislation*) (Fendri, 2011), either in the form of issuing regulatory legal products (*regulation*), results (*order*) and policy regulations (*policy rule*). As already mentioned, the government's legislative authority, apart from relying on statutory regulations (the principle of legality), is also based on government discretion (*discretion*). According to Philipus M. Hadjon, products such as policy regulations are inseparable from usage *discretion*.<sup>[21]</sup> Administrative bodies or organs that formulate their discretion (*discretion*) in written form will generally become a policy regulation. It is said in general because it is not always the government's actions on the basis of discretion that produce policy regulations. Can only government action based on discretion (*discretion*) gave birth to laws and regulations (Sianturi, 2017), or produce forms of real government actions (*actual actions*).

That in conclusion, policy regulations are a means for the government to implement laws in order to reach the public so that the goals of the Indonesian nation are achieved. Whereas policy regulations are not part of the law, so they must be made by TUN officials and are concrete on an issue and binding on the organs below them. In order not to become tyrannical, policy regulations must meet the following requirements:

1. Must not conflict with the basic regulations that contain discretionary authority;
2. In accordance with common sense;
3. Should be carefully prepared, seeking expert advice from regulatory authorities where necessary, consulting interested parties and examining available options;
4. The contents of the policy must clearly state the rights and obligations of each member of the community and there must be certainty about the actions of the competent authorities (formal legal certainty);
5. This opinion does not have to be detailed, as long as the purpose and reasons for carrying out the review are clear; And
6. The requirements for material legal certainty must be obeyed, meaning that the rights of citizens who have been eroded must be respected, then the expectations given cannot be denied.

#### **Establishment of Directorate General of Tax Regulations in the Indonesian Legal System**



The Directorate General of Taxes (Directorate General of Taxes) is an echelon I unit under the Ministry of Finance (Ministry of Finance) which has the task of formulating and implementing technical standardization policies in the field of taxation.

The functions of the Directorate General of Taxes are:

1. Formulation of policies in the field of taxation;
2. Implementation of policies in the field of taxation;
3. Compilation of norms, standards, procedures and criteria in the field of taxation;
4. Providing technical guidance and supervision in the field of taxation;
5. Implementation of monitoring, evaluation, and reporting in the field of taxation;
6. Administration of the Directorate General of Taxes; as well as
7. Implementation of other functions given by the Minister of Finance (Menkeu).

