

The Application of the Principles of Justice and Legal Certainty to Final Income Tax for Micro, Small and Medium Enterprises (MSMEs)

Ahmad Roni Akroma^{*)}

^{*)} Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, E-mail: ahmad.std@unissula.ac.id

Abstract. *This study aims to analyze the application of the principles of justice and legal certainty in Government Regulation No. 23 of 2018. This research is normative legal research, which uses library materials or secondary data through primary legal materials, secondary legal materials, and tertiary legal materials. The results of this study are First, there are justice criteria that have not been met by PP No. 23 of 2018, (i) There is no mechanism to filter business actors who have no profits or even suffer losses. (ii) Simplicity in calculating PPh, so that it is unable to accommodate the different characteristics of each type of business. And (iii) Abandonment of MSME layering. There is an element of injustice in PP No. 23 of 2018 above, demands a review of the PP. Second, the convenience principle promoted by the government in PP No. 23 of 2018, apart from having an element of injustice, reflects the absence of legal certainty considering that final PPh arrangements are stipulated in the law via Article 4 paragraph (2) letters a to Act No. 36 of 2008 concerning Income tax, furthermore the addition of final PPh objects in Article 4 paragraph (2) letter e regulated through PP. This is not in accordance with the characteristics of PP which cannot add or subtract provisions of the law. The principles of justice and legal certainty have a significant role in increasing taxpayer compliance in fulfilling obligations as law-abiding citizens.*

Keywords: Certainty; Fairness; Income; Tax.

1. Introduction

SystemLaw is a hierarchical arrangement in the order of norms and may not conflict between legal norms that apply either vertically or horizontally. In Indonesia, laws and regulations have a hierarchy contained in Article 7 of Law Number 12 of 2011 concerning Formation of Legislation. Hans Kelsen, who is known as the Stufenbau Theory, also put forward this legal theory about the

statutory hierarchy. Kelsen argues that basic norms are the reason for the validity of legal norms originating from the same legal order, so these basic norms are a unity of these various kinds of norms. This unity is also expressed by the fact that the legal order can be explained in legal rules which do not conflict with each other. Hans Kelsen explained that if there is a conflict between one norm and another, then the lower norm must obey the higher norm. Higher norms become the basis for the validity of lower norms¹.

One of the laws and regulations that has received attention from both policy makers and academics is the tax laws and regulations. In order to provide support to MSMEs that have a limited capital structure, the Indonesian government has issued a series of regulations and policies, some of these policies, namely the provision of social assistance, tax incentives, relaxation and credit restructuring, expansion of working capital financing, provision of product supports, and online training².

This is considering that MSMEs have an important role in improving economic performance, this condition is very possible because the existence of MSMEs is quite dominant in the Indonesian economy, with the reason that the number of industries is large and exists in every economic sector; great potential in employment, and the contribution of MSMEs in the formation of the Gross Domestic Product (GDP) is very dominant, besides that MSMEs also contribute to job creation. Empirical studies show that internationally, MSMEs are a source of job creation, so both globally and for Indonesia, MSMEs contribute positively to reducing unemployment³. Support for MSMEs is expected to be able to save the business sector from a difficult situation.

With regard to the contribution of tax revenue from the MSME sector, it is still relatively minimal, ranging from 5 trillion to 6 trillion rupiah annually and the number of MSMEs recorded in the tax system is also relatively small, with an amount of around 2.3 million.⁴ This shows that the compliance of MSME taxpayers in utilizing the tax incentives provided and in fulfilling their tax obligations is still low. This is most likely due to the lack of knowledge of MSME taxpayers in utilizing tax incentives and reporting taxes payable affecting MSME

¹Hans Kelsen, Hans, *Pure Legal Theory Fundamentals of Normative Law*, (Bandung: Nusa Media Publisher, 2011), p. 13

²Dani Sugiri, 2020. *Saving Micro, Small and Medium Enterprises from the Impact of the Covid-19 Pandemic*. *Business Focus: Management and Accounting Study Media*, 19(1), p. 80. Accessed via: <https://doi.org/10.32639/focusbusiness.v19i1.575>

³Ananda Uswatun Hasanah, et al., "The Role Of Information Technology In Improving The Competitiveness Of Small And SME Enterprises". *IAIC Transactions on Sustainable Digital Innovation (ITSDI Vol. 3 No. 2 April 2022)*. 168.

