

Tax Collection Authority for Hotels Aboard Tourist Boats After Law Number 1 of 2022 and Law Number 7 of 2021

Hendra Kurniawan^{1*}, Emir Yusuf Ilham¹, Tia Rizkya Dilbar Sumadi¹

¹Faculty of Law, Pelita Harapan University, Indonesia

*Corresponding author E-mail: provisitjakarta@gmail.com

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ABSTRACT

This research was conducted with the aim to find out how the regulations related to the authority to collect taxes on hotels on board tours after the issuance of the HKPD Law and HPP Law. Taxes on hotels aboard tour boats so far have created a separate polemic regarding the authority of the tax collection agency authorized to collect this type of tax, namely, whether it is a Regional Tax which is the authority of the Regional Government or is it the Center which is the authority of the Central Government, this is because there is an object that is the same wedge between the hotel tax on the tour boat and the VAT on the tour ship itself. Where in Law Number 28 of 2009 it has not been specifically regulated regarding whether staying on a tour boat is part of the hotel tax. For hotels on board tours it is more appropriate to be collected by the Regional Government. In the preparation of laws related to local taxes in the future, to include hotel tax coverage from a more substantive point of view and includes the nature of the accommodation services business itself, which in the future will likely be very transformative, not only on ships, but also by train, car and other modes, for this reason, it is better not to be limited by a limited scope.

Keywords: Local Tax, Central Tax, Tax Collection Authority

1. INTRODUCTION

The series of grand events for the 42nd ASEAN Summit which were held in Labuan Bajo, West Manggarai Regency on 6-11 May 2023 are certainly not without reason. President Jokowi certainly has an agenda to introduce the tourism potential in the area. A year earlier, there was also success in holding an international event which was no less prestigious which was held at the Mandalika Circuit which is not far from the Labuan Bajo location, namely the Moto GP 2022. If we look at the tourism potential in the central region of Indonesia, the beauty of the natural panorama is truly extraordinary, especially marine tourism. In Labuan Bajo itself, it is very famous for its unique tourist ship and has a long history, namely the Pinisi Ship. Although The tourist boats that are there are not only of the Pinisi type, but there are other types such as ships *Yacht*, *Open Deck* and others. This great tourism potential certainly has *multiplier effect* separately not only to economic actors, of course, to increasing Regional Original Income (PAD) both through taxes and through levies (Wijaya, 2021). The potential for taxes in the tourism sector mainly comes from regional taxes in the form of existing hotel taxes around tourist sites.

With the development of the existing hotel business model, many business actors in the hotel sector have looked at opportunities to develop accommodation on tour boats into one travel package (accommodation) (Alfari & Rahmi, 2022). However, there is still low awareness of business actors to pay taxes related to hotels on board tours. The West Manggarai Regency Government, East Nusa Tenggara recorded around 4,000 tour boats operating in the Labuan Bajo area. Of that number, only 500 ships have been registered and officially carry out tourism activities (Kustiani, 2023). In terms of hotel business opportunities, of course, it has very good opportunities, because hoteliers can have alternative accommodation packages that are not only in hotels in the sense of staying in a building but also offer packages of lodging on ships accompanied by tour packages to places certain that has been agreed. From the perspective of taxation law phenomenon business hotel on These tour ships certainly have tax legal consequences which may be different from the hotel business in buildings/buildings (Maria Magdalena Fontaine Ekawati, 2019). Especially from a tax perspective on consumption, is this business model included in the category of Value Added Tax (VAT) on tourist ships (considered as part of the transportation services business), where if it includes transportation services, it will become a VAT object. Or is the business model for the hotel aboard the tour ship more appropriately included in the local tax category (if you look at it the substance, that the phenomenon is the hotel/accommodation business on boat. The author is interested in discussing and studying the problem as a topic in this article by using a legal synchronization approach, namely between the laws governing local taxes and the laws governing central taxes.

