

The legal aspect of changing the Final Income Tax as a tax incentive for MSMEs during the covid-19 period in Indonesia

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Abstract: The 2019 Coronavirus Disease (Covid-19) pandemic, which attacked globally, including in Indonesia in early March 2020, triggered chaos that affected many sectors in Indonesia, such as the tourism and entertainment sector, industrial development, education, including the economy and MSMEs in it. MSMEs have an important role in national economic development. Apart from playing a role in economic growth and employment, it also provides income to the state through paid income taxes. The government is trying to combat this. So that the government issued a final PPh change policy for MSMEs so that this study aims to find out how the legal aspects of Final Income Tax changes as tax incentives for MSMEs. This research uses normative juridical research with a one-stop approach. The results of the study provide an illustration that changes in Final Income Tax are based on Article 6 Number (1) letter (i) of the Income Tax Law, which is the basis for implementing the Article is PP. 93 Tahun 2010, PMK No. 76 / PMK.03 / 2011 as further implementing regulations, and then also required to pay attention to the provisions of PMK No. 86 / PMK.03 / 2020 with the aim of obtaining a reduction in taxable income.

Keyword: Tax Law, Final Income Tax, Covid-19, UMKM

1. Introduction

Taxes are an important instrument for the economy of a country, including Indonesia. Since 1984, the tax system adopted by Indonesia is self-assessment. The self-assessment system is a tax collection system that gives taxpayers the confidence to carry out their own obligations, starting from calculating, paying to reporting the amount of tax that should be owed based on the applicable tax laws and regulations. Thus, people as taxpayers are given the opportunity to take part in tax collection. Without tax collection, it is certain that state finances will be even more paralyzed for a developing country like Indonesia. (Chidir Ali: 1993; Miljenic, 2018) Taxes imposed and collected by the government from the public which are categorized as taxpayers are forcing and are used for the public interest as stipulated in Article 23A of the 1945 Constitution which reads "taxes and levies that are compelling for the needs of the state are regulated by law". This shows that all regulations issued by the government must be obeyed by all Indonesian citizens, including Micro, Small and Medium Enterprises (MSMEs).

MSMEs have an important role in national economic development. In addition to playing a role in economic growth and employment, MSMEs also play a role in distributing development results (R.M.Tedy Aliudin: 2019). MSMEs who become taxpayers must comply with the laws and regulations governing UMKM taxes. The fact is that there are still many MSME players who are reluctant to pay taxes and choose to avoid them. These actions are of course caused by various factors such as high tax rates for them, not having sufficient knowledge, and so on. With the Coronavirus Disease 2019 (Covid-19) pandemic which attacked globally, including in Indonesia in early March 2020, it triggered chaos that affected many sectors in Indonesia, such as the tourism and entertainment sector, industrial development, education, including the economy and MSMEs in therein. The Covid-19 pandemic that has occurred since the beginning of 2020 has put enormous pressure on world conditions, especially in the economic and health sectors. Quoting from a press conference delivered by Sri Mulyani on April 1, 2020, the latest 2020 global economic growth projection is negative or experiencing a recession. JP Morgan company predicts global economic growth of -1.1%. Meanwhile, The Economist Intelligence Unit predicts global economic growth of -2.2%. World institutions are changing strategies to maintain global financial stability and allocating financing to deal with the Corona virus from various directions.

The Government of the Republic of Indonesia conducted an assessment of the economic impact and decrease in people's income in each province based on a mild, moderate, and bad scenario. The scenario refers to the economic resilience of each province and the decline in income of economic actors. For the MSME sector in the medium scenario, the worst is predicted to occur in North Kalimantan. With a decrease in income of up to 36% and the ability to survive until August-October 2020 (Danang Sugianto: 2020). The government, which is also troubled by this epidemic, does not necessarily want to lose state revenue through taxes. Tax is an obligatory contribution of society to the state. Payment of taxes is the embodiment of the obligation and also the participation

of the people who are taxpayers to participate directly and jointly finance the needs of the state and carry out national development. The tax revenue target which usually increases, as well as its realization, must be hindered by the covid-19 virus.

