

## The Legal Due to the Naming of Street Light Taxes on Regional Taxes & Retribution

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Article	Abstract.
Keywords: Lighting; Problem; Street; Tax.	The study describes the problem with the naming of Street Lighting Tax in Act No. 28 of 2009 which he practiced often led to multiple interpretations from the community, which then the community assumed that by paying a tax on the use or utilization of electricity, the people asked for a return in the form of providing public street lighting facilities around their settlements. Of course, the naming of Street Lighting Tax clearly raises problems and polemics that are still ongoing in the community, so it is necessary to get attention from the Government so that the naming of Street Lighting Tax can be placed in the right and correct position. The purpose of this research is more directed to determine the impact or legal consequences that occur on the naming of Street Lighting Tax in Act Number 28 of 2009. This normative legal research uses two problem approaches, namely the statute approach and the comparative approach. The conclusion in this study explains that the provisions of Article 1 number 28 jo. Article 52 of Act No. 28 of 2009 clearly results in obscure legal norms. So that the nomenclature or naming of Street Lighting Tax is a wrong thing if then the public is only asked to pay taxes on the use of electricity but then the public does not get in return for public street lighting facilities. So if it is compared in other countries such as Malaysia which uses the name Service Tax, in Germany it uses the name Electricity Tax which both provides returns in the form of service quality and electricity savings and control of environmental issues, while in the United States it uses the name Carbon Tax imbalance. It is closely related to the fuel that causes climate decline in the country. So that from this comparison there should be a change in the nomenclature of the Street Lighting Tax which in society often arises multiple interpretations.
Article History	
Received: 2022-04-14;	
Reviewed: 2022-07-13;	
Accepted: 2022-07-13;	
Published: 2022-07-26.	
DOI: <a href="http://dx.doi.org/10.30659/jdh.v5i2.21088">http://dx.doi.org/10.30659/jdh.v5i2.21088</a>	

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### 1. Introduction

Taxes are one of the sources of state revenue in order to improve national development and aim to the welfare and prosperity of citizen. In general, the state has sources of revenue consisting of:<sup>1</sup> Earth, water and natural resources; Taxes, Customs and Excise; Non-tax State Revenues; Results of state enterprises and ; and Other sources such as printing money and loans. It can be seen that taxes is a source of state income which are the most central thing in the life of the nation and state especially in Republic of Indonesia.

The regulation of taxation in the Indonesia in the Constitution of UUD 1945 (Act 1945) has been given legal certainty as regulated in Article 23 A of the 1945 Constitution,

<sup>1</sup> Bohari, H. (2010). *Pengantar Hukum Perpajakan*. Jakarta: PT Raja Grafindo Persada. p. 11.

namely: "Taxes and other levies that are coercive for the purposes of the state are regulated by law". This provision contains profound consequences if it is to regulate and collect taxes from its people, it must be based on the law and cannot be justified without being based on the law, as well as other levies that are coercive for the needs of the state must also be regulated in advance by law.

The provisions of Article 23 A of the 1945 Constitution regulates the Taxation Fundamentals applicable in Indonesia which are then regulated in Act No. 6 of 1983 as amended by Act No. 9 of 1994, as the second amendment with Act No. 16 of 2000, as the third amendment with Act No. 28 of 2007, and the fourth amendment as referred to in Act No. 16 of 2009 concerning General Provisions and Tax Procedures Act. And furthermore, the general provisions of taxation have also been updated through Act No. 11 of 2020 concerning Job Creation Act.

The authority to collect taxes in Indonesia can be divided into Central Taxes and Regional Taxes. As we know, each region has its own authority or regional autonomy to carry out its own government affairs. Autonomy essentially means freedom or independence in regulating and managing the government (*zelfwetgeving and zelfbestuurs*) with a dimension of responsibility.<sup>2</sup>

The authority or regional autonomy is no exception to the regional authority to collect regional taxes in their respective regions. Government give the legal umbrella in terms of local tax collection as been enacted in Act no. 28 of 2009 concerning Regional Taxes and Regional Levies Law.

