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Imposition of Value Added Tax on Natural Stone Mining Products from the Creative Industry Reviewed Based on the Principle of Legal Certainty

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Abstract: The discussion of this title is motivated by the existence of problems, namely: First, based on the principle of certainty of tax law, that material tax law consisting of tax subjects, tax objects, tax rates and criminal sanctions must be regulated based on the Law, but the normative agreement is that tax objects in the form of mining products of the types of natural stones currently in effect are regulated in the form of Government Regulations. Second, based on the Government Regulation of the Republic of Indonesia No. 49 of 2022 Concerning Value Added Tax Exemption and Value Added Tax or Value Added Tax and Sales Tax on Luxury Goods Not Collected on Imports and/or Delivery of Certain Taxable Goods and/or Delivery of Certain Taxable Services and/or Utilization of Certain Taxable Services from Outside the Customs Area in Article 6 paragraph (1) mining or drilling products taken from their sources: asbestos, slate, semi-precious stones, limestone, pumice, gemstones, bentonite, dolomite, feldspar, rock salt (halite), graphite, granite/andesite, gypsum, calcite, kaolin, leucite, magnesite, mica, marble, nitrate, opsidiene, ochre, sand and gravel, quartz sand, perlite, phosphate, talc, fullers earth, diatomaceous earth, clay, alum, tras, jasper, zeolite, basalt, and trachyte. In practice, the Directorate General of Taxes imposes value added tax on mining goods in the form of natural stones from the creative industry. The results of the discussion conclude first, the legal position of imposing value added tax on mining goods in the form of types of natural stones regulated in the form of Government Regulations reviewed based on the principle of legal certainty is not appropriate, because it is contrary to the principle of legal certainty, not in accordance with the VAT Law and not in line with Article 23A of the third amendment to the 1945 Constitution. Second, the legal consequences of the imposition of value added tax by the Directorate General of Taxes on mining goods in the form of natural stones from the creative industry are invalid and cause losses for taxpayers.

Keywords: hierarchy of legislation; legal certainty; mining products; natural stone; Value Added Tax (VAT).

Introduction

The Government's task in national development to realize a welfare state in practice requires a lot of costs, and requires fast performance and resolution of various national development problems. To realize national development with fast performance, one of the policies of the legislators is the delegation of authority of the Law in the field of taxation. One of the significant tax collections for state treasury revenues is revenue from Value Added Tax (PPn) and Sales Tax on Luxury Goods (PPnBM). The object of discussion related to this PPn is the imposition of value added tax on goods resulting from natural stone mining from the creative industry. Based on Law No. 42 of 2009 concerning the Third Amendment to Law No. 8 of 1983 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods, Article 4A paragraph (2) states that:

The types of goods that are not subject to Value Added Tax are certain goods in the following groups of goods:

1. Mining or drilling products taken from the source;
2. Basic necessities that are really needed by the people;
3. Food and drink served in hotels, restaurants, eateries, stalls and the like, including food and drink whether consumed on the premises or not, including food and drink delivered by catering or catering services; and
4. Money, gold bullion, and securities.
5. Dsd

The categories that include mining products or drilling products taken directly from the source as stated in Article 4 paragraph (2) letter a of the VAT Law above, the details are explained in the explanation of the VAT Law in Article 4A paragraph (2) namely "Mining products or drilling products taken directly from the source include: crude oil; natural gas, excluding natural gas such as LPG which is ready for direct consumption by the public; geothermal; asbestos, slate, semi-precious stones, limestone, pumice, gemstones, bentonite, dolomite, feldspar, rock salt (halite), graphite, granite/andesite, gypsum, calcite, kaolin, leucite, magnesite, mica, marble, nitrate, opoxide, ochre, sand and gravel, quartz sand, perlite, phosphate, talc, fullers earth, diatomaceous earth, clay, alum, trass, jarrosif, zeolite, basalts, and trachytes; coal before processing into coal briquettes; and iron ore, tin ore, gold ore, copper ore, nickel ore, silver ore and bauxite ore."

Based on the material content of Article 4 A paragraph (2) letter a and the explanation of the material content of Article 4 paragraph (2) letter d of the Law as mentioned above, in relation to the object of discussion regarding natural stones, that goods that are not subject to Value Added Tax are certain goods in the form of: asbestos, slate, semi-precious stones, limestone, pumice, precious stones, bentonite, dolomite, feldspar, rock salt (halite), graphite, granite/andesite, gypsum, calcite, kaolin, leucite, magnesite, mica, marble, nitrate, opsidiene, ochre, sand and gravel, quartz sand, perlite, phosphate, talc, absorbent soil (fullers earth), diatomaceous earth, clay, alum, trass, jarrosif, zeolite, basalt, and trachyte. For further Article 4A paragraph (2) letter a. Law No. 42 of 2009 concerning Value Added Tax and Sales Tax on Luxury Goods has been removed by Article 4A paragraph (2) of Law No. 7 of 2021 concerning Harmonization of Tax Regulations which states: Types of goods that are not subject to Value Added Tax, namely certain goods in the following groups of goods: food and drinks served in hotels, restaurants, eateries, stalls, and the like, including food and drinks whether consumed on the premises or not, including food and drinks delivered by catering or catering services, 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 money, gold bullion for the benefit of state foreign exchange reserves, and securities.