The government is trying to achieve the tax revenue target by finally revising tax incentives for 2020. On the one hand the government needs state revenue through taxes to help handle the Covid-19 outbreak, but on the other hand, the government also does not want to burden its people who are hit by economic turmoil. The government itself has made changes in policies regarding tax incentives in the midst of the Covid-19 outbreak through the Minister of Finance Regulation Number 23 of 2020 replaced by the Minister of Finance Regulation Number 44 of 2020 which later changed to a Ministerial Regulation. which is subsequently revoked and declared invalid by Regulation of the Minister of Finance Number 86 / PMK.03 / 2020. In addition, the government has also issued various regulations that become the legal umbrella for the parties to carry out activities so that they can maintain the stability of the sectors affected by the presence of Covid-19 in Indonesia. By doing so, it is hoped that it can minimize losses and other disruptions in the sector which can also have an impact on the condition of the Indonesian economy. Based on the background above, what is the legal aspect of changing the Final Income Tax as a tax incentive for MSMEs during the Covid-19 period in Indonesia.

2. Literature review

Definition of Tax and Taxpayer

Article 1 paragraph 1 of Law of the Republic of Indonesia Number 28 of 2007 concerning the Third Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures (UU KUP) defines that tax is a mandatory contribution to the state owed by an individual or entity is coercive based on the Law, without getting direct compensation and used for the state's needs for the greatest prosperity of the people. Article 1 point 2 of Law Number 28 Year 2007 Concerning the Third Amendment to Law Number 6 Year 1983 Regarding General Provisions and Tax Procedures states that taxpayers are individuals or entities, including taxpayers, tax cutters and tax collectors, who have tax rights and obligations in accordance with the provisions of taxation legislation.

Tax Elements and Characteristics

Referring to the tax definition above, the tax elements can be described as follows (Suparno, 2013)

- a. There is an underlying law. Tax collection must be based on law, cannot be with statutory regulations which are lower in order.
- b. There is a tax collector authority. In tax collection, there must be a government that will collect taxes, tax collection is not carried out by private (private) individuals.
- c. There is a tax subject, which means that there must be a subject that can be an individual or entity that can be burdened with the obligation to pay taxes.
- d. There is a tax object, meaning that there must be a target to be taxed, which can be in the form of circumstances, deeds or events
- e. There are public or public interests, meaning that the results of tax collection must return to the community or for the benefit of the community.
- f. There is a tax assessment letter, a tax assessment letter is not absolute but is optional, meaning that for certain types of tax, sometimes it does not require a tax assessment.

Definition of Micro, Small, and Medium Enterprises (MSMEs)

The definition of MSMEs according to Article 1 of Law Number 20 of 2008 concerning Micro, Small and Medium Enterprises is:

- a. A micro business is a productive business owned by individuals and / or individual business entities that meet the criteria of a micro business.
- b. Small business is a productive business that stands alone, which is carried out by an individual or a business entity that is not a subsidiary of a company that is owned, controlled, or is a part, either directly or indirectly, of a medium or large business that meets the criteria of a small business.
- c. Medium-sized enterprises are productive economic enterprises that are independent, carried out by individuals or business entities that are not subsidiaries or branches of companies that are owned, controlled, or are part of, either directly or indirectly, with small or large businesses with total net assets or annual sales results.

In Indonesia, MSMEs are regulated in Law Number 20 of 2008 concerning Micro, Small and Medium Enterprises (UMKM Law). The UMKM Law mandates the Decree of the People's Consultative Assembly of the Republic of Indonesia Number XVI / MPR-RI / 1998 concerning Political Economy in the context of Economic

Democracy, Micro, Small, and Medium Enterprises need to be empowered as an integral part of the people's economy which has a strategic position, role and potential to realize it. a national economic structure that is increasingly balanced, developed, and just (Anastasia Tamara:2013). Prior to the existence of this UMKM Law, MSMEs in Indonesia were not specifically regulated. There is only Law Number 9 of 1995 concerning Small Business which only regulates Small Business. So that it needs to be replaced with a more comprehensive one so that MSMEs in Indonesia can obtain assurance of business certainty and justice in relation to the increasingly dynamic development of the global economic environment. (Azrul Tanjung:2018)

In general, the structure and material of the UMKM Law contains:

1. General Provisions (Article 1), consisting of 15 points.
2. Principles and Objectives (Articles 2-3). MSMEs are based on kinship, economic democracy, togetherness, efficiency with justice, sustainability, environmental insight, independence, balance of progress, and national economic unity.
3. Principles and Objectives of Empowerment (Articles 4-5)
 - a. The principles of UMKM are the growth of independence, togetherness and entrepreneurship of MSMEs to work on their own initiative; manifestation of a public policy that is transparent, accountable and just; regional potential-based and market-oriented business development in accordance with the competence of MSMEs; increasing the competitiveness of MSMEs; and carrying out planning, implementation and control in an integrated manner. The aim of empowering MSMEs is to create a national economic structure that is balanced, developing, and just; grow and develop the ability of MSMEs to become strong and independent businesses; and increasing the role of MSMEs in regional development, job creation, income distribution, economic growth, and alleviation of people from poverty.
4. Criteria (Article 6), divides micro, small, and medium enterprises based on total net assets and annual sales proceeds.
5. Business Climate Development (Articles 7-15), which regulates that the government and regional governments foster a business climate by stipulating laws and regulations and policies covering aspects of funding, facilities and infrastructure, business information, partnerships, business licensing, business opportunities, trade promotion, and institutional support

3. Research methods

This type of research is a normative juridical research that raises legal issues in the form of obscure norms of implementing tax incentives which the authors view needs to be emphasized and socialized in order to make it easier for taxpayers as rights holders regardless of the obligations they have carried out. This research focuses on the source of data on literature study based on secondary data related to aspects of social justice (social justice) and socio economy. The normative juridical approach is legal research which is carried out by examining library materials or secondary data as the basic material to be studied by conducting a search of the regulations and literature related to the problems under study (Soerjono Soekanto and Sri Mamudji: 2001). Normative legal research or normative juridical research, consisting of:

- a. Research on legal principles.
- b. Research on legal systematics.
- c. Research on the level of legal synchronization.
- d. Legal history research.
- e. Comparative law research.

The approach used in this research is the statute approach, which refers to the Law of the Republic of Indonesia Number 20 of 2008 concerning Micro, Small and Medium Enterprises, Government Regulation of the Republic of Indonesia Number 23 of 2018

Regarding Income Tax on Business Income Received or Obtained by Taxpayers with Certain Gross Circulation and Regulation of the Minister of Finance of the Republic of Indonesia Number 44 / PMK.03 / 2020 concerning Tax Incentives for Taxpayers Affected by the Pandemic Corona Virus Disease 2019, Regulation of the Minister of Finance of the Republic of Indonesia Number 86 / PMK.03 / 2020 concerning Tax Incentives for Taxpayers Affected by the Corona Virus Disease 2019 Pandemic which systematically describes the object of research by basing the research on normative legal provisions.

4. Discussion

The legal basis for the imposition of PPh is written in Article 4 paragraph (1) of the Income Tax Law, namely: "the object of tax is income, namely any additional economic capacity received or obtained by the taxpayer, whether originating from Indonesia or from outside Indonesia, which can be used for consumption or to increase the wealth of the taxpayer concerned by name and in whatever form, ..." Based on Article 4 Paragraph (1) of the

Income Tax Law, it reflects the concept of the imposition of PPh in Indonesia which is broad in nature, seen from the five principles contained in this Article (First, in relation to the clause 'any additional economic capability', this refers to any additional ability to control goods and services obtained by the taxpayer in a certain tax year. The meaning of the additional word here is the net amount of income, namely the amount of revenue or earned income. gross deducted by the cost of obtaining, invoicing, and maintaining the related income.

The second principle, related to the clause "received or obtained by the taxpayer". This means that the PPh is imposed only on the increase in the economic capacity that has been realized. The definition of realization in this case takes the accounting concept, namely bookable income, both on a cash basis and on an accrual basis. This realization can also lead to legal events that can result in taxable events. The third principle, namely the clause "originating from Indonesia as well as those from outside Indonesia". This clause refers to the worldwide income tax system (WWI) which is applied to domestic tax subjects related to their objective tax obligations. With the WWI taxation system, all income received or earned must be subject to Income Tax, both from Indonesia and outside Indonesia. This is different from the territorial income system which is applied to foreign tax subjects, where only income originating from Indonesia is subject to PPh. The fourth principle relates to the clause "which is used for consumption or for buying additional assets". This fourth element is a method of calculating or measuring the amount of income subject to tax. The last clause, which is related to the class 'with any name and in any form', is an application of the principle of the substance-over-form principle, meaning that the economic substance of an income takes precedence over the formal form of the income. The tax subjects discussed in this research are corporate tax subjects, who receive or earn income during a tax year or can also be taxed if the subjective tax liability begins or ends in the tax year, the domestic corporate tax subject becomes taxpayer when it is established or resides position in Indonesia. This obligation ends when the agency is dissolved or is no longer domiciled in Indonesia. The method of calculating the taxes imposed on business entities on the income earned is by reducing net fiscal income with fiscal compensation. Net fiscal income is the net income received by domestic taxpayers, whether from business activities or not, after passing fiscal adjustments based on taxation provisions. The definition of net fiscal compensation is the loss suffered by the entity, if using bookkeeping, the loss can be compensated for five consecutive years. From the deduction of the net fiscal income and the compensation for fiscal losses is the amount of taxable income. In calculating the income tax payable, to get the nominal income tax payable, the taxpayer can multiply the taxable income with the applicable tax rate. The tax rate imposed on entities is 25%, the amount of this rate applies from the 2010 tax year. However, not all income is subject to income tax.