The Regional Taxes and Regional Levies Law in the context of its implementation still often causes problems in practice in the society, which can actually create legal uncertainty due to ambiguity or vague norms in the Regional Taxes and Regional Levies Act. One of them is when referring to the provisions of: Article 1 Number 28:

*"Street Lighting Tax is a tax on the use of electricity, both self-generated and obtained from other sources."*

While Article 52 paragraph (1):

*"The object of the Street Lighting Tax is the use of electric power, both self-generated and obtained from other sources"*

and paragraph (2):

*"Self-generated electricity as referred to in paragraph (1) covers all power plants",* which when referring to the provisions of Article 1 number 28 jo. Article 52 paragraphs (1) and (2) of the Regional Taxes and Regional Levies Law mentioned above, not a few Indonesian people misinterpret the provisions in question and assume that after the community pays the Street Lighting Tax through the use or utilization tax, the community actually asks for a return in the form of providing public roads lighting facilities around their settlement.

As for through this writing, the formulation of the problem can be stated, namely: What are the legal consequences regarding the naming of the Street Lighting Tax in Act no. 28 of 2009 at the implementation level; and How is the street lighting tax naming treated in other countries?

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<sup>2</sup> Abdurrahman. (1987). *Beberapa Pemikiran Tentang Otonomi Daerah*. Jakarta: Media Sarana Press. p.10

## 2. Research Methods

The method used in this study is a legal research study of literature (juridical normative), which analyzes the application of law based on the applicable laws and regulations and what is happening in the community. The researcher tries to explain so that the legal problems that arise in this research can be resolved. This study uses a statutory approach and a comparative approach.<sup>3</sup> This normative legal research is based on secondary data or obtained from library materials in the form of: (i) primary legal materials consisting of basic norms or rules, statutory regulations in the form of laws, government regulations, and so on, and (ii) secondary legal materials in the form of explanations of primary legal materials in the form of research results, works from legal circles, and so on. The data obtained consists of secondary data in the form of primary legal materials in the form of laws relating to research cases as well as data analysis and legal logic accompanied by examples of cases that occur and may occur, then compiled systematically for further qualitative analysis related to problems.<sup>4</sup>

## 3. Results and Discussion

### 3.1. The legal consequences regarding the naming of the Street Lighting Tax in Act No. 28 of 2009

Regional Taxes and Regional Levies Act cannot be separated from the tax reforms in 1983 which began with the issuance of the General Provisions and Tax Procedures Act in 1983 until various amendments were last amended in 2009 and then updated again through the Job Creation Law in the taxation sector cluster with the aim that the changes were intended to broaden the tax base and maximum tax potential.<sup>5</sup>

With the enactment of the Regional Taxes and Regional Levies Act, regions have the authority (regional autonomy) to collect local taxes in their respective regions, even the Regional Taxes and Regional Levies Act explicitly divides the types of taxes at both the provincial and district/city levels as stipulated in Article 2 paragraph 1 and paragraph 2, namely:

#### *Section 2*

- *Types of provincial Taxes consist of:*
  - *Vehicle tax*
  - *Duty on Transfer of Motor Vehicle Ownership Names*
  - *Motor Vehicle Fuel Tax*
  - *Surface Water Tax and*
  - *Cigarette Tax.*
- *Types of Regency/Municipal Taxes consist of:*
  - *Hotel Tax;*

<sup>3</sup> Marzuki, Peter Mahmud. (2014). *Metode Penelitian Hukum (Revised Edition)*. Jakarta : Kencana Prenada. p.158 & 172

<sup>4</sup> Soekanto, Soejono. (2007). *Pengantar Penelitian*. Jakarta: UI Pers. 3<sup>rd</sup> Edition.

<sup>5</sup> Kertahadi, Fauzi Achmad Mustofa & Mirza Maulinarhadi R. (2016). *The Effect of Understanding Tax Regulations, Tax Rates and the Principle of Justice on Taxpayer Compliance*. Jurnal of Taxation (JEJAK) Vol. 8 No. 1.