2. RESEARCH METHOD

Normative legal research is legal research conducted by examining literature or secondary data. Normative legal research is also known as doctrinal legal research. According to (Marzuki, 2010), normative legal research is a process to find a rule of law, legal principles, and legal doctrines to answer the legal issues at hand. In this type of legal research, law is generally formulated as what is written in statutory regulations or laws are formulated as rules or norms which is a basis for human behavior that is considered appropriate.

3. RESULTS AND DISCUSSION

Legal Review of Taxes on Hotels on Tour Boats From the Point of Value Added Tax (VAT) as last amended by the HPP Law

In theory there are many definitions of according to tax opinion member. Several definitions can be described below which are taken from the book Introduction to Tax Law written
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by (Hari Sugiarto, 2019) R. Santoso Brotodihardjo that according to Prof. Dr. P.J.A. Adriani (former professor of tax law at the University of Amsterdam) argues:

“Taxes are contributions to the state (which can be imposed), owed by those who are obliged to pay it according to the regulations, without getting performance in return, which can be directly pointed out, and whose purpose is to finance the production-general expenses related to the duty of the state to administer the government.

Dr. Soeparman Soemahamidjaja (Hari Sugiarto, 2019) in his dissertation entitled "Taxes Based on the Mutual Cooperation Principle", argued "Taxes are mandatory fees, in the form of money or goods, which are collected by the authorities based on legal norms, in order to cover the costs of producing goods and collective services in achieving general welfare. While conceptually in relation with Article 23 paragraph 2 of Taxation, UUD 1945 require that "All taxes for state purposes are based on law." Furthermore, in Law No. 6 of 1983 concerning General Provisions and Procedures for Taxation, in article 1 it is stated that "Taxes are mandatory contributions to the state owed by individuals or entities that are coercive based on the law, by not receiving compensation in return. directly and used for the needs of the state for the greatest prosperity of the people.

From this definition it is clear that taxes are instruments used to finance state needs and are coercive and in their implementation must be regulated by law (Agustina, 2020). The important role and contribution of taxes to development can be seen from posture Budget Income and Expenditure (APBN) Indonesia, where it can be seen that tax revenue as the main source of state revenue currently accounts for almost more than 50% of total state spending (Directorate General of Budget, Ministry of Finance, 2021a). Based on the type of tax is classified into Direct Tax and Indirect Tax. In a juridical sense, direct tax is a tax in which the bearer of the tax burden and the person responsible for paying it to the State Treasury are on the same side. Meanwhile, indirect taxes are taxes that bear the tax burden and are responsible for payments to the State Treasury on different parties. With this classification, VAT is included in the Indirect Tax group (Sugiarto Hari, 2019). Furthermore, VAT is a tax on the consumption of goods and services. From a historical point of view, prior to the implementation of VAT, the imposition of taxes on indirect consumption was only limited to certain products (Darmayanti, 2012). For example, the imposition of taxes on alcohol and tobacco. Apart from excise, other types of indirect taxes are also known, namely sales tax and circulation tax. However, the resulting distortion from the sales tax and circulation tax is due to the tax on the tax (*cascading effect*) from the application of these two types of taxes coupled with the demand for increased revenue, it has given impetus for the government to seek alternative forms of other taxes (Darmayanti, 2012).

In addition, according to economist Adam Smith (Bohari, 2002) in his book *An Inquiry Into The Nature and Cause of The Wealth of Nation* Tax collection should be collected using 4 (four) principles namely: *Equality, Certainty, Economy, dan Convenience*. According to (Iskandar, 2021) each of these tax collection principles can be briefly described as follows:

- 1) *Equality*, Tax collection must be fair and equitable, namely taxes must be imposed on individuals who must be in proportion to the ability to pay taxes (*ability to pay*) and in accordance with the benefits received. Fair means that each taxpayer contributes money for government spending in proportion to his interests and the benefits requested.
- 2) *Certainty*, The tax determination is not arbitrary. Therefore, taxpayers must know clearly and with certainty the amount of tax owed, when it must be paid and when the deadline for payment.
- 3) *Convenience*, when the taxpayer has to pay taxes should be in accordance with the times that do not make it difficult for the taxpayer. For example: when the taxpayer earns income. This voting system is called *pay as you earn*
- 4) *Economy*, economically that the cost of collection and the cost of fulfilling tax obligations for taxpayers is expected to be as minimum as possible, as well as the burden borne by taxpayers (Addi M Idhom, 2023).

