

## **JURIDICAL ANALYSIS OF LIABILITY OF INCOME TAX AND VALUE ADDED TAX ON E-COMMERCE BUSINESS ACTIVITIES**

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**Abstract:** *E-commerce business activities use electronic media connected to the internet to conduct trade transactions. The development of e-commerce business activities brought many changes to the business activity sector carried out conventionally so far. The types of e-commerce business activities are business to business, business to the customer, customer to the customer, and customer to business. E-commerce business activities are regulated in the Law Number 11 of 2008 on the Information and Transaction of Electronic stating that electronic data transaction information is a valid proof of law. The problems discussed in this research are how to set up e-commerce business activities in Indonesia, how to impose an income tax and value-added tax on e-commerce business activities using delivery services. This research used normative legal research methods of descriptive analysis using normative juridical approaches and interviews to obtain the necessary data associated with the problems. The entire data were collected by collecting literature and field studies in the form of interviews with parties deemed competent in this study. Based on research results about The Juridical Analysis Of Income Tax And Value Added Tax on E-Commerce Business Activities regulated in the Circular of General Directorate of Taxes Number SE-62/PJ/2013 and SE-06/PJ/2015, the imposition of income tax for delivery service providers is regulated in Article 23 of the Law of Income Tax further regulated in PMK 141/PMK.03/2015 and Article 22 of the Law of Income Tax further regulated in PMK 34/PMK.010/2017. The imposition of value-added tax for delivery service providers is regulated in PMK 121/PMK.03/2015 and PMK 112/PMK.04/2018.*

**Keywords:** *E-Commerce, Income Tax, Value Added Tax, Freight Forwarding Tax.*

### **BACKGROUND**

The use of the internet in business activities has a positive impact on speed, ease, and sophistication in conducting global interactions with unlimited place and time,

which is now commonplace. E-commerce users in Indonesia, according to Ernst & Young's analysis data, always increase by 40 percent every year. There are about 93.4 million internet users and 71 million smartphone users in Indonesia. The crowd of e-commerce business users keeps their transaction value growing. Data from the Director of Commerce showed that 80 percent of retailers admitted that the percentage of online sales increased with an average growth of 25 percent (Quoted from <https://www.cnnindonesia.com/teknologi/20160122170755-185-106096/nilai-transaksi-e-commerce-di-indonesia-menggiurkan>, accessed on 12 May 2018, at 02:08 pm).

E-commerce business activities that are beginning to shift conventional business activities also have an impact on tax obligations for those who use technological advances in this trade. The General Directorate of Taxes has conducted a study on e-commerce. First, the study was carried out on all aspects of taxation that exist, so that the study identified what should be developed in the e-commerce world. Second, the General Directorate of Taxes created a team that will decide the regulations or procedures for taxation aspects, management, and extracting tax potential (Nufransa Wira Sakti, "Pemenuhan Kewajiban Perpajakan Bagi Pelaku e-Commerce Di Indonesia," Paper, Jakarta, 27 August 2014. p. 5).

Seeing the rapid increase in users of e-commerce business activities, the General Directorate of Taxes reissued a Circular of the General Directorate of Taxes Number SE-06/PJ/2015 on Withholding and/or Collection of Income Tax on E-Commerce Transactions (hereinafter referred to as SE-06/PJ/2015). Basically, SE-62/PJ/2013 and SE-06/PJ/2015 explained that principally, there are no new types of taxes in e-commerce but only applying existing rules. In other words, business management through e-commerce attains the same taxation treatment as ordinary trade. Therefore, in general, e-commerce actors also have tax obligations, both starting from registration, calculation, payment, and reporting that has been regulated in the rules and regulations of the General Directorate of Taxes. Hence, with the existence of SE-62/PJ/2013 and SE-06/PJ/2015, it is expected that every user of e-commerce business activities, both local and foreign individuals can better understand and implement their tax obligations. This thesis research aimed to find out and analyze the regulation of e-commerce business activities, the tax regulations applicable in Indonesia related to e-commerce business activities, and the application of taxation in e-commerce business activities in Indonesia.

## **LITERATURE REVIEW**

The theory serves to explain why specific symptoms or certain processes occur, and theory must be tested by exposing it to facts that can show untruth (J.J.J M. Wisman, *Penelitian Ilmu-Ilmu Sosial, Asas-Asas*, Universitas Indonesia, Jakarta, 1996. p. 203). A theoretical framework is a thought framework or points of opinion, theories, theses of the author on a case or problem to be the consideration for the readers whether they agree, and theoretical framework becomes an external insight for the readers. Explaining theory in this study aims to provide direction, predict, and explain the observed symptoms.