This deletion must be understood as simultaneously revoking the explanation of Article 4A paragraph 2 letter d of the same VAT Law. Subsequently, the Government issued Government Regulation (PP) of the Republic of Indonesia No. 49 of 2022 Concerning Value Added Tax Exemption and Value Added Tax or Value Added Tax and Sales Tax on Luxury Goods Not Collected on Imports and/or Delivery of Certain Taxable Goods and/or Delivery of Certain Taxable Services and/or Utilization of Certain Taxable Services from Outside the Customs Area, in Article 6 paragraph (1) reads: Certain strategic Taxable Goods whose imports are exempt from Value Added Tax include: "Mining products or drilling products taken directly from the source, excluding coal mining products, including: Asbestos, slate, semi-precious stones, limestone, pumice, gemstones, bentonite, dolomite, feldspar, rock salt (hnlite), graphite, granite/andesite, gtps, calcite, kaolin, leucite, magnesite, mica, maffner, nitrate, obsidian, ocher, sand and gravel, quartz sand, perlite, phosphate, talc, absorbent soil (fullers earth), diatomaceous earth, clay, alum (alum | tras, jarosite, zeolite, basalt, trachyte, and sulfur, the limits and criteria of which can be regulated by Ministerial Regulation".

The discussion problem is first, based on the principle of certainty of tax law, that material tax law consisting of tax subjects, tax objects, tax rates and criminal sanctions, must be regulated based on the Law, but the normative agreement is that tax objects in the form of types of natural stone are regulated in the form of PP. Second, the Government, through the Director General of Taxes, imposes value-added tax on mining products in the form of natural stone, creative industry products, based on the same PPn and PPnBM Laws in Article 4 paragraph (1) regarding Value Added Tax imposed on a. Delivery of taxable goods within the customs area carried out by entrepreneurs. Mining goods in the form of types of natural stone listed in the explanation of Article 4 A paragraph (2) of the PPn Law which have been removed by the tax harmonization law and re-regulated in the form of PP, should not be subject to PP, because they are included in goods that are exempt from the imposition of PP. This discussion is supported by the existence of a case pact in the community, namely PT Stones of Eden is a foreign company engaged in the business of selling exported natural stone goods from the creative industry in the form of andesite stone (mountain stone) and marble stone, with an address at the Bumi Panyileukan Complex, Citra Block AB 11 No. 10, Bandung City. Andesite stone (mountain stone) and marble stone creative industry (handicrafts) by only using glue attached to the collar material so that it becomes a tile material that can be sold.

Method

This research uses a normative legal research method (normative juridical). This can be seen from the focus of the discussion which examines the synchronization of laws and regulations, legal principles, and applicable legal norms related to the imposition of Value Added Tax (VAT) on natural stone. So, the regulation of tax objects in the form of mining goods of various types of natural stone is included in the explanation of the law, according to Rochmat Soemitro, it is not binding or in the Author's Language is not justified because it does not have legal certainty. Bagir Manan is of the opinion that the official explanation is not a rule, therefore it does not have legal force as a rule. Law enforcers or other law enforcers and anyone else are also bound by the provisions in the body of the Law or PP, but are not bound by the explanation. The judge can set aside the official explanation by using the interpretation method. Tax objects regulated based on the explanation of the law have been removed by Article 4A paragraph (2) of Law No. 7 of 2021 concerning Harmonization of Tax Regulations. Subsequently, the Government issued PP No. No. 49 of 2022 concerning Value Added Tax Exemption and Value Added Tax or Value Added Tax and Sales Tax on Luxury Goods Not Collected on Imports and/or Delivery of Certain Taxable Goods and/or Delivery of Certain Taxable Services and/or Utilization of Certain Taxable Services from Outside the Customs Area, Article 6 paragraph (1) reads: Certain strategic Taxable Goods whose imports are exempt from the imposition of Value Added Tax.

Results and Discussion

The concept of compulsory taxation

The meaning of conception according to the Big Indonesian Dictionary is understanding or opinion (understanding) (Pusat Bahasa, 2023). In other words, conception is the development of an image to translate an idea or concept that is usually in the form of words. The difference between conception and the meaning or definition used in everyday life, conception is broader than the meaning or definition of a word. Conception is directed as an effort to bring something from the abstract to the concrete which is called an operational definition (Sjahdeini, 2009). Taxation, the basic word for tax, means a mandatory levy, usually in the form of money that must be paid by residents as a mandatory contribution to the state or government in relation to income, ownership, purchase price of goods, etc. (Pusat Bahasa, 2023). There are several terms for mentioning taxes in foreign languages, namely tax, import contribution, taxe, droit (French), steser, abgabe, gebuhr (German), impuesto contribution, tribute, gravamen, tasa (Spanish), and belasting (Dutch). In the United States, besides the term tax, the term tariff is also known (Nurmantu, 2003). In Arabic, it is called dharibah, which comes from the word (phrase) dhraraba yadribu dharban. It means to oblige, determine, determine, hit, explain or charge, and so on (Al-Munawwir, 1997).

Doctrinally, in defining taxes, some include the term or element of coercion or can be forced and some should avoid using the term coercion or can be forced. Experts who include the element of coercion include: P.J.A. Adriani stated that tax is a contribution to the state (which can be forced) which is owed by those who are obliged to pay it according to the regulations without getting any repayment, which can be directly appointed and the purpose of which is to finance general expenses related to the state's task of organizing government.