When pulled backwards, the emergence of the VAT Law Number 8 of 1993 in Indonesia was officially issued for the first time on December 31, 1983 but through Government Regulation in Lieu of Law Number I of 1984 which was later with Law Number 8 of 1984 it was determined to become an Act its implementation was suspended until January 1, 1986. However, with Government Regulation 01 of 1985 it was stipulated when the VAT Law came into force to be April 1, 1985. Previously, laws regulating taxes on the consumption of goods and/or services in Indonesia had existed two years after the Republic of Indonesia's independence, namely Law No. 14 of 1947 concerning Collection of Development Tax in Restaurants and Lodgings. Then it was replaced by the 1950 Circulation Tax and then replaced by the 1951 Sales Tax. Since its appearance until the time this writing was written, the VAT Law has undergone 6 amendments, the last changed with the Law on the Harmonization of Tax Regulations (HPP) in 2021.

Value Added Tax is principally imposed on all consumption of goods and services within the customs area. However, there are exceptions to goods and services certain which is regulated in article 4A of Law Number 42 year 2009 concerning VAT and PPnBM as last amended by Law Number 7 of 2021 concerning Harmonization of Tax Regulations (HPP), where article 4A regulates exceptions (*negative list*) as follows:

“Types of goods that are not subject to Value Added Tax are certain goods in the group of goods as follows: a. deleted; b. deleted; c. food and drinks served in hotels, restaurants, restaurants, stalls, and the like, including food and drinks whether consumed on site or not, including food and drinks delivered by catering or catering businesses; which are objects of regional taxes and regional levies in accordance with the provisions of laws and regulations in the field of regional taxes and regional levies; and D. money, gold bullion for the benefit of the state's foreign exchange reserves, and securities.”

Then, the types of services that are not subject to Value Added Tax are certain services in the group of goods as follows:

“Types of services that are not subject to Value Added Tax are certain services in the group of goods as follows: a. religious services; b. art and entertainment services, including all types of services performed by arts and entertainment workers which are objects of regional taxes and regional fees in accordance with the provisions of laws and regulations in the area of regional taxes and fees; c. hotel services, including room rental services and/or room rental services in hotels which are objects of regional taxes and regional levies in accordance with the provisions of laws and regulations in the field of regional taxes and regional levies; d. services provided by the government in the context of running the government in general, covering all types of services in connection with service activities that can only be carried out by the government in accordance with its authority based on laws and regulations and these services cannot be provided by other forms of business; e. parking space provision services, including parking space provision or management services carried out by parking lot owners or parking lot management entrepreneurs to parking lot users who are objects of regional taxes and regional levies in accordance with the provisions of laws and regulations in the field of regional taxes and regional levies; f. catering or catering services, includes all food and beverage provision service activities which are objects of regional taxes and regional levies in accordance with the provisions of laws and regulations in the field of regional taxes and regional levies”

Then, when referring to the provisions in Article 6 of Regulation of the Minister of Finance Number 70 of 2022 concerning Criteria and/or Details of Food and Beverages, Arts and Entertainment Services, Hospitality Services, Parking Space Provision Services, and Catering or

Catering Services, Which Are Not Subject to Value Added Tax , in that article it states what are the criteria for hotel services that are not subject to VAT, namely:

"Certain services in the hotel services group that are not subject to Value Added Tax as referred to in Article 3 letter b include room rental services and/or room rental services in: a. hotel; b. hostels; c.villa; d. cottage; e. motel; f. inn; g. tourism guest house; h. guest house; i. guest houses, guest houses,bungalow, resorts, or cottages; j. private residences that function as hotels; and K. luxury camping (glamping)."