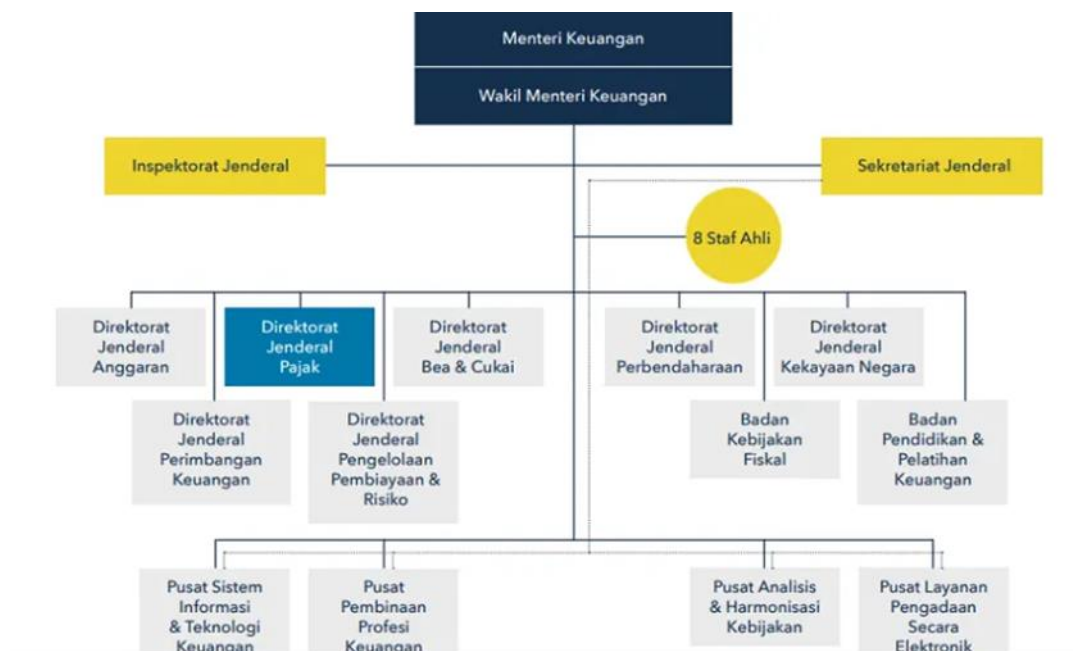


Figure 1. Position of Directorate General of Taxes

In order to carry out its functions, the Directorate General of Taxes issues products in the form of regulations, circulars, operational guidelines and so on which are internal and external in nature, the essence of which is to implement laws and decrees/regulations of the Minister of Finance.

Whereas in terms of position, the Directorate General of Taxes is echelon I, which means that institutionally it is under the Minister of Finance, which means that its task is only as the executor of ministerial rules or decisions and does not make rules that violate the rules above it and for that it is accountable to its superiors, namely the Minister of Finance. However, with the

authority they have to handle the field of taxation, the Directorate General of Taxes then makes regulations that are regulatory in nature and are aimed at leaving (the public) which also contain sanctions in the form of administrative or fines.

#### **Authority of the Directorate General of Taxes**

The authority of the Directorate General of Taxes to carry out the formulation and implementation of policies in the tax sector in accordance with the provisions of laws and regulations is derived from Regulation of the Minister of Finance Number 217/PMK.01/2018 concerning the Organization and Work Procedure of the Ministry of Finance as amended by Regulation of the Minister of Finance Number 87/PMK.01/2019 about Changes Above Regulation of the Minister of Finance Number 217/PMK.01/2018 concerning the Organization and Work Procedure of the Ministry of Finance and lastly amended by Regulation of the Minister of Finance Number 229/PMK.01/2019 regarding the Upper Second Amendment Regulation of the Minister of Finance Number 217/PMK.01/2018. So if it is drawn from the theory of Authority, the type of authority obtained by the Directorate General of Taxes includes Delegation Authority.

In the perspective of administrative law regarding the source of authority or concrete actions to make arrangements or issue state administrative decisions, it can be based on the authority obtained by the attribution of delegation. According to Philipus M. Hadjon, the way to obtain the authority itself is put forward in two ways, namely the acquisition of attribution and delegation, while the mandate is put forward as a separate method. to obtain authority, this opinion is in line with Hans van Maarseveen's opinion that in carrying out as well as in the mandate.

Regarding the characteristics of delegation in authority according to J.B.J.M Tenge as quoted by Philipus M. Hadjon are as follows (Kusumohamidjojo, 1999):

1. The delegation must be definitive, meaning that the delegates cannot use the delegated authority themselves;
2. Delegation must be based on the provisions of laws and regulations, meaning that delegation is only possible if there are provisions for that in laws and regulations;
3. Delegation is not to subordinates, meaning that in a staffing hierarchical relationship no delegation is permitted;
4. The obligation to provide information (explanation) means that delegates have the authority to ask for clarification regarding the executor of said authority;
5. Policy regulations mean delegans about the use of that authority.

In accordance with the nature of the authority obtained, the Directorate General of Taxes in making rules must comply with the decision of the delegation, namely the Minister of Finance.<sup>[26]</sup>

And in the form of implementation of the delegation, the Directorate General of Taxes has the right to formulate and make special regulations in the field of taxation, namely regarding procedures for collecting taxes, and these rules should be returned to the delegate giver because the Minister of Finance has the right to carry out tax affairs in government.