Edwin R.A. Seligman in his essay in Taxation (NewYork, 1925) stated: A tax is a compulsory contribution from the person to the government to defray the expenses incurred in the common interest of all without reference to special benefits conferred. " (Munawwir, 1997) This means that tax is a forced contribution from individuals to the government to finance expenses related to the interests of the public (general), without being able to show any special benefits to it. Rochmat Soemitro stated that tax is a transfer of wealth from the private sector to the public sector based on the law that can be forced without receiving compensation (tegenprestatie) that can be directly shown, which is used to finance general expenses and which is used as a means of encouragement, inhibition or prevention to achieve goals that are outside the field of state finances (Soemitro, 1988).

According to C.F. Bastble, tax is "a compulsory contribution of the wealth of a person or body of persons for the service of the public powers." The definition in French is contained in Leroy Beaulieu's book entitled Traite de la Science des Finances, 1906 which reads: L' impot et La contribution, soit directe soit dissimulee, que La Puissance Publique exige des habitants ou des biens pur subvenir aux depenses du Gouvernment". Tax is assistance, either directly or indirectly imposed by the public power from the population or from goods, to cover government spending" (Brotodihardjo, 2003).

N.J. Feldmann, dalam bukunya The government resources of Indonesia, Leiden, 1949, antara lain; Taxes are enforceable pretties owed to the government (according to general standards established by it), for which no consideration is required and they serve solely to cover public expenditure. M. J.H. Smeets dalam bukunya The Economic Meaning of Taxes, pay the following: Taxes are enforceable pretties owed to the overhead (according to standards), without any demonstrable consideration in the individual case; they serve to cover public expenditure. *Artinya* Pay the following: *pemerintah yang terutang melalui norma-norma umum dan yang dapat dipaksakan, tanpa adakalanya kontraprestasi yang dapat ditunjukan dalam hal yang individual; maksudnya adalah untuk membiayai pengeluaran pemerintah* (Brotodihardjo, 2003).

This is different from the definition of tax put forward by others, where tax does not use the term coercion or can be forced, including: H.C. Adam, Tax as "Contribution from the citizen to the support of the state" (Seligman, 1899). In the German Reichs abgaben ordnung (RAO) Tax Law it is said: "Steuern sind einmaligen oder laufende Geldleistungen die nicht eine Gegenleistung fur eine besondere Leistung darstellen und von einem offentlichrechtlichen Gemeinwesen zur Erzielung von Einkunften allen auferlegt warden, bei denen der Tatbestand zutrifft, an den das Gesetz die Leistungspflicht knupft". It means; Tax is a payment (performance) of money at once or repeatedly, which does not have any reciprocal service for a special service from the people, which is collected by a general legal entity from every person to obtain income, if it is fulfilled the Tatbestand required by law (Brotodihardjo, 2003). Yusuf Qardhawi: Tax is an obligation set for taxpayers, which must be paid to the state in accordance with the provisions, without receiving any performance in return from the state, and the results are used to finance expenses (Al-Qaradawi, 1973).

Gazi Inayah: Tax is an obligation to pay cash determined by the government or authorized officials that is binding without any specific compensation. This government provision is in accordance with the ability of the owner of the property and is allocated to meet general food needs and to meet the demands of the government's financial policy (Inayah, 1995). Soeparman Soemahamidjaja, in his dissertation entitled "Tax Based on the Principle of Mutual Cooperation", Tax is: Mandatory contributions, in the form of money or goods collected by the authorities based on legal norms, to cover the costs of producing goods and collective services in achieving general welfare (Soemahamidjaja, 1964). By creating mandatory contributions, the characteristic has been fulfilled, that taxes are collected with the help and cooperation of taxpayers. At the same time, the use of the term coercion in tax collection is also avoided. An obligation based on law must be carried out, this applies to all types of obligations regulated by law. If the obligation is not carried out, the law also indicates another way of implementing it, this does not only apply to taxes.

The mandatory tax levy mentioned in a Basic Law or so-called constitution, is inappropriate. Because this is contrary to the nature of a constitution, namely, containing and describing a thought (statement) about the philosophy, morals, ideals of a nation, the goals of the state, and the personality of the nation. To strengthen this view, this was put forward by C.S.T. Kansil UUD is a charter that states the ideals of the nation and contains the basic outlines and goals of the state (Kansil, 1979). According to Abu Daud Busroh, the constitution in the ideal sense (idealbegriff der verfassung) is a vessel that accommodates the ideals of the nation (Busroh, 2009). The constitution contains the meaning as a vessel that accommodates an idea, so the idea is listed one by one as the content of the constitution. The ideal as the content of a constitution that wants the authorities to not act arbitrarily and also as a guarantee for the people that their basic rights are protected as stated in the preamble to the 1945 Constitution, paragraph 4.