⁴Setiawan, DA (2020). Assessed as "Resilient", the Contribution of MSMEs to Taxes is Expected to Increase. *DDTC NEWS*, 1.

taxpayer compliance in fulfilling their rights and obligations. In addition to the lack of knowledge possessed, taxpayer compliance in Indonesia is still relatively low and taxpayers tend not to fulfill their tax obligations if it is not profitable for them, economic policies based on tax incentives issued by the government are expected to provide high benefits for taxpayers.

The existence of Final Income Tax for MSMEs received various different responses for MSME taxpayers (WP). There are those who welcome the rule for easy and simple reasons⁵. However, there are some MSMEs who feel that the basis for calculating PPh does not reflect the concept of justice⁶. Regardless of the form of business, regardless of the profit margin, they both use a 0.5% rate. This includes businesses that suffer losses and are also required to pay taxes, unless there is no business turnover in that month⁷.

The government is well aware that MSMEs are not business institutions that have good financial record administration, therefore the government provides convenience for MSMEs that use PP 23 of 2018 to calculate PPh, not to pay the final PPh because it has been borne by the government, as stated in the PMK Number 9/PMK.03/2021. Initially, the PPh was borne by the government only until July 2021. With consideration of accelerating the national economic recovery (PEN) from the impact of the Covid-19 pandemic, MSMEs can still enjoy PPh incentives borne by the government until 31 December 2021.

The large contribution of MSMEs to the national economy, but not accompanied by the large amount of tax revenue by the government from the MSME sector, indicates a miss-match between the contribution of MSMEs to GDP and the contribution of MSMEs to tax revenues. Based on the characteristics of MSMEs, it is necessary to have a strategy from the government to increase MSMEs compliance. The strategy for MSME groups who decide not to comply with the provisions (disengaged) is through full law enforcement, to provide a deterrent effect. Then for groups who do not want to obey, but will obey if the government pays attention to them (resisters) is prevention through early detection of tendencies to avoid taxes. While the group that tries to obey but has difficulty complying with the applicable provisions (tries),

Policy in the field of taxation for MSMEs is interesting to study more deeply, this cannot be separated from the multi-dimensional role of taxes, namely the

⁵Wijaya, S., & Arumningtias, D. (2021). Preventing The Potential Tax Avoidance in Government Regulation Of The Republic Of Indonesia Number 23 Of 2018. *Multicultural Education*, 7(1).

⁶Puspasari, ID (2020). The Dilemma of Taxation Law for Small Farmers. *International Journal of Religious and Cultural Studies*, 2(1), 11–18.

⁷Government of the Republic of Indonesia. (2018). Government Regulation Number 23 of 2018 concerning Income Tax on Income from Business Received or Earned by Taxpayers with Certain Gross Turnover (No. 23).

function of budgeting, regulating, stability, and redistribution of income⁸. On the one hand, the government requires large state revenues to finance the state budget in the current year. However, from the business actor's point of view, they must rack their brains on how to reduce their business expenses, including the tax burden⁹. Based on the description above related to a series of tax regulations, the contribution of MSMEs to GDP, the minimal contribution of tax revenue from the MSME sector, this study aims to analyze the application of the principles of justice and legal certainty through the principles that apply in taxation Government Regulation 23/2018 Income Tax for MSMEs .

2. Research Methods

This research is normative legal research, which uses library materials or secondary data through primary legal materials, secondary legal materials, and tertiary legal materials.¹⁰. Data collection techniques by means of document studies, namely examining statutory documents related to the object being discussed. The data analysis method is carried out through normative qualitative, namely analyzing data based on norms from laws and regulations through interpretation not using statistical data.