Furthermore, when viewed from the sound of Article 4A of Law Number 7 of 2021, it clearly stipulates that certain services that are not subject to VAT, namely one of them is hotel services where the scope of hospitality services includes room rental services and/or room rental services in hotels which are objects of regional taxes and regional levies in accordance with the provisions of laws and regulations in the field of regional taxes and regional levies with further details and types stipulated in PMK-70 of 2022, where details of types of closed hotel services(*closed list*), it can seen from the use of diction "*cover*" in Article 6 (six) said. Thus, when interpreted textually article 4A of the HPP Law and linked to the limitations and details of PMK -70 of 2022, hotel services are clearly not included in the tax object.Increase Value (VAT) as long as the hotel services referred to have become regional taxes or at least have been included in the category/type of tax collected in accordance with laws and regulations in the field of regional taxes and regional levies which are currently regulated in Law Number 1 of 2022 concerning Financial Relations between the Central Government and the GovernmentArea (UU HKPD).

In other words, if the tax on hotels on tour boats is included in the scope of the HKPD Law, then according to the author, the authority that has the right to collect regional taxes is the local government in accordance with the authority granted in the HKPD Law. However, if we look at article 6 of PMK 70 of 2022, especially in points "j" and "k", it only mentions "*private residence that functions as a hotel*" as well as "*luxury camping (glamping)*". In Article 6 which is closed, there is no related regulation, for example, "*ships, trains, or other vehicles/means of transportation that function as hotels*". So this has the potential to cause confusion in the field as well as legal uncertainty for hotel service businesses on tour boats. Where entrepreneurs who have a hotel business aboard a tourist ship do not rule out being subject to VAT by the central tax authorities (Directorate General of Taxes), assuming that hotel services on board are not included in the list.(*list*) PMK 70 year 2022.

Review of Tax Law on Hotels on Board Tours From a Regional Tax Perspective (PDRD Act) as last amended by the HKPD Law

In the discussion of this sub-chapter, the author uses a comparative analysis of hotel taxes between hotel taxes in the previous regional tax law, namely Law Number 28 of 2009 concerning Regional Taxes and Regional Retribution (UU PDRD) and Law Number 1 of 2022 (HKPD Law), from the table below it can be seen a comparison of definitions, subjects, objects and authority before and after the HKPD Law.

Table 1. comparison of definitions, subjects, objects and authorities before and after the HKPD Law.

No	Regarding	PDRD Act	UU HKPD	Information
1	Hotel definition	Hotel Tax is a tax on services provided by the hotel. Hotel is a facility for providing lodging/resting services including other related services free of charge, which includes motels, inns, tourism huts, tourist guesthouses, guest houses, lodging houses and the like, as well as boarding houses with more than 10 (ten) rooms.	Hospitality Services are accommodation providing services which can be complemented by food and drink services, entertainment activities, and/or other facilities.	There is a change in definition



2	Hotel Taxpayers and Subjects	Hotel tax subjects are individuals or entities that make payments to individuals or entities that operate hotels. Hotel taxpayers are individuals or entities that operate hotels.	Tax subjects on certain goods and services (PBJT) are consumers of certain goods and services. PBJT taxpayers are individuals or entities that sell, deliver, and/or consume certain goods and services.	This regional tax is a unification (integration) of the 5 types of consumption-based local taxes in Law 28 of 2009, namely Hotel Tax, Restaurant Tax, Entertainment Tax, Parking Tax, Street Tax and Lighting, into one type of tax with the PBJT nomenclature.
3	Hotel Tax Object	(1) Hotel Tax Objects are services provided by Hotels with payment, including supporting services as Hotel accessories which are to provide convenience and comfort, including sports and entertainment facilities. (2) Supporting services as referred to in paragraph (1) are telephone, facsimile, telex, internet, photocopying, laundry services, iron, transportation, and other similar facilities provided or managed by the Hotel	Hospitality services as referred to in Article 50 letter c include accommodation services and supporting facilities, as well as meeting/meeting room rentals at hotel service providers such as: a. hotel; b. hostels; c. villa; d. cottage; e. motel; f. inn; g. tourism guest house; h. guest house; i. Inn/guest house/bungalow/resort s/ cottages; j. private residences that function as hotels; and K. glamping.	In the PBJT Hospitality object, an object for renting meeting rooms at the hotel is added, as well as a private residence object that functions as a hotel