The word "forced" or "coercible" is included in this constitution, which illustrates that the Indonesian people do not have the legal awareness to pay taxes, even though in reality only a small portion of the people still lack the awareness to pay taxes. The drafters of the 1945 Constitution of the Republic of Indonesia paid little attention to local wisdom, namely the spirit of the nation (volkgeist). As the theory put forward by Von Savigny, that every nation has its own spirit called Volkgeist (soul of the people/soul of the nation). Indonesian society is a cultured society, even more than that, a religious society (especially based on religious values of devotion to God Almighty), by itself, that paying taxes is a commendable act for the benefit of all of us in our national and state life for the purpose of spiritual and material well-being. In line with the opinion of Abdul Asri Harahap:

> Ideally, taxpayers should fulfill their obligations without being forced by state apparatus, as the law regulates and requires it. This is the condition expected of the self-assessment system, where the obligation to calculate, account for, pay, and report taxes owed is carried out by taxpayers themselves. From a legalistic perspective, tax collection in Indonesia is enforceable because it is based on law. However, because the tax collection system in Indonesia adheres to a self-assessment system, coercive tax collection cannot be simply implemented. The use of coercive measures must be a last resort and must be carried out selectively. For example, against taxpayers who are stubborn after being given various warnings and warnings, both verbal and written, of course after there is sufficient evidence. A persuasive approach must certainly be prioritized to foster awareness and compliance. Because, as previously stated, the main key to a self-assessment tax collection system is voluntary compliance, not coercion.

In another statement, Harahap said:

> In general, theories of compliance can be classified into coercion theory (dwang theory) and consensus theory. According to coercion theory, people obey the law because of the coercive element of the legal power of the ruler. This theory is based on the assumption that physical coercion, which is the monopoly of the ruler, is the basis for creating order, which is the goal of law. Therefore, according to coercion theory, the element of sanctions is a factor that causes people to obey the law. The problem is that if a legal rule is based solely on sanctions as a demand for compliance, it will actually reduce the authority of the law, both for the law itself and for law enforcers. Often, coercion regarding the validity of the law and compliance with it will be superficial because it is not rooted in existing social values. According to consensus theory, the basis of legal compliance lies in societal acceptance of the legal system, namely as the basis for legal legality. It is said that this latter theory is in line with efforts to achieve voluntary taxpayer compliance (Harahap, 2004).

Legal status of VAT on natural stone mined at source

The problem in this discussion is that the objects of value added tax on mining or drilling products taken from their sources are: Asbestos, slate, semi-precious stones, limestone, pumice, gemstones, bentonite, dolomite, feldspar, rock salt (halite), graphite, granite/andesite, gypsum, calcite, kaolin, leucite, magnesite, mica, marble, nitrate, opsidiene, ochre, sand and gravel, quartz sand, perlite, phosphate, talc, fullers earth, diatomaceous earth, clay, alum, trass, jarrosive, zeolite, basalt, and trachyte are regulated based on one type of legislation, namely in the form of Government Regulations. In discussing this issue, to strengthen the principle of legal certainty as an analytical tool in resolving the problem, the Pancasila theory of the rule of law will be used first. When viewed from the perspective of the theory of the rule of law based on the 1945 Constitution, laws and regulations, including the position of the 1945 Constitution, play a vital role in national development, considering several reasons, including the following:

1. The 1945 Constitution adheres to a constitutional system which means that every government action is intended to implement the Constitution as the highest legal basis.
2. The 1945 Constitution concerning the division of governmental powers, namely by determining the existence of a legislative body (DPR) which has the task together with the President to make laws, even according to the 1945 Constitution, there are at least 17 areas which must be regulated in (organic) laws (Fitriana, 2018).

Based on the above thinking, in relation to the basis of tax collection, it can be stated that in the context of a Pancasila state based on the 1945 Constitution, the Government has no other way but to comply with and implement Article 23 A of the third amendment to the 1945 Constitution, which states: Taxes and other compulsory levies for state purposes are regulated by law. With the exception of the word compulsory in the text. Although Article 23 A does not explicitly regulate the (core) elements of taxes that must be regulated by law, it can be understood that without core elements, such as tax subjects, tax objects, tax rates, and sanctions, especially criminal sanctions, there will be no such thing as tax collection by the Government (Directorate General of Taxes). The government collects taxes without a subject, whether an individual or a legal entity, so it cannot collect taxes. The government collects taxes without a tax object, yes it cannot, the government collects taxes without a tax rate, yes 0 percent (%). Likewise, the government collects taxes without criminal sanctions, it is certain that taxpayers will not want to pay taxes. These elements are referred to as the core elements of taxation. Therefore, it can be stated that the core elements of taxation that must be regulated by law are the tax subject, tax object, tax rate, and criminal tax sanctions.

These core elements of tax give rise to the principle of tax legal certainty. Based on literature research, Adam Smith (1723-1790) stated: Certainty, the tax that each individual is bound to pay ought to be certain, and not arbitrary. The time of payment, the manner of payment, the quantity to be paid, ought all to be clear and plain to the contributor and to every other person (Smith, 2026). This means Certainty, the tax that must be paid by an individual must be certain and not arbitrary. The time of payment, the method of payment, the amount to be paid, must be clear and firm for the payer and for everyone else. This Certainty is interpreted by R. Santoso Brotodihardjo, that the most important legal certainty is the tax subject, the tax object, the amount of tax, and also regarding the time of payment (Brotodihardjo, 2003). This legal certainty is expanded by Rohmat Soemitro who states:

The provisions of material tax law must absolutely be placed in the Law and these material legal provisions include the tax subject, tax object and tax rate, so that the Law must be determined firmly and clearly, who (the tax subject) is subject to tax, what (the object) is subject to tax, and how much tax (rate). All of this is to provide legal certainty. If these three things are not clearly and firmly determined in the Law, then there is great doubt about the existence of legal certainty, and it is even very worrying that through the interpretation of the subject, objects that are not intended to be the target will be subject to tax (Soemitro, 1988).