3. Result and Discussion

Changes in Government Regulation (PP) No. 46 of 2013 to PP No. 23 of 2018, of course not without reason, one of which is to be able to guarantee and encourage the public to participate in economic activities, provide convenience and fairness to taxpayers who have certain gross turnover for certain period of time, provide opportunities to contribute to the state, and knowledge of tax benefits for the community. Meanwhile, according to Henryd Marimis, the purpose of issuing PP No. 23 of 2018 is as a learning period for taxpayers who have gross circulation (all rewards or replacement values in the form of money or the value of money received or obtained from businesses, before deducting sales discounts, cash discounts,¹¹.

⁸The Function of Taxes as the Development of the Nation and State, Accessed via: <http://bphtb.asahankab.go.id:8182/post/fungsi-pajak-bagi-pembelian-bangsa-dan-negara>

⁹Marlinah, 2021. Utilizing MSME Tax Incentives in an Effort to Encourage National Economic Recovery. *Journal of IKRAH*, 4(98).

¹⁰Depri Liber Sonata. (2014). "Normative and Empirical Legal Research Methods: Typical Characteristics of Legal Research Methods", *Fiat Justisia Journal of Law Studies* Volume 8 No. 1, January-March 2014. ISSN 1978-5186.

¹¹Henryd Maramis, Government Regulation 23/2018 Income Tax for MSME, accessed via: <https://buk.ung.ac.id/home/berita/peraturan-Government-232018-pajak-penghasilan-umkm#:~:text=Peraturan%20Government%20Number%2023%20Year,commencing%20valid%201%20July%202018>).

PP No. 46 of 2013 which was amended by PP No. 23 of 2018 is intended for taxpayers who are classified as small businesses. Small Business is a productive economic business that stands alone, which is carried out by individuals or business entities that are not subsidiaries or not branches of companies that are owned, controlled, or become part either directly or indirectly of Medium or Large Businesses that meet the criteria for Small Business. Small. The criteria for Small Business are as follows:

- a. Have a net worth of more than IDR 50,000,000.00 (fifty million rupiah) up to a maximum of IDR 500,000,000.00 (five hundred million rupiah) excluding land and buildings for business premises; or
- b. Having annual sales proceeds of more than IDR 300,000,000.00 (three hundred million rupiahs) up to a maximum of IDR 2,500,000,000.00 (two billion five hundred million rupiahs). These criteria can be changed in nominal value in accordance with economic developments regulated by Presidential Regulation.

3.1. Application of the Principle of Justice in Imposing Final Income Tax for MSMEs

There have been several new things in the imposition of PPh for MSMEs since the enactment of PP 23 of 2018. First, the PPh rate used has decreased significantly, from 1% to 0.5%. Furthermore, regarding the time limit for using the final PPh mechanism for MSMEs, where the previous rules did not limit the use of this final PPh¹². Currently, the longest period of use of final PPh for MSMEs is seven years for individual taxpayers¹³. PP 23 of 2018 leaves problems with the application of tax justice, not only at the regulatory level but also in its implementation in the field. This issue needs to be managed closely by the DGT as a government institution that administers income tax revenues. If the taxpayer still sees injustice in taxation, it is feared that it will affect the level of trust in the government and ultimately affect tax compliance¹⁴.

Based on the literature study, several justice problems were found in PP No. 23 of 2018, that there are several problems of injustice in this PP, both for taxpayers and types of businesses, when it comes to the theory of fairness in taxes. There are justice criteria that have not been met by PP No. 23 of 2018, including: First,

¹²Government of the Republic of Indonesia. (2013). Government Regulation Number 46 of 2013 concerning Income Tax on Income from Business Received or Earned by Taxpayers with Certain Gross Turnover

¹³Government of the Republic of Indonesia. (2018). Government Regulation Number 23 of 2018 concerning Income Tax on Income from Business Received or Earned by Taxpayers with Certain Gross Turnover (No. 23).