The strength of the rules made by the Directorate General of Taxes is not as strong as the laws and regulations as stipulated in Law Number 12 of 2011 concerning the Establishment of Legislation (UU 12/2011). Article 7 of Law 12/2011 states that the types and hierarchies of laws and regulations in Indonesia are:

1. The 1945 Constitution of the Republic of Indonesia.
2. Decree of the People's Consultative Assembly.
3. Laws/Government Regulations in place of Laws.
4. Government regulations.
5. Presidential decree.
6. Provincial Regulations, and
7. District/City Regional Regulations.

For regulations made by the Minister, the legal force is recognized as long as the regulations are ordered by the laws and regulations specified above or the rules are formed based on the authority of the Minister (from the President), as stated in Article 8 paragraph (1) of Law 12/2011 .

Whereas the conclusion from the authority of the Directorate General of Taxes is only to formulate and make tax rules to be continued to the Minister of Finance so that regulations are made by the Minister, and to be implemented by the Directorate General of Taxes after the regulations have been made. And by law, the Directorate General of Taxes cannot make its own rules that are binding on the public.

#### **Regulation of the Director General of Taxes Number PER-03/PJ/2022 is not a law**

As mentioned above, the authority of the Directorate General of Taxes in Indonesian governance is part of the Ministry unit, so it is not possible for the Directorate General of Taxes to make general rules that are binding because the position of making rules that are legalized by law by the Minister and the existence of the Directorate General of Taxes is formed from a Minister of Finance Decree and not from a Ministerial Regulation where the legal force of the Decision is concrete and only for certain.

And as mentioned above regarding that there are rules that are not made by the competent authority in accordance with the order of legislation and these rules are usually regulatory or implementation of a law. In this case it is referred to as a policy regulation where this rule applies

to certain matters and is concrete, namely about one thing only and an example of this policy regulation is the Director General of Taxes regulations.

So that in state administrative law, the authority of the Directorate General of Taxes is only given the authority to make policies for the field of taxation, the implementation of which is through ministerial regulations that obtain delegates from laws. Because the authority is only as a policy maker, the rules made by the Directorate General of Taxes do not include the statutory regulations in Indonesia, and one of them is policy regulations.

Therefore, policy regulations are classified as policy regulations because these Directorate General of Taxes regulations only regulate certain matters that are within the jurisdiction of taxation and for that reason do not regulate other matters, and are made by TUN officials and not the legislature. One of these policy regulations is the Regulation of the Director General of Taxes Number PER-03/PJ/2022 concerning Tax Invoices, which only regulates tax invoices and their mechanisms, so they will not regulate other matters and for this reason taxpayers must obey them. Even though this policy regulation is not part of the legislation, its existence is acknowledged and its nature ('forced to') is binding on all parties regulated by it so that if it is not complied with, there will be sanctions received by the violator and that is administrative in nature.

In this study, the focus is on article 25 PER-03/PJ/2022, namely regarding tax invoices for PKP PE, which states that all sales transactions carried out with end consumers can be classified as Retail Traders. Where in accordance with Article 2 paragraph (5) it explains that PKP PE is the one who delivers the BKP and/or JKP to the buyer of BKP and/or the recipient of JKP with the characteristics of being the end consumer, in this case the final consumer is mentioned in Article 25 paragraph (2) namely : (a) BKP buyers and/or JKP recipients who consume directly for the BKP purchased and/or JKP received; and (b) BKP buyers and/or JKP recipients do not use or utilize the BKP and/or JKP for business activities. And for all activities or some of the activities carried out for end consumers are considered PKP PE.

Whereas in this case what is meant by not being used for business activities, is not explained further in the regulation resulting in a double interpretation for this matter, because the determination of PKP PE must cover both of these paragraphs namely the end consumer and not used for business. The problem that arises from the rule above is how can the seller know whether the goods are used for business or not? Especially for sellers through an electronic system (online) where communication is only based on messages on each other's phones and rarely makes direct contact.