- *Restaurant tax;*
- *Entertainment Tax;*
- *Advertisement tax;*
- *Street Lighting Tax;*
- *Tax on Non-Metal and Rock Minerals;*
- *Parking Tax;*
- *Groundwater Tax;*
- *Swallow's Nest Tax;*
- *Rural and Urban Land and Building Tax; and*
- *Fee for the Acquisition of Land and Building Rights.*

Seeing the distribution of types of regional taxes at the Regency/City level, especially the types of Street Lighting Taxes as stipulated in Article 2 paragraph 2 letter e of the Regional Taxes And Regional Levies Act, when examined further at the implementation level it often creates polemics in the community. People actually tend to misinterpret the naming of this Street Lighting Tax.

Whereas as previously described, if we refer to the provisions of: Article 1 Number 28: "*Street Lighting Tax is a tax on the use of electricity, either self-generated or obtained from other sources*". While Article 52 paragraph (1) explains: "*The object of the Street Lighting Tax is the use of electricity, both self-generated and obtained from other sources*".

Then it becomes clear that the provisions of Article 1 number 28 jo. Article 52 paragraph 1 of the Regional Taxes And Regional Levies Act can be concluded that this Street Lighting Tax is a tax on the use of electricity that can be produced independently or from other sources.

However, on the other hand, the community considers that by paying the Street Lighting Tax through payments for the use of electricity use either through a prepaid (token) or postpaid system, the community actually asks for compensation from the Regional Government for providing Public Street Lighting facilities. If a study is carried out on the naming of the Street Lighting Tax in the PDRD Law which then results in the community asking for compensation for providing Public Street Lighting facilities around their settlements, it must be re-examined about the naming of the Street Lighting Tax itself.

Referring to the Regional Taxes And Regional Levies Act before the enactment of Act No. 28 of 2009 namely as Act No. 18 of 1997 which was later amended by Act No. 34 of 2000 concerning Regional Taxes and Regional Levies, in fact does not provide an explicit definition in the provisions of the law, apart from only classifying the types of Street Lighting Tax as part of the Regency/City Taxes in accordance with the provisions of Article 2 paragraph 2 letter e (which is also in line with the provisions of Article 2 paragraph 2 letter e) with the provisions of Act No. 28 of 2009). However, if we look more closely, there are differences between Act no. 28 of 2009 with Act no. 34 of 2000, namely when referring to the Elucidation of Article 2 paragraph 2 letter e of Act no. 34 of 2000 explains that: "*Street Lighting Tax is a tax on the use of electricity, provided that in the area of the region there is street lighting available, the account of which is paid by the Regional Government*".

From that definition, it becomes the equation with Act No. 28 of 2009 is equally

defined Street Lighting Tax is "Tax on the use of electricity". However, the additional definition that distinguishes it in the Elucidation of Article 2 paragraph 2 letter e of Act no. 34 of 2002 is: "provided that in the area of the region there is street lighting available, the account of which is paid by the regional government". So that it implies a meaning that by paying taxes on the use of electricity, the Regional Government must provide street lighting whose bills for street lighting are paid by the Regional Government itself.

Considering that the Street Lighting Tax is a type of Regency/City Tax, then when referring to the Surabaya City Regional Regulation No. 4 of 2011 concerning Regional Taxes (hereinafter referred to as Surabaya City Regulation No. 4 of 2011) can be found in the provisions of Article 1 number 17 of Surabaya City Regulation No. 4 of 2011 namely: *"The Street Lighting Tax is a tax on the use of electricity, both self-generated and obtained from other sources."*, while Article 31 paragraph 1 is: *"In the name of the Street Lighting Tax, a tax is levied on every use of electricity, whether self-generated or obtained from other sources."*, while paragraph 2, namely the Object of the Street Lighting Tax is the use of electric power, either self-generated or obtained from other sources." Seeing the enactment of Surabaya City Regulation No. 4 of 2011, then the provisions are also the same as the provisions of Article 1 number 28 jo. Article 52 of Act no. 28 of 2009.