¹⁴Nathania, AO, Astuti, TP, & Siddiq, FR (2021). Analysis of Factors Affecting MSME Taxpayer Compliance During the Covid-19 Pandemic. Accounting Research Forum, 9(2), 91–105.

there is no mechanism to filter business actors who have no profits or even suffer losses. Whereas in general PPh provisions, individual tax subjects who do not exceed PTKP are exempt from paying taxes. While the concept of tax equity requires parties who are subject to the same amount of tax are those who have the same benefits¹⁵. There is PP No. 23 of 2018 allows business actors who experience losses but choose to pay Final Income Tax will pay more Income Tax than those who pay Income Tax using the general mechanism.

If understood further, PP No. 23 of 2018 also accommodates the concept of fairness in calculating PPh, namely calculating using bookkeeping. This is reflected in the implementation of progressive rates and PTKP for individual taxpayers as well as the recognition of costs to reduce gross income for taxpayers in general. However, for MSMEs that use the bookkeeping method, it will be difficult because there is a demand to make financial reports every month.

Second, simplicity in calculating PPh, incompatibility with the next principle of justice comes from the government's enthusiasm to make PP 23 of 2018 calculations as simple as possible. The way to calculate PPh as a result of multiplying turnover and rates is indeed very easy for even micro entrepreneurs to do. However, this convenience must be redeemed by not accommodating the different characteristics of each type of business. Not to mention the difference in profit in each distribution chain, where producers, wholesalers and retailers have different considerations in determining the selling price¹⁶.

Third, neglect of UMKM layering. As stated in PP No. 7 of 2021, criteria for grouping MSMEs have been established, one of which is based on annual sales results. In fact, this is the right criterion, side by side with the criteria for business capital, in which the regulation applies a distinction in providing convenience, protection and empowerment for each layer of MSMEs. However, the principle of youth that is often echoed at the educational stage of PP No. 23 of 2018 by the DGT is always associated with MSMEs.

Even though there is not one sentence that explicitly states that PP No. 23 of 2018 is intended for MSMEs. The only narrative that exists is income tax on income from business received or earned by taxpayers who have a certain gross turnover. This problem is not only related to violations of the principles of justice horizontally, but also vertical justice. How could it not be, the enthusiasm to provide different treatment to each category of MSMEs cannot be implemented properly through PP No. 23 of 2018. In fact, the implementation of vertical tax

¹⁵Adam, S. (2011). Tax by design: The Mirrlees review (Vol. 2). Oxford University Press

¹⁶Arief Budi Wardana, Measuring Income Tax Fairness and Incentives for MSMEs During the Covid-19 Pandemic, Journal of Indonesian Taxes Vol.5, No.2, (2021), Hal.192-205

justice through progressive tax rates turns out to make the lower middle class in the United States feel happier, without reducing the happiness level of the upper class in the slightest¹⁷.

The three aspects that fulfill the injustice in PP No. 23 of 2018 above, provides an understanding that there is a need for a review of the PP, this is none other than MSME taxpayers who contribute dominantly to the national economy, also have a contribution to tax revenue by the state, in addition to a sense of justice in good laws and regulations Laws and government regulations will increase taxpayer compliance in fulfilling the rules that apply.

3.2. Application of Legal Certainty

Legal certainty is based on dogmatic juridical teachings originating from a positivistic school which tends to see law as something that is autonomous, independent because law is a collection of rules regardless of whether it is fair or not, the important thing is legal certainty is guaranteed. John Austin as a figure of positivism school said that law is apart from justice and its pros and cons because the science of law is tasked with analyzing the elements that actually exist in the modern legal system. The science of law is only related to positive law, namely law that is accepted without regard to its good and bad, because law is an order from sovereign political power in a country.¹⁸ Then according to Hans Kelsen, that law is a system of norms. Norms are statements that emphasize the "should" or *das sollen* aspects, by including some rules about what to do. Laws containing general rules serve as guidelines for individuals in legal behavior, both in interactions among individuals or in community groups.¹⁹

In *Stufen Theory* Hans Kelsen argues that legal norms are tiered and layered in a hierarchical arrangement, where a lower norm applies, is sourced, and is based on higher norms, higher norms apply, are sourced and are based on to a higher norm, and so on until it reaches a norm that cannot be traced further and is hypothetical and fictitious. So that the basic rules above are often referred to as "*grundnorm*" or "*ursprungnorm*", according to Kelsen, *grundnorm* in general is a meta *juridisch*, not a product of a legislature (*de wetgeving*), not part of statutory regulations, but is the source of all the source of the arrangement of laws and regulations that are under it²⁰.