In Law no. 1 of 2012 (UU VAT) only states that PE is a seller who sells directly to end consumers *door to door* to the final consumer without any mechanism of bidding, ordering,

contract, auction or other written agreement and carried out by *cash* and *carry*. And the final consumer actually consumes directly from BKP and/or JKP without any production activities. The intent of the VAT Law above can be implemented for PE because with a direct contact mechanism PE can find out the condition of the BKP buyer and/or the JKP recipient (Minollah, 2017).

Whereas in PER-03/PJ/2022, for online transactions, how can sellers find out the condition of their consumers whether they have more production activities or not for the goods they buy, for example, PE sells office supplies, such as paper, pens online and when there are buyers who contact online then pay so that the goods are sent to the buyer. When the buyer receives the item, it turns out that the office stationery is printed as a fulfillment of company X's order and is then sent to company X. In this case, a production event occurs from the buyer, namely printing stationery so that there is added value, so the question is whether the online seller can be categorized as as PE? And can I use the backed up tax invoice facility or a simple tax invoice?

As mentioned in the discussion above, the Regulations of the Director General of Taxes are included in the category *policy rule* because it is not included in the order of legislation in Indonesia, is a discretion from the existing legal rules, made and determined by TUN officials and is concrete in nature, namely the executor of the Law. Included in this case PER-03/PJ/2022 is part of *policy rule* mentioned, whereby the determination of PE is expanded to include online sales. Previously, the explanation from PE was that sellers directly met with the end consumers (buyers of BKP and/or JKP recipients) with a mechanism *cash and carry*. That the position of *beleidsregel* in Indonesia is the discretionary authority of TUN officials implementing the law so that in fact the law is legally binding.

With the condition that online sellers and buyers cannot meet in person and the payment mechanism is electronic cash (bank transfers, *digital money*) which is not regulated in the VAT Act, then the legal interpretation is that online sellers can be categorized as PE and can use taxation facilities in the form of simple or inflated invoices even though the BKP and/or JKP will be used in the production stage. But the treatment of PE as a PKP itself still refers to the conditions of the PKP, which is that the gross circulation for a year is above Rp. 4,800,000,000,-. So when the gross circulation is below that figure, the PE is not included in the PKP classification.

The conclusion of this chapter is that the legal position of PER-03/PJ/2022 is *policy rule* which are not included as statutory regulations that have binding power to the people of Indonesia or in other words that PER-03/PJ/2022 is not part of the law. Legal power of *policy rule* only exists so that it should not have legal consequences for the people of Indonesia. This is because the position of the Director General of Taxes is only as one of the Echelon I institutions within the Ministry of Finance, which means that it is an assistant minister, so it is only responsible to the

minister for carrying out its duties. Because *Beleidsregel* originates from *Feis Ermessen*, PER-03/PJ/2022 is by nature made to deviate from the VAT Law, and based on Article 8 paragraph (2) of Law 12/2011, the position of PER-03/PJ/2022 is still recognized because there is delegation authority obtained Directorate General of Taxes.

### **Legal Justice In Per-03/Pj/2022 For Determination Of Retail Traders**

#### **Justice Theory (*Fairness Theory*)**

*Fairness* Derived from the English word which means fair, reasonable, and honest. In this case, said *fairness* more aimed at the definition of fair. Fair means balanced and impartial which can also be interpreted as fair. The choice of the word fair here is caused by the transition from English to the word *fairness* into Indonesian, where the word fair cannot be understood by everyone, especially when it is associated with taxation.

Kahar Mansyur requires 3 (three) things in order to be called fair:<sup>[27]</sup>

- (1) Fair is putting something in its place.
- (2) Fair is Right without getting more and giving to others without less.
- (3) Justice is to anyone who has the right to give rights that are neither more nor less among those entitled in equal circumstances and to punish the wicked or those who break the law according to their mistakes and offences.