Furthermore, the principle of legal certainty as stated by Rochmat Soemitro, the author adds that there are 4 (four) core elements of tax, namely Tax Subject, Tax Object, Tax Rate and Tax Criminal Sanction, and the name of the principle is the principle of tax legal certainty, so that there is a distinction between the principle of legal certainty with other legal systems. Thus, there is a correlation of conceptual understanding, between the material contained in Article 23 A of the third amendment to the 1945 Constitution and the legal principle, which lies in the first, that tax collection by the Government must be based on Law. Second, the way out to find the most important tax elements that must be regulated by Law, as stated in Article 23 A of the third amendment to the 1945 Constitution, namely through the discovery of legal principles. The legal principle in question is the principle of legal certainty. Based on the principle of legal certainty, it can be seen that the most important elements that must be regulated by Law in Article 23 A of the third amendment to the 1945 Constitution, namely tax subjects, tax objects, tax rates, and tax sanctions, especially tax criminal sanctions.

With the principle of legal certainty, tax can be known, whether the regulation of the tax object of mining goods of the types of natural stone regulated in the explanation of Article 4 paragraph (2) of Law No. 42 of 2009 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods is correct? Based on the principle of legal certainty, Rochmat Soemitro explains: In the creation of new tax laws, less attention is paid to which matters should be included in the provisions of the law and which matters are sufficient to be included in the explanatory memorandum, so that many material provisions that should be included in the law, are included in the explanation. It should be understood that the explanation is not a law (therefore included in the supplement to the State Gazette) and the provisions contained therein, are not binding provisions, but only serve as guidelines for the implementation of the law in question (Soemitro, 1988). Values include:

Mining products or drilling products taken directly from the source, excluding coal mining products, include: Asbestos, slate, semi-precious stones, limestone, pumice, gemstones, bentonite, dolomite, feldspar, rock salt (hnlite), graphite, granite/andesite, gtps, calcite, kaolin, leucite, magnesite, mica, maffner, nitrate, obsidian, ochre, sand and gravel, quartz sand, perlite, phosphate, talc, absorbent soil (fullers earth), diatomaceous earth, clay, alum (alum|tras, jarosite, zeolite, basalt, trachyte, and sulfur, the limits and criteria of which can be regulated by Ministerial Regulation.

Article 5 paragraph (2) of the 1945 Constitution of the Republic of Indonesia: The President establishes government regulations to implement laws properly. PP is the result of the delegation of authority from the Law. Therefore, it has very limited authority, in other words, the contents of the PP regulate the administrative procedures/technicals to implement the contents of the law. This is related to the contents of the tax. The contents of the PP regulate the administrative procedures/technicals of taxation to implement the contents of the tax law. Willem Konjnenbelt views the contents of Article 5 paragraph (2) of the 1945 Constitution as meaning that the President has general authority to implement laws. This general authority raises two problems, whether the President has general authority or must be delegated from the Law. I agree with the first. According to Bagir Manan, the source of the formation of PP as implementing regulations for the Law can come from the regulatory authority (regelen funcitie) inherent in state administration (original power) and from delegation (Fitriana, 2018). Regarding the source of the PP's formation, which can originate from the authority to regulate, Bagir Manan and Kuntana Magnar clarify that PP is not only limited to matters that are expressly stated to be implemented or will be further regulated by PP (expressis). Although there is no affirmation in the law, if the President ..., considers it necessary to regulate further in PP, this also includes the definition of implementing the law (Manan, 2004).

Based on this thinking, it can clarify the understanding of the formation of PP as implementing regulations of the Law can be sourced from the regulatory authority inherent in the state administration with the understanding that the PP is formed can be sourced from an unclear delegation, that both contain the same meaning. It contains the intention, that the authority to make PP is with the President, PP is made to implement the Law. In relation to the formation of PP No. 49 of 2022 concerning Value Added Tax Exemption and Value Added Tax or Value Added Tax and Sales Tax on Luxury Goods Not Collected on Imports and/or Delivery of Certain Taxable Goods and/or Delivery of Certain Taxable Services and/or Use of Certain Taxable Services From Outside the Customs Area, in Article 6 paragraph (1) it reads: Certain strategic Taxable Goods whose imports are exempt from Value Added Tax originate from the original, namely, the regulatory authority inherent in the state administration. Is the only taxable object, namely mining goods of various types of natural stone, allowed to be regulated in the form of regulations under the Law? According to Rochmat Soemiro, the Minister can only change the tariff if he is expressly authorized by law (Soemitro, 1988). The author argues otherwise, that material tax law, which consists of the tax subject, tax object, tax rate, and criminal tax sanctions, may not be delegated by law to regulations below the law, including changing the tariff. If this were done, it would be the same as returning to the tax collection system of the past (an absolute state).