¹⁷Oishi, S., Kushlev, K., & Schimmack, U. (2018). Progressive taxation, income inequality, and happiness. *American Psychologist*, 73(2), 157.

¹⁸Satjipto Rahardjo, *Law Studies*, (Bandung: Alumni 2006), p, 118

¹⁹Peter Mahmud Marzuki, *Introduction to Law*, (Jakarta: Kencana, 2008).

²⁰Ni'matul Huda. (2008). *The 1945 Constitution and the Re-Amendment Idea*, Jakarta: Rajawali Press.

As is the opinion of Purnadi Purbacaraka and Soerjono Soekanto in the formation of laws and regulations, it must pay attention to the principles of laws and regulations, among others, laws made by higher authorities have a high position as well (*Lex superiori derogat legi inferiori*); Laws that are specific will override or paralyze laws that are general in nature (*Lex specialis derogat legi generalis*)²¹.

The provisions regarding final PPh regulated in Article 4 paragraph (2) letter e of Act No. 36 of 2008 which was then implemented through PP No. 46 of 2013 which was amended by PP No. 23 of 2018 are juridically problematic because other final PPh objects are in the form of Law via Article 4 paragraph (2) letters a, b, c, d while letter e is regulated based on PP even though the object of the final PPh is equal, so the arrangements should also be equal in the form of a law. PP No. 23 of 2018 as the mandate referred to by Article 4 paragraph (2) letter e becomes biased. This is in line with the opinion of A Hamid S Attamimi, the characteristics of PP are:

- a. PP cannot be formed first without having a law as its parent;
- b. PP cannot include criminal sanctions if the law in question does not include criminal sanctions;
- c. PP provisions cannot add to or reduce the provisions of the law concerned;
- d. PP can be formed even though the provisions of the law concerned do not explicitly require it;
- e. PP provisions contain regulations or a combination of regulations and stipulations. PP does not contain determinations solely.

Based on the characteristics of PP point 3 "PP provisions cannot add to or reduce the provisions of the relevant law", then the addition of a sentence in Article 4 paragraph (2) of Act No. 36 of 2008 letter e "Other certain income", which is regulated by or based on Government Regulations be contrary to the characteristics of the PP itself resulting in legal uncertainty.

4. Conclusion

Based on the description above, at least two main conclusions can be drawn. First, there are criteria for fairness that have not been met by PP No. 23 of 2018,

²¹Akmal Rudin, *Juridical Analysis of the Return of the Decree of the People's Consultative Assembly (TAP MPR) in the Hierarchy of Legislation in Indonesia (Juridical Study of Article 7 of Law No. 10 of 2004 with Article 7 of Law No. 12 of 2011)* <http://repository.uin-suska.ac.id/7061/3/BAB%20II.pdf>, p. 32.

(i) There is no mechanism to filter business actors who have no profits or even suffer losses. (ii) Simplicity in calculating PPh, so that it is unable to accommodate the different characteristics of each type of business. And (iii) Abandonment of MSME layering. There is an element of injustice in PP No. 23 of 2018 above, demands a review of the PP. Second, the convenience principle promoted by the government in PP No. 23 of 2018, apart from having an element of injustice, reflects the absence of legal certainty considering that final PPh arrangements are regulated in law via Article 4 paragraph (2) letter as/d of Act No. 36 of 2008 concerning income tax, then the addition of the final PPh object in Article 4 paragraph (2) letter e is regulated through PP. This is not in accordance with the characteristics of PP which cannot add or subtract provisions of the law. The principles of justice and legal certainty have a significant role in increasing taxpayer compliance in fulfilling obligations as law-abiding citizens.