The definition of justice according to Satjipto Rahardjo is a constant and unceasing desire to give each person what is their right.<sup>[28]</sup> This justice is a rational justice that does not require transcendental institutions, but instead rests on the human mind's understanding of the world of experience.

Aristotle as quoted by Darji Darmodiharjo argues "Justice is a virtue related to human relations." The definition of fair has many meanings. According to law, fair can mean what is in proportion, ie. must. People who are fair when exercising their rights properly without harming others. According to Aristotle, there are 2 (two) types of justice, namely:

1. Distributive justice is justice that gives everyone a share according to their role. He does not demand that everyone gets an equal share, so not on the basis of equality but in proportion.
2. Commutative justice, namely justice that gives each person the same amount regardless of their role. This type of justice requires equality.

John Rawls argues "in justice there needs to be a balance between personal interests and common interests. Justice is an absolute value that must exist in human life to maintain human stability itself."<sup>[32]</sup> Meanwhile, Plato qualifies justice in three ways, namely:

- a. Qualities or "traits" that are unique to each individual human being;



- b. Justice allows people to coordinate (organize) as well as place control limits on their "emotional" levels in an effort to adapt to the environment in which they associate; therefore,
- c. Justice is something that allows humans to carry out their human nature in a complete and proper way.<sup>[33]</sup>

In taxation, there are two kinds of justice:<sup>[34]</sup>

- 1. horizontal justice

All people who have the same economic capacity or obtain additional economic capacity must be subject to the same tax.

- 2. Vertical justice

In essence, it relates to the obligation to pay taxes where the ability to pay is not the same, that is, the greater the ability to pay taxes, the greater the tax rate imposed.

From the definitions of justice mentioned above, it can be believed that justice is very relative and subjective, so that to say justice can only be measured from a point of view that can be different from other points of view.

In this study, the theory of justice functions as a theory that examines whether the existing tax system in the country works according to laws and standards that are in accordance with the criteria of fairness. In the context of taxation, equity is the exchange between the taxpayer and the government, namely what the taxpayer receives from the amount of tax paid by the government<sup>[35]</sup>. When taxpayers disagree with government spending policies or feel that they are not getting a fair return from the government on their tax payments, they feel pressured and change their minds about tax laws, which leads to their behavior, ie. report income less than their tax burden. should. There are two basic assumptions in justice theory, one of which assumes that the evaluation of justice is based on interpersonal trust to behave cooperatively in social institutions. Second, many people are believed to use cognitive shortcuts to ensure that they are making fair judgments when making decisions about cooperative preferences<sup>[36]</sup>. This shows that the perception of justice towards a person influences how they behave when they want to be involved in government activities, and at the same time indirectly influences the behavior of everyone involved.

This shows that a person's distrust of injustice moves from one person to another, for example someone feels that the tax burden that has been paid so far has not received a balanced benefit from the state, so in the next tax period that person lowers his taxes. tax. the tax burden should be a tax burden, and if the government does not know about it, other taxpayers consider it fair and legal, so that it greatly influences people's behavior which is quite significant.

### **Principle of Tax Fairness**

The principles of justice are principles where people who think rationally will be able to solve a problem without considering their own interests."<sup>[37]</sup> Basically there are 2 (two) schools of thought in tax law related to tax justice, namely "the principle of benefits (*benefit principle*) and the ability to pay principle (*ability to pay principle*). These two principles look at tax justice from different perspectives, but basically they are closely related to the equality of taxation.

The benefits obtained by certain taxpayers from government spending must be known beforehand, then the principle of benefits can be implemented. Therefore it can be assumed that equal distribution in the economy already existed when this system was introduced. To apply the ability to pay principle, it is necessary to know how this ability is measured. And tools to testability to pay someone is:

- a. Expenditure issued by a person reflects the ability to pay taxes. Of course, tax collection is also proportional to the amount of spending done (*Expenditure*).
- b. A person's net worth shows his ability to pay taxes. (*Property*).
- c. Assets that can generate income owned by a person, then he is considered capable of paying taxes. (*Product*).
- d. The more a person's income, the more he is considered capable of paying taxes. (*Income*).