There are exceptions not to be subject to income tax and there are also conditions that allow the government to provide tax incentives. The determination of Covid-19 as a national disaster is a consideration for taxpayers to get tax incentives in the form of a reduction in taxable income in the calculation of corporate income tax. Corporate taxpayers are entitled to receive incentives in the event of a donation event with the interest of helping the government cope with Covid-19. The amount of taxable income for domestic taxpayers is determined based on gross income minus costs to obtain, collect and maintain income. In Article 6 Paragraph (1) letter (i) of the Income Tax Law, the gross income minus costs for obtaining, collecting and maintaining income, including "donations in the context of national disaster management, the provisions of which are regulated by a Government Regulation". Implementing regulations of Article 6 Number (1) letter (i) of the Income Tax Law above are based on PP. 93 of 2010. In this PP it is written that an expense that can be deducted up to a certain amount from gross income in the framework of taxable calculation for taxpayers includes donations in the context of national disaster management, which are donations for victims of national disasters that are conveyed directly through the agency. disaster management or delivered indirectly through an institution or party that has obtained permission from the competent agency / institution to collect disaster management funds.⁵⁸ Other implementing regulations PMK No. 76 / PMK.03 / 2011.⁵⁹ In this regulation, national disaster management contributions can be deducted from gross income, but must meet the following criteria: 1) Taxpayers have fiscal net income based on the Annual Income Tax Return (STP) of the previous tax year; 60 2) Donation and / or costs do not cause loss in the tax year the donation is given; 61 3) Supported by valid evidence; 62 4) Institutions that receive donations and / or fees have NPWP, except for entities that are exempted as tax subjects as regulated in the Law Income Tax; 63 5) Not given to parties who have a special relationship in accordance with Article 18 paragraph (4) of the Income Tax Law with the donor party; 6) Donations may be made in the form of money and / or goods; 7) The value of donations in the form of goods is determined based on the acquisition value and fiscal book if the goods donated have not been depreciated, as well as the cost of goods sold if the goods donated are self-produced.

In addition, it must also pay attention to the provisions of PMK No. 86 / PMK.03 / 2020.⁶⁵ Please note that after the promulgation of PMK No. 86 / PMK.03 / 2020 also provides incentives for PPh 21 for the income that employees get from the employer, it is borne by the government (DTP) with certain criteria.⁶⁶ The head of the Covid-19 task force issued SE No. 6 of 2020, affirming that the status of Covid-19 is still valid until it ends only

through a presidential decision, meaning that the status of disaster emergency is in accordance with Presidential Decree No. 12 of 2020. As long as the Presidential Decree has not ended, the Covid-19 status is still valid. This indicates that the government is right in taking taxation which is considered responsive to business actors and society in order to boost the national economy.

5. Conclusion

The government must be more careful and make it easier for corporate taxpayers who have good intentions to contribute to the interests of overcoming Covid-19, by providing tax incentives, such as providing a reduction in corporate income tax. In fact, this has been clearly mandated in Article 6 Number (1) letter (i) of the Income Tax Law, the basis for implementing the Article is PP. 93 Tahun 2010, PMK No. 76 / PMK.03 / 2011 as further implementing regulations, and then also required to pay attention to the provisions of PMK No. 86 / PMK.03 / 2020. Not only that, the government has committed to extend and expand the scope of providing tax incentives until December 2020 based on Presidential Decree No. 72 of 2020 which revised Presidential Decree No. 54 of 2020. Thus, the determination of Covid-19 to be a non-natural national disaster is a strong and appropriate consideration for taxpayers who make contributions for the benefit of overcoming Covid-19 to get a reduction in their taxable income.

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