This research used the theory of legal certainty and justice. Legal certainty (*rechtszekerheid*) is the clarity of statutory regulations regarding the rights and obligations of a person's status or legal entity. The certainty of these rights and obligations brings order, regularity, and calmness to the person concerned because with clarity as regulated by law; one really knows how his status or position, how far the rights or obligations in that position (M. Solly Lubis, *Filsafat Ilmu dan Penelitian*, Mandar Maju, Bandung, 1994. P. 80). The theory of justice, according to Aristotle, is the opinion that justice must be understood in terms of equality. The relation of legal certainty and justice theories to this research can be concluded that e-commerce business activities that are inseparable from legal actions must obtain legal certainty for all service users of these business activities, and receive the same legal treatment as conventional business activities. In this study, e-commerce business activities were also obliged to be taxed in accordance with applicable regulations. The task of law principles is to guarantee legal certainty. By this understanding of the legal norms, the public truly realizes that the shared life will be orderly if there is legal certainty in relations between people (Sudarsono, *Pengantar Ilmu Hukum*, Rineka Cipta, Jakarta, 1995. p.49-50).

This theory of legal certainty and justice is in accordance with the objectives of SE-62/PJ/2013 and SE-06/PJ/2015 so that every user of e-commerce business activities both individuals and entities is required to have an income tax and value-added tax as legal certainty for e-commerce businesses activities to avoid sanctions in accordance with taxation and justice regulations. Therefore, every business activity in Indonesia is required to pay a certain amount of tax.

## **RESULTS AND DISCUSSION**

### **Regulation of E-Commerce Business Activities in Indonesia**

The history of the development of e-commerce started from the emergence of the Internet, which then progressed to be useful as a source of business activity. The application of electronic commerce began in the early 1970s with innovations, such as Electronic Fund Transfers (EFT). At that time, the application was still very limited to large-scale companies, government financial institutions, and some daring middle and lower companies, then emerged to so-called Electronic Data Interchange (EDI) (Adi Sulistyono Nugroho, *op.cit.* p.4.). The development of e-commerce business activities has brought many changes to the business activity sector carried out in conventional ways so far. E-commerce business activities often used in Indonesia has several models, namely online marketplaces, classified ads, daily deals, and online retail.

E-commerce business activities are inseparable from the agreement so that the provisions regarding the legal basis of the agreement stipulated in the Civil Code remain applied. Substantively, e-commerce business activities in Indonesia constitute an agreement as stipulated in Article 1233 of the Civil Code, stating that "An agreement is made due to the law." It can be interpreted as a relationship that is made due to an agreement between the parties to bind themselves in the agreement or because of the law. A relationship originating from a deal is regulated in Article 1313 of the Civil Code, stating that "An agreement is an act by which one or more people commit themselves to one or more other people." Besides, e-commerce business activities

obtained legal certainty through Law Number 11 of 2008 on Information and Electronic Transactions, stating that electronic data transaction information is legal proof, as well the Law Number 7 of 2014 on Trade, stating that providers of e-commerce business services are required to provide complete and correct information on what is offered.

### **The Imposition of Income Tax to E-Commerce Business Activities Using Shipping Services**

Income tax is imposed on an individual or entity income received or obtained in a tax year regulated in Law Number 36 of 2008 on the Fourth Amendment to Law Number 7 of 1983 on Income Tax. The object of income tax under the Income Tax Law is income, that is, any additional economic capability received or obtained by taxpayers, both originating from Indonesia or outside Indonesia, which can be used for consumption or to increase the wealth of the taxpayer concerned by name and in any forms (Article 4 of the Law Number 36 of 2008 on the Fourth Amendment of the Law Number 7 of 1983 on Income Tax). Not all income or additional economic capacity can be categorized as an income tax object is regulated in Article 4 paragraph (3) of the Income Tax Law.

The large scope of income tax objects is the first step in the imposition of income tax on e-commerce business activities regulated in the Circulars of the General Directorate of Taxes Number SE-62/PJ/2013 on Affirmation of Tax Provisions for E-Commerce Transactions and Number SE-06/PJ/2015 on Withholding and/or Collection of Income Taxes on E-Commerce Transactions. Income tax rates on e-commerce business activities vary based on the type of business. The provisions of Article 17 of the Income Tax Law are classified into individual domestic taxpayers, domestic corporate taxpayers, and permanent establishments. The income tax rate in Article 23 of the Income Tax Law on income from service providers of places and/or times in other media for the delivery of information is 2% of the gross amount, not including value-added tax, usually used for the process of buying and selling goods and/or services. The income tax rate in Article 26 of the Income Tax Law on income from service providers for time and place in other media for the delivery of information is 20% of the gross amount, not including value-added tax or based on the applied double taxation avoidance agreement.