So it can be seen that in fact this Street Lighting Tax is a tax paid for the use of electricity in return for which the Regional Government provides street lighting for which the bill for street lighting must be paid by the Regional Government as stipulated in Act no. 34 of 2002 which used to be in effect before being amended by Act no. 28 of 2009. Therefore, if at this time the community asks for compensation from the Regional Government for providing public street lighting facilities around their settlements, it is clearly not wrong, because that is the basis for postulating such a thing because it refers to Act no. 34 of 2000 referred to. So the provisions of Article 1 number 28 jo. Article 52 of Act no. 28 of 2009 clearly results in the law having vague norms. So that the nomenclature or naming of the Street Lighting Tax is clearly a wrong thing if then the public is only asked to pay taxes on the use of electricity but then the public does not get a return on public street lighting facilities.

Act No. 28 of 2009 in particular the provisions of Article 1 number 28 jo. Article 52 must immediately make changes to the nomenclature or naming of the Street Lighting Tax so that there are no vague norms and so that the public does not interpret wildly on the Street Lighting Tax as regulated in Act no. 28 of 2009. Considering that in real practice, people who are not provided with public street lighting facilities around their settlements actually carry out illegal actions by installing public street lighting and connecting electricity lines to electricity installations belonging to the State Electricity Company (PLN) both in the line of electricity poles / transformers in PLN electricity pole.

### **3.2. Enforcement of Naming Street Lighting Tax in other countries**

The imposition of taxes on the usage of electricity as defined in Article 1 number 28 of Act no. 28 of 2009 which in this paper is considered to have the potential to cause misperceptions so that a change in tax naming must be made, then as input it would be very interesting if other considerations were also submitted in the form of tax naming

on the use of electrical energy applicable in other countries, which in this paper will be submitted from other countries such as Malaysia, Germany and the United States.

### 3.2.1. Malaysia

Malaysia's regulation is interesting to compare in terms of laws related to electricity because this country has the similar character of a society that is still in the Malay cultural family and furthermore Malaysia is a neighboring country with the closest distance but has very strong European law because it is one of the British Commonwealth countries. On the other hand, these two countries deserve to be compared because they are members of the Heads of ASEAN Power Utilities/Authorities (HAPUA), which is an association of companies and electricity authorities in 10 ASEAN countries.

The determination of the tax on electricity use in Malaysia is based on the Service Tax Act 2018, which states that the provision of electricity is designated as a taxable service subject to a 6% Service Tax. In this regard, as a registered Taxable Person, in this case, *Tenaga Nasional Berhad* (TNB) as an electricity operator controlled by the state such as State Owned Enterprises (SOE) or BUMN in Indonesia, is obliged to impose a Service Tax on the provision of electricity to customers who using electricity sourced from TNB.

The imposition of a 6% service tax consists of billing components, including:

- Electricity consumption (kWh)
- Imposition of discount (Service Tax will be charged after discount reduction)
- ICPT (Imbalance Cost Pass-Through) , which is a mechanism under the Incentive Based Regulation (IBR) framework which allows TNB as the utility to reflect changes (either increase or reduction) in fuel and other generation-related costs in the electricity tariff every six (6) months in the form of rebate or surcharge
- Temporary Load Charge or the imposition of a temporary load (incidental)

It should be noted that in Malaysia the imposition of a service tax is not related to the street lights around the customer. Service tax only applies to the billing component specified in the 4 points above. Other services like Connection Fee, Supply Application, Meter Accuracy Test are not subject to Service Tax. And it should be noted that not all customers are also subject to service tax.

So from the explanation of the imposition of taxes on electricity bills in Malaysia, the choice of the name Service Tax or Service Tax is used. This service tax is based on the use of electricity that has been compensated if there are discounts or other incidental programs. The concept of imposing a tax on the use of electricity is the same basis for the application of taxes in Indonesia, but the terminology used is the Electricity Service Tax so that the compensation for imposing a 6% electricity tax rate in Malaysia is the quality of electricity services.

### 3.2.2. German

The electricity tax in Germany was introduced in 1999 with the aim of increasing energy efficiency and enabling lower labor costs. The electricity tax increases electricity prices, thereby putting pressure on electricity usage savings.