4	Object Exceptions	Not included in the Hotel Tax object as referred to in paragraph (1) are: a. hostel housing services provided by the Government or Regional Government; b. rental services for apartments, condominiums, and the like; c. housing services at educational centers or religious activities; d. housing services in hospitals, nursing homes, orphanages, and other similar social institutions; and e. travel agency services or tour trips organized by hotels that can be utilized by the public.	What is excluded from Hospitality Services as referred to in paragraph (1) includes: a. Dormitory housing services provided by the Government or Regional Government; b. housing services in hospitals, nursing homes, orphanages, and other similar social institutions; c. housing services at educational centers or religious activities; d. travel agency or travel agency services; and e. Room rental services to be operated in hotels.	The object excluded still the same even though the HKPD law uses dictionary law, which is firmer and more restrictive, namely "covers"
5	Collection Authority	Regional Government, namely the City / Regency	Regional Government, namely the City / Regency	Still the same

(Source: Law)

From the comparison of the table above after and before the amendment to the regional tax law, it can be seen that there are a number of differences regarding definitions, objects and differences in terminology, where in the HKPD Law the terminology used for taxes related to consumption is unified into one type of tax, namely Certain Goods and Services Tax (PBJT) which includes taxes on hotel services. The explanation regarding the differences and similarities of hotel taxes before and after the HPP Law will be explained under This. First, there is a difference in terms of definition, where in the PDRD Law there is no definition of hotel tax Specific is this a tax on goods or services, it only mentions a tax on service hotels only. Then, in the HKPD Law, boarding houses which total more than 10 (ten) doors are excluded from the definition of hotel tax. So that in terms of the definition of hotel tax in the HKPD Law it becomes more Specific and clearer (*clear*) i.e. Hospitality Services are accommodation providing services which can be complemented by food and drink services, entertainment activities, and/or other facilities.

The definition is clear that the tax on hotels is the provision of accommodation services without limiting that those providing these services must be in a permanent building called a hotel,



but can also be a private residence or a semi-permanent building such as *glamour camping* (glamping) as long as it functions as a hotel, or according to In the opinion of the writer, it can also be interpreted that these norms are not limitative, as can be seen from the use of diction "like" not using diction "covers" in article 50 of the HKPD Law, namely hospitality services including the provision of accommodation services and supporting facilities, as well as rental of meeting/meeting rooms at hotel service providers such as: hotels; hostels; villa; cottage; motel; inn; tourism guest house; guest house; Inn/guest house/bungalow/resorts/ cottages; private residences that function as hotels; and glamping. From this it is clear that there are differences in the norm approach used in regional tax post amendment (Article 50 of the HKPD Law), where the details and types related to hotel taxes are not limited (*closed list*), but with an open system (*open list*), so that it is still very possible for local governments to include hotel tax objects on tour boats as hotel/regional tax objects, by entering additional detailed phrases, for example, "ships, trains, or other vehicles/means of transportation that function as hotels" including hotel tax objects. So that it becomes a legal basis for the regions to collect taxes on hotels on tour boats without breaking existing laws.

4. CONCLUSIONS

From the discussion it can be concluded that the tax on hotels on tour boats under the authority of law, especially in the post-amendment local tax law (UU HKPD), is very possible to be included in the draft regional regulation (Raperda), because of the norms of article 50 in The HKPD Law is not closed (*closed list*). However, so that there is no confusion and uncertainty in tax collection practices in the field by tax collectors (*treasury*) at the central and regional levels, the authors need to suggest that the central government, in this case the Directorate General of Taxes, can revise article 6 of PMK 70 of 2022, to include the phrase for example, "ships, trains, or other vehicles/means of transportation that function as hotels", in order to anticipate the occurrence of disharmony of laws and regulations between the central tax (PPN) and local tax provisions (Perda), if later by the local government the hotel tax on ships on tour boats will be included as a hotel tax object.

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