Shipping services often used in e-commerce business activities are freight forwarding. Freight forwarding services are business activities that are shown to represent the owner's interest to take care of all/some parts of the activities required for the delivery and receipt of goods through the land, sea and/or air transportation, which may include receiving, storing, sorting, packing, marking, measuring, weighing, handling of document settlement, issuance of transportation documents, calculation of transportation costs, claims, insurance for the delivery of goods, as well as a settlement of bills and other costs relating to the shipment of the goods until receipt of the goods by the rightful recipient (Article 2 verse (6) of Minister of Finance Regulation Number 141/PMK.03/2015 on the Type of other Services as referred in Article 23 verse (1) c number 2 of the Law Number 7 of 1983 on Income Tax as has been changed many times and the last change is the Law Number 36 of 2008).

The imposition of income tax on freight forwarding services is regulated in Article 23 of the Income Tax Law and the Minister of Finance Regulation Number

141/PMK.03/2015 on Other Types of Services as referred to in Article 23 verse (1) letter c number 2 of the Law Number 7 of 1983 on Income Tax as amended several times, the latest by the Law Number 36 of 2008 (hereinafter referred to as PMK 141/PMK.03/2015). Freight forwarding services are subject to an income tax rate of 2% of the gross amount, not including value-added tax. However, taxpayers who do not have an NPWP are subject to tariffs that are 100% higher than the tariffs that should be 4% in accordance with Article 1 verse (7) of PMK 141/PMK.03/2015.

### **The imposition of Value Added Tax on E-Commerce Business Activities Using Shipping Services**

Value-added tax is imposed on consumption indirectly. Value-added tax collection is carried out indirectly by the seller at the time of delivery of taxable goods or services to the buyer by issuing a tax invoice as proof of value-added tax. Thus, the amount of value-added tax deposited to the country will be the same as the value-added tax paid by consumers. Therefore, the purpose of taxation on consumption will be in accordance with this mechanism; the tax is imposed on the final consumer.

The legal basis for the application of value-added tax in Indonesia is regulated in the Law Number 42 of 2009 on the Third Amendment to the Law Number 8 of 1983 on Value-Added Taxes on Goods and Services and Sales Tax on Luxury Goods. Value-added tax rates in Indonesia are generally 10%, but the rates may change according to statutory provisions at least 5% and at most 15%. This case is due to economic development considerations and/or increasing the need for development funds so that the government has the authority to set value-added tax rates (Article 7 verse (3) of the Law Number 42 of 2009 on the Third Change in the Law Number 8 of 1983 on Value-Added Tax on Goods and Services, and Sales Tax on Luxury Goods).

The method used by the Law of value-added tax in the application of the destination principle is the zero rate method, namely the export of taxable goods and services determined as the surrender of value-added tax payable at a rate of 0% (Article 7 verse (2) of the Law Number 42 of 2009 on the Third Change in the Law Number 8 of 1983 on Value Added Tax on Goods and Services, and Sales Tax on Luxury Goods).

The imposition of value-added tax at a rate of 0% has made the export of taxable goods and services free from the imposition of value-added tax so that export entrepreneurs can still credit the input tax on the acquisition of the exported taxable goods and services. The basis of value-added tax can be classified as selling price, replacement, import value, export value, or other values that are useable as a basis for calculating value-added tax and the sales tax on luxury items owed (Article 9 of the Government Regulation Number 1 of 2012 on the Implementation of the Law Number 42 of 2009 on the Third Change in the Law Number 8 of 1983 on Value Added Tax on Goods and Services, and Sales Tax on Luxury Goods). The imposition of value-added tax on e-commerce business activities is emphasized in the Directorate General Circular Number SE-62/PJ/2013 on Affirmation of Tax Provisions for E-Commerce Transactions.

Basically, the tax obligation for e-commerce business activities is not a new type of tax, but it is the same as the tax on conventional business activities. The difference is only in the media for carrying out these business activities. Therefore, parties in e-commerce business activities obtain income tax or value-added tax obligations in accordance with statutory provisions. Also, it is expected that activators of e-commerce business activities will be compliant with tax for the common goal (The results of an interview

with Dodi Irawan and Khairul Azwar as Account Representative in the Primary Tax Service Office in Medan City, on 16 May 2019, at 09.57 am).

The imposition of value-added tax on shipping services using freight forwarding services in e-commerce business activities is regulated in the Minister of Finance Regulation Number 121/PMK.03/2015 on the Third Amendment to the Minister of Finance Regulation Number 75/PMK.03/2010 on Other Values As Basis of Tax Imposition (hereinafter referred to as PMK 121/PMK.03/2015). Article 2 letter m of PMK 121/PMK.03/2015 states that for the delivery of transportation management services (freight forwarding) in which the transportation management services bill contains freight charges, the tax is 10% of the amount billed or that should be collected. The value of 10% is assumed to be the cost of freight forwarding services, which as the basis for