Electricity tax in Germany is imposed based on electricity usage. The full rate is currently EUR 20.5 per MWh. Compared to the average annual wholesale price for

electricity, which ranged from around EUR 30 to EUR 65 per MWh between 2003 and 2010 (EEX, 2014), it can be seen that the tax rate in Germany is quite high.

This implies an effective tax on the carbon content of the unit of electricity, although this calculation boldly assumes that the power mix generation would not change, if the tax were imposed on CO<sub>2</sub> instead of electricity, this provides an alternative indication of the importance of the electricity tax.<sup>6</sup>

So from the explanation above, it can be seen that in Germany there is an imposition of an electricity tax based on the use of electricity which has a threshold which is intended to suppress environmental issues on energy use. The concept of a tax on the use of electricity is the same basis for the application of taxes in Indonesia, but the terminology used is the Electricity Tax so that the feedback from the imposition of electricity tax rates in Germany is to increase savings so that environmental issues are maintained.

### 3.2.3. United States of America

The tax mechanism in the United States is interesting compared to the fact that it is a developed country with a more established system and becomes a reference for other countries. It is more interesting because the tax system, especially in terms of taxes related to the use of electricity, has a different subject and imposition background.

The 2019 Taxing Energy Use report issued by the Organization for Economic Cooperation and Development (OECD), contains an explanation of how the United States imposes taxes on the use of some energy. The report explains that the distribution of the use of tax rates on energy will depend on the fuel used and the carbon produced domestically in the country. So that one of the goals of imposing a tax on energy in the United States is a return by the state to use the tax for the sake of saving the environment and the purpose of climate stability.<sup>7</sup>

The United States consists of states that have different regulations, but regarding the imposition of energy taxes, globally the tax rates are categorized based on the designation sector, namely Road, Off-road, Industry, Agriculture & Fisheries, Residential & Commercial, and Electricity. The tariff for this designation sector is further divided based on the fuel source, namely:

- Road sector, namely the energy use sector in vehicles on the road where tax rates are distinguished based on the use of diesel fuel, gasoline, and biofuels.
- Off-road sector, namely the energy use sector in vehicles at sea or in the air, where the tariff is differentiated through diesel fuel, kerosene, gasoline and natural gas.
- Industrial Sector, namely for the use of energy in industry where there is no imposition of tax rates
- Agriculture and Fisheries sector, also not subject to tax on energy use
- The Residential & Commercial sector is included in the sector that is not taxed on energy use.

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<sup>6</sup> Flues, Florens and Benjamin Johannes Lutz. (2015). *Competitiveness Impacts Of The German Electricity Tax*. Paris Cedex 16, France : Environment Working Paper No. 88.

<sup>7</sup> OECD. (2018). *Effective Carbon Rates 2018: Pricing Carbon Emissions Through Taxes and Emissions Trading*. Paris : OECD Publishing. <http://dx.doi.org/10.1787/9789264305304-en>.

- The Electricity sector is also not subject to a tax on energy, whether using fossil fuels, natural gas, biofuels, water, renewable energy, nuclear or other fuel sources.

Through the above explanation as well as some literature can be seen that the United States simply avoids taxes imposed on electricity use.<sup>8</sup> The main reason is that the price of electricity tariffs is already quite high in the country. so that it will add to the burden on users and on the other hand the United States prefers to issue a tax on carbon called a carbon tax on the use of fuels that produce carbon which has an impact on the environment.<sup>9</sup>

So in terms of terminology, what is used in the United States is Energy Tax, Electricity Tax, or Carbon Tax, where the naming of the tax is not related to the terminology of street lighting.

#### 4. Conclusion

Based on experience in conducting specific research on electricity taxes or in Indonesia mentioned as Street Light Tax, further development can be deepened through more comparative research in other countries and suggestions to relate the findings of legal consequences cases at the implementation level of the Street Lighting Tax nomenclature. Furthermore, the most important suggestion is a follow-up in the form of a change in terminology that is more appropriate to the law and other related regulations for the imposition of taxes on electricity consumption so that it becomes more targeted at the tax object.

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