The tax system must be fair, of course everyone agrees, the problem is how to achieve tax justice. Marihot Pahala Siahaan stated: "There are at least 3 (three) aspects of justice that must be considered at the time of taxation, namely: fairness in the preparation of the tax law, fairness in the application of tax provisions, and fairness in the use of tax money."<sup>[40]</sup>

### **Tax Fairness for PKP Retail Traders in Value Added Tax**

Determination of the subject of VAT for retail traders refers to the classification of small traders in the calculation of income tax, which in this case follows the limit of gross circulation of small traders, namely Rp. 4,800,000,000. within the customs territory. Where this is still added to the stipulation requirements contained in PER-03/PJ/2022, namely:

- Article 2 paragraph (5)

PKP that delivers the BKP and/or JKP to the BKP Buyer and/or JKP Recipient with the characteristics of the final consumer can make a Tax Invoice without including information regarding the identity of the buyer and the name and signature of the seller.

- Article 25

- (1) The delivery of BKP and/or JKP to the BKP Buyer and/or JKP Recipient with the characteristics of the final consumer as referred to in Article 2 paragraph (5) is a delivery made in retail.
- (2) The characteristics of the final consumers as referred to in paragraph (1) include:

- a. buyers of goods and/or service recipients directly consume the goods and/or services purchased or received; And
  - b. buyers of goods and/or service recipients do not use or utilize the goods and/or services purchased or received for business activities.
- (3) PKP whose all or part of their business activities deliver BKP and/or JKP to BKP Buyers and/or JKP Recipients with the characteristics of final consumers as referred to in paragraph (2), including those carried out through Trading Through Electronic Systems, are PKP retail traders.
- (4) PKP for retail traders as referred to in paragraph (3) is not determined based on business field classification, but based on the transaction of delivery of BKP and/or JKP to BKP Buyers and/or JKP Recipients with the characteristics of the final consumer as referred to in paragraph (2).

The above determination by the government provides a fair perception measure for the government to be categorized as PE, namely if the sale is carried out directly to the final consumer without going through the distribution chain like a company, as shown in traditional markets. And to this, the requirement is added that the BKP purchased and/or the JKP received is directly consumed by consumers without being used for business processes.

The definition of a seller who is able to serve the end consumer without being reprocessed can then be considered a retailer and if he has been registered as a PKP, he is therefore entitled to receive tax facilities for retail traders, one of which is making tax invoices backed up for reporting VAT obligations.

Because as a retailer, his economic capacity is very unstable, therefore the Government also provides convenience if in the following year PE is unable to carry out retail sales activities to end consumers and the gross circulation value does not reach IDR 4,800,000,000, - then he can revoke his status as PKP.

The above is the government's perception of fairness in the collection of VAT for retail traders. But what about the perception of justice for the VAT subject itself? Because the person who can make the tax invoice be covered is the PE, while one of the requirements to be determined as a PE is that the final consumer does not use the Taxable Goods purchased and/or the Taxable Goods received for the production or business process.

For traders who are involved in traditional markets and always meet physically with buyers, the status of using the goods purchased by consumers, whether they are consumed directly or not, must know because they already know the buyer or at least know the characteristics of the goods they sell and the transactions made are definitely cash (although there are also those who



owe money but are still in cash). But what about online sellers who don't know their customers at all, can't they be declared as PE? Because the final consumer's requirements use the conjunction "and" so the correlation is that both conditions must be met (Roesli et al., 2017).