5. References

Adam, S. 2011. Tax by design: The Mirrlees review (Vol. 2). Oxford University Press

Budi Wardana, Arief. Measuring Income Tax Fairness and Incentives for MSMEs During the Covid-19 Pandemic. Journal of Indonesian Taxes Vol.5, No.2, (2021).

Government of the Republic of Indonesia. (2013). Government Regulation Number 46 of 2013 concerning Income Tax on Income from Business Received or Earned by Taxpayers with Certain Gross Turnover

Government of the Republic of Indonesia. (2018). Government Regulation Number 23 of 2018 concerning Income Tax on Income from Business Received or Earned by Taxpayers with Certain Gross Turnover (No. 23).

Hans Kelsen, Hans, Pure Legal Theory Fundamentals of Normative Law. Bandung: Nusa Media Publisher, 2011.

Huda, Ni'matul. The 1945 Constitution and the Re-Amendment Idea. Jakarta: Rajawali Press. 2008.

Liberal Sonata. depri. "Normative and Empirical Legal Research Methods: Typical Characteristics of Legal Research Methods", Fiat Justisia Journal of Law Studies Volume 8 No. 1, January-March 2014. ISSN 1978-5186.

Mahmud Marzuki, Peter. Introduction to Law. Jakarta: Kencana. 2008.

Maramis, Henry. Government Regulation 23/2018 MSME Income Tax. accessed via: <https://buk.ung.ac.id/home/berita/peraturan-Government-232018-pajak-penghasilan-umkm#:~:text=Peraturan%20Pemerintah%20Nomor%2023%20Tahun,start%20berlaku%201%20July%202018>).

Marlina. Utilizing MSME Tax Incentives in an Effort to Encourage National Economic Recovery. *Journal of IKRAH*, 4 2021. (98).

Nathania, AO, Astuti, TP, & Siddiq, FR (2021). Analysis of Factors Affecting MSME Taxpayer Compliance During the Covid-19 Pandemic. *Accounting Research Forum*, 9(2), 91–105.

Oishi, S., Kushlev, K., & Schimmack, U. (2018). Progressive taxation, income inequality, and happiness. *American Psychologist*, 73(2), 157.

Puspasari, ID (2020). The Dilemma of Taxation Law for Small Farmers. *International Journal of Religious and Cultural Studies*, 2(1), 11–18.

Rahardjo, Satjipto. *Legal studies*. Bandung: Alumni 2006.

Rudin, Akmal. Juridical Analysis of the Return of the Decree of the People's Consultative Assembly (TAP MPR) in the Hierarchy of Legislation in Indonesia (Juridical Study of Article 7 of Act No. 10 of 2004 with Article 7 of Act No. 12 of 2011) <http://repository.uin suska.ac.id/7061/3/BAB%20II.pdf>

Setiawan, DA (2020). Assessed as "Resilient", the Contribution of MSMEs to Taxes is Expected to Increase. *DDTC NEWS*, 1.

Sugiri, Dani. 2020. Saving Micro, Small and Medium Enterprises from the Impact of the Covid-19 Pandemic. *Business Focus: Management and Accounting Assessment Media*, 19(1) Accessed via: <https://doi.org/10.32639/FocusBusiness.v19i1.575>.

The Function of Taxes as the Development of the Nation and State, Accessed via: <http://bphtb.asahankab.go.id:8182/post/fungsi-pajak-bagi-pembelian-bangsa-dan-negara>.

Uswatun Hasanah, Ananda. et al., "The Role Of Information Technology In Improving The Competitiveness Of Small And SME Enterprises". *IAIC Transactions on Sustainable Digital Innovation (ITSDI Vol. 3 No. 2 April 2022)*. 168.

Wijaya, S., & Arumningtias, D. (2021). Preventing The Potential Tax Avoidance in Government Regulation Of The Republic Of Indonesia Number 23 Of 2018. *Multicultural Education*, 7(1).