Bagir Manan that the principle of legal certainty has a protective function, both for the tax authorities and the people as taxpayers, considering that taxes are the transfer of people's assets to the state, therefore the imposition of taxes cannot be applied retroactively. Taxes cannot be imposed on tatbestand that occurred before the enactment of the tax law (non-retroactive). A legal rule cannot be applied retroactively if it will create a burden (new or heavier) for those affected (Manan, 2004). In the theory of legal certainty, the tax subject, tax object, and tax rate are regulated by law. This provision is the basis for tax imposition that applies universally in a democratic country, not by lower regulations, such as Government Regulations (PP), Decrees of the Minister of Finance, let alone a decree of the Directorate General of Taxes (DGT). Taxes are regulated by law because they are a burden and cut into our own flesh. Taxes are the people's blood, the people's heart, and the people's veins. Taxes do not provide compensation. The transfer of wealth without compensation is only a form of robbery, theft, and plunder, therefore it requires the people's consent obtained through the House of Representatives (DPR).

In other words, it must be based on law. Taxes regulated by law are the embodiment of constitutional democracy, which cannot be separated from the rule of law and state administrative law. Constitutional democracy can be likened to roots that creep underground to build a strong foundation, while the rule of law and administrative law can be likened to a tree and its shady leaves. As an implementing regulation of Article 23A of the third amendment to the 1945 Constitution, taxes are regulated by law. One of these is the VAT Law No. 42 of 2009 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods, Article 1 paragraph (3) states: "Taxable goods are goods that are subject to tax based on this Law (VAT Law)".

In this case, the state as a tax collector through the Director General of Taxes, in addition to implementing Article 23 A of the third amendment to the 1945 Constitution, must also implement Article 1 paragraph (3) No. 42 of 2009 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods, that taxable goods are goods that are subject to tax based on the Law. If using a systematic interpretation method, namely an interpretation that connects one article with other articles in a particular statutory regulation, so that we can understand the meaning of the sound of the material between one article and another. The interpretation begins by examining the concept of the principle of legal certainty, the material content of Article 23 A of the third amendment to the 1945 Constitution of the Republic of Indonesia and the function of PP, then the regulation of tax objects, namely mining goods in the form of types of natural stone regulated in the form of PP is inappropriate. For this reason, the regulation of tax objects for mining goods in the form of types of natural stone must be regulated in the VAT tax law clearly and firmly.

Legal consequences of VAT on natural-stone mining for the creative industry

In practice, the government through the Directorate General of Taxation imposes value added tax (VAT) on natural stone mining products from the creative industry. What is meant by creative natural stone here is natural stone taken from its source that has undergone a sawing process by craftsmen, which is then processed by the business actor PT Stones of Eden with an address at Bumi Panyileukan Complex, Citra Block AB 11 No. 10, Bandung City, a foreign capital company that has a valid establishment permit. The PT is engaged in the trading and export of goods from natural stone (andesite stone - mountain stone) and marble purchased directly from Tulung Agung, East Java as a seller) in the first state, in the form of slab stone, which is sawed by a sawer, and second, in the state of intact stone, which is then packaged by PT Stones of Eden in the form of a creative industry (handicraft) by using glue attached to the collar material so that it becomes a tile material that can be sold.

The Directorate General of Taxes, in this case the Cicadas Tax Office of Bandung City, issued a tax audit report for 2011, and PT Stones of Eden had to sign it with a tax payment amount for 2011 of 1.2 billion for all the audit results they had carried out. The examination material can be explained as follows:

Matter 1 (material 1)

1. That in the 2011 report, there was a clause that reported export sales of around 700,000,000.00. This means that in the 2011 report, there was a clause that reported export sales of around 700,000,000.00.
2. According to the tax officer, there was no evidence in that report that SOE was the exporting company. This is because the goods were transferred abroad from the Indonesian customs district by another party. This means that according to the tax office, there is no evidence in the report that the company in question is the exporter, as the export or transfer of goods outside the Indonesian customs area was carried out by another party.
3. That base on the fact that there was no proof that SEE was the party who sent the material out of Indonesian customs, but the evidence is showing us that the third party (sender) was the party who did this. So the tax officer states and disputes SEE is not doing an export activity, but doing the overhanding activities which is can be assumed as local sale. Meaning: That based on the report there is no evidence regarding the delivery of goods outside Indonesian customs, but rather there is evidence regarding the delivery of goods from PT Stones of Eden to a third party as the sender, then based on this evidence, the tax officer states that PT Stones of Eden did not export the goods, but made local sales.
4. That inserted by that report, there was the agreement letter between PT Sones of Eden and the buyer, which was written there that the buyer is the one who will choose the party who will send the goods that they (buyer) buy from PT Stones of Eden. This means: That in the report, there is an agreement letter between the buyer and PT Stones, which states that the buyer will appoint a third party outside PT Stones to make deliveries to the buyer for the goods purchased from PT Stones.
5. That agreement letter also states that the buyer is responsible for all costs resulting from the delivery of the goods, which is handled by a chosen third party. This means that the agreement also states that the buyer will pay all costs incurred as a result of the delivery carried out by the third party they designate.
6. In this situation, PT Stones is the only party keeping the records and bookkeeping of the goods taken over by the chosen party as the sender by the buyer. PT Stones also requires the buyer to pay PT Stones for the goods taken over by the chosen party from PT Stones. This means that PT Stones, in this case, only records the number of goods sent through a third party appointed by the buyer and bills the buyer for the goods sent to them through the third party they appoint.
7. That's based on the fact that, for this overhandling of the goods, we are the passive party in sending the material abroad. Based on these facts, in this case, PT Stones is the passive party in sending the goods abroad.
8. That the statement and dispute over the local sales between PT Stones and the third party are totally unfounded. This means that the tax office's determination regarding the local sales made by PT Stones to the third party (the sender) is baseless.
9. To demonstrate and prove that there was a local sale, as the tax officer assumed, it must be proven that there was a transaction between the buyer and the seller. In the case of overtaking, which is done by the buyer from PT Stones, that the buyer takes the ordered goods from PT Stones by themselves. And for this taking, the buyer asked and ordered the chosen party to take the goods from PT Stones and send them to them. So it is clear that there is PT Stone and the third party chosen by the buyer to do the overtaking, but the transaction and cash flows that were done are directly between PT Stones and the buyer. This means that to show the existence of a local sale, it must be proven by a transaction between the local sale, it must be proven by a transaction between the seller and the buyer.

In the case of the taking of goods carried out by the buyer from PT Stones, the buyer instructed the third party. In this case, the sender takes the goods from PT Stones at PT Stones' premises, and in this case, there is no transaction or cash flow between PT Stones and the third party instructed by the buyer, but the transaction for the goods is between PT Stones and the buyer directly.

10. That base on the conditions of article of… about the goods and service which were set as ppn object, clearly declared that must hav 3 condition
    a. The goods are realy the object of tax.
    b. There must be overhanding activities which is held in Indonesian distric of pabean.
    c. That activities must be done by the businessman which is conescted by the producing of that goods.
    d. done by the businessman which is conescted by the producing of that goods.

This means: Based on the provisions regarding goods and services subject to VAT, it is clearly stated that they must fulfill 3 elements:

a. The item is a taxable object.
b. There was a delivery of goods within the Indonesian Customs area.
c. Carried out by entrepreneurs related to the production of the goods.

Matter 2

That in the short investigation period, tax officers have the resume which they made on behalf of themselves that what PT Stones did as the activity was about the act of local sales, and it was classified as the object of VAT, and in that investigation, the calculation that they are doing is the calculation which was taken from the data of the turnover of sales abroad (or to the buyer) which is clearly shown that the buyer is not in the Indonesian area. This means that in the investigation, the tax officers still believe that the goods transferred to the sender are included in the object of VAT, with the calculation being based on sales turnover. This is because according to the 2008 law, PEB is no longer allowed to use under name, but must be done by the producer itself with the provision that they must have a permit as an exporter. Based on the explanation above, it can be clarified as follows:

1. PT Stones of Eden, a foreign company investing in Indonesia, exports natural stone products from the creative industry through a third party upon orders from buyers outside Indonesia's customs area. Therefore, in this case, no direct export sales were made to the buyers. This is evidenced by the VAT periodic tax returns for January-December 2010 and 2011. PT Stones reported exports, but the Directorate General of Taxes (DGT) data does not show any PEBs in the name of PT Stones of Eden.
2. The tax officer is of the view that what PT Stones of Eden did was a local sales action and this is the object of VAT. Local sales by PT means that the delivery of goods from PT Stones of Eden to the exporter who owns the quota is a delivery of goods subject to domestic tax and is subject to 10% VAT in accordance with the Income Tax Law No. 36 of 2008. The calculation of tax that must be paid by PT Stones is a tax debt calculated based on the amount of sales turnover in 2011 from buyers abroad.

For the first point, it can be explained that based on the Circular Letter of the Director General of Taxes No. SE 47/PI/2008 concerning the Revocation of the Circular Letter of the Director General of Taxes and the Confirmation Letter concerning the Use of the Q.Q. Method in the Standard Tax Invoice of the Director General of Taxes.

1. Revoking several Director Circular Letters: a. Circular Letter of the Director General of Taxes No. SE-25/PJ 32/1989 Concerning VAT related to exports using other export quota names. b. Circular Letter of the Director General of Taxes No. SE-19/PJ 32/1990 Concerning VAT on Export Handing Services. c. Circular Letter of the Director General of Taxes No. SE-09/PJ 531/2000 Concerning the Use of the QQ method on standard tax invoices.

2. All letters of confirmation issued that grant permission to taxable entrepreneurs to issue Standard Tax Invoices using the Q.Q. method based on the Circular Letter as referred to in point 1 are declared invalid and revoked as of the date this circular letter comes into effect.

So, based on the Circular Letter of the Director General of Taxes No. SE 47/PI/2008, the export of goods must be carried out by the company itself, it cannot be carried out by a third party (under name export services) or the use of Q.Q. This is the mistake of PT Stones of Eden, this could happen because of the ignorance of business actors, also because of the less than optimal socialization of tax regulations by the Director General of Taxes to the public, especially business actors. The Letter of the Director General of Taxes, in line with the DGT's efforts to support the creation of "good governance", the principles of justice and legal certainty of tax regulations need to be prioritized. For this reason, it is necessary to reorganize the "ruling" and interpretation of tax regulations that have the potential to cause distortion in the implementation of good legal principles.

For the second point, the Director General of Taxes is of the opinion that what PT Stones of Eden did was a local sales action and this became the object of VAT, or in other words, the delivery of goods from PT Stones of Eden to the quota-holding exporter is a delivery of domestic taxable goods and is subject to 10% VAT in accordance with the Income Tax Law No. 36 of 2008. In this case, the Tax Officer imposed 10% VAT on natural stone export goods only because it was based on the delivery of goods to a third party (ander name service company) or domestic sales, because no PEB was found in the name of PT Stones. The connection with the object of this research is that the Director General of Taxes imposed VAT on natural stone goods from the creative industry based on the sales transaction of the delivery of goods to an export service company or ander name. The results of the Director General of Taxes' examination were based on Law No. 42 of 2009 concerning the Third Amendment to Law Number 8 of 1983 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods in Article 4 paragraph (1) states: Value Added Tax is imposed on a. Delivery of Taxable Goods in the Customs Area carried out by Entrepreneurs.

This problem when viewed from the perspective of the principle of legal certainty which states that material tax law, in this case one of the most important elements is the tax object, namely mining goods in the form of natural rocks, must be regulated by law, including the imposition of VAT on mining goods in the form of natural rocks must be based on the VAT Law, as explained in Article 1 paragraph (3) of the VAT Law No. 42 of 2009 which states: "Taxable goods are goods that are subject to tax based on this Law (VAT Law)". According to the VAT Law No. 42 of 2009 in Article 4 A paragraph 2 it reads: Types of goods that are not subject to Value Added Tax are certain goods in the following groups of goods: a. Goods resulting from mining or drilling that are taken directly from the source. The category of mining goods is detailed in the explanation of the same VAT Law, namely in Article 4A paragraph (2) letter a which states: "Goods resulting from mining or drilling that are taken directly from the source include letter d which reads:

Asbestos, slate, semi-precious stones, limestone, pumice, gemstone, bentonite, dolomite, feldspar, rock salt (halite), graphite, granite/andesite, gypsum, calcite, kaolin, leucite, magnesite, mica, marble, nitrate, opsidiene, ochre, sand and gravel, quartz sand, perlite, phosphate, talc, fullers earth, diatomaceous earth, clay, alum, trass, jarrosive, zeolite, basalt, and trachyte; e. coal before being processed into coal briquettes.

Mining goods in the form of natural stones that are not taxable goods, if classified including mining goods taken from their source before being carried out by the creative industry. For mining goods in the form of natural stones that have been carried out by the creative industry, the VAT Law No. 42 of 2009 does not regulate it at all. Because there are no regulations, it must be understood that natural stone mining goods from the creative industry are goods that are not subject to VAT. If you want to impose VAT on creative industry goods, there must be a legal basis. As stated in Article 1 paragraph (3) of the VAT Law No. 42 of 2009 states: "Taxable goods are goods that are subject to tax based on this Law (VAT Law). Thus, the Director General of Taxes imposes VAT on natural stones as mentioned above on the basis of the transfer of goods as stated in Article 4 paragraph (1) of the VAT Law No. 42 of 2009 which explains: Value Added

Tax is imposed on: a. the transfer of Taxable Goods within the Customs Area carried out by entrepreneurs, which is inappropriate, because the Article regulates the transfer of taxable goods, while mining goods in the form of natural stones from the creative industry are included as goods that are not subject to VAT.

Related to the above, previously there was a company engaged in the mining business of class C mining materials in the form of andesite stone (mountain stone) located in Kampung A Bogor. The production results obtained from blasting in the form of split stone and sand, the split stone and sand without processing were sold to independent buyers (drivers of stone transport trucks), who were not willing to be subject to VAT. Then submitted an application to the Director General of Taxes. The Director General of Taxes issued a Letter from the Director General of Taxes No. S-2514 / PJ 54/1998 Concerning the Imposition of VAT on the Sale of Class C Mining Materials (Natural Stone). This letter provides confirmation that based on Article 4A of Law No. 8 of 1983 as amended by Law No. 11 of 1994, it is regulated that the types of goods as referred to in Article 1 letter b and the types of services as referred to in Article 1 letter e that are not subject to tax based on this Law are determined by Government Regulation. The PP in question is PP No. 50 of 1994. Law No. 11 of 1994 regulates the following:

a. Article 3 point 4 regulates that the types of goods that are not subject to VAT are goods resulting from mining, excavation and drilling that are taken directly from the source.
b. Article 7 stipulates that mining, excavation and drilling products taken directly from the source as referred to in Article 3 include: crude oil; natural gas; sand and gravel; other mining, excavation and drilling products taken directly from the source.

Based on the description above and paying attention to the contents of your letter, we hereby confirm that split stone and sand, stone are goods resulting from mining and excavation taken directly from the source and the delivery of split stone and sand stone is a delivery that is not subject to value added tax. Based on the pact above, in terms of the imposition of VAT by the Director General of Taxes on goods in the form of types of natural stone resulting from the creative industry sold by PT Stones of Eden to Landvorm in the Netherlands as a buyer, it should be included as not subject to value added tax, in other words, it is not included as goods subject to VAT. This both refers to the VAT Law, which currently refers to Article 4A paragraph (2) of Law No. 42 of 2009 concerning the Third Amendment to Law No. 8 of 1983 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods.

Conclusion

The legal position of imposing value added tax on mining goods in the form of types of natural stone is regulated in the form of Government Regulations related to the review based on the principle of legal certainty, is not appropriate, because it is contrary to the principle of legal certainty, is not in accordance with the VAT Law and is not in line with Article 23A of the third amendment to the 1945 Constitution. For this reason, the regulation of tax objects, namely mining goods in the form of types of natural stone, must be clearly and firmly regulated under the VAT Law. The legal consequences of the imposition of value added tax by the Directorate General of Taxes on mining goods in the form of natural stones from the creative industry are invalid and cause losses to taxpayers.

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