If he cannot meet these requirements and his gross turnover exceeds IDR 4,800,000,000 per year, then it is his obligation to report and ask to be confirmed as a PKP, because if the tax authorities finds that his turnover is like that, the PKP confirmation can be carried out by position and will be calculated backwards since the gross turnover is fulfilled for the obligation to pay and report VAT (the calculation is also obtained by PKP who registered voluntarily).

Even though he has become a PKP, his status is not a PE so that whatever happens the obligation for VAT must be carried out and the application for not becoming a PKP takes a longer process than a PE and this will definitely make it difficult for online sellers. Even with the ease of making tax invoices covered, where by becoming a PE, PKP should not need to be complicated by making a list of sales and purchases by providing the full identity of the buyer and seller, at least as shown in the Simple Tax Invoice.

Whereas actually making a Tax Invoice is made very easy for PKP PE because traders only make sales and purchases recapitulation for reporting Output Tax Invoices and Input Tax Invoices, so that the tax subject can carry out the recapitulation himself without the need for additional personnel who specifically record sales and purchases.

The addition of the final consumer criteria requirements that those who do not carry out the BKP purchased and/or the JKP received for further business are deemed not to fulfill a sense of justice for sellers who wish to fulfill their tax obligations (VAT). Because with these conditions, the hope to be determined as a PE will be further away. When viewed from Aristotle's theory of distributive justice, the provision of this condition does not fulfill the elements of justice because according to this theory, justice is giving something to someone according to their abilities or roles and not made equally and equally.

For this reason, the words "and" in the requirements for end consumers can be replaced with the words "and/or" so that tax subjects who meet the criteria to serve end consumers can be categorized as PE, even including online sellers who only meet with their consumers. through digital means and without knowing the conditions of each of these consumers. And PER-03/PJ/2022 should have been made with the excuse of increasing state revenue to accommodate a sense of justice for sellers, especially online sellers. So that the determination to become a PKP is no longer a compulsion for these traders, because of their unstable economic capacity.

#### **4. CONCLUSIONS**

The legal position of PER-03/PJ/2022 is that it is a *beleidsregel* which is not included as a statutory regulation that has binding power to the people of Indonesia or in other words that PER-03/PJ/2022 is not part of the law because it makes is not authorized by law. That the legal force of *beleidsregel* only exists so that it should not have legal consequences for the people of Indonesia. This is because the position of the Director General of Taxes is only as one of the Echelon I institutions within the Ministry of Finance, which means that it is an assistant minister, so it is only responsible to the minister for carrying out its duties.

Regarding the VAT Law, PER-03/PJ/2022 is not an implementing regulation for the Law because those who can implement the Law are parties appointed by the Law. The legal basis for this recognition is Article 8 paragraph (2) of Law 12/2011, while binding force must be embodied in a ministerial regulation as the authority holder of the law. Determination of requirements for final consumers in PER-03/PJ/2022 which adds that buyers of Taxable Goods (BKP) and recipients of Taxable Services (JKP) do not use the BKP and JKP for further business activities is an additional requirement that was not previously stated in the Law VAT so that it can be considered deviating from the VAT Law because it changes the rules above it. Manufacturing mechanism *policy rule* must also comply with the General Principles of Good Governance (AUPB) and the procedures for forming laws and for the formation of *apolicy rule* is that it must comply with existing limitations, one of which is not regulatory in nature and applies only to internal. That all this time the Directorate General of Taxes has always used *policy rule* to make tax rules because based on legal status that the Directorate General of Taxes does not have the authority to make rules for the public and is binding in nature.

When viewed from Aristotle's theory of justice, the meaning of distributive justice is justice that is given based on its role so that each human being gets things according to his role. Related to the addition of the condition "may not be used for business activities" this results in a sense of justice for traders, because the addition of the sentence is added with the word "and" whose correlation is that all of these conditions must be obeyed in order to become Final Consumers and traders who serve end consumers can categorized as a Retail Trader, one of the benefits of which is to make a Tax Invoice for Retail Traders who register as a Taxable Entrepreneur (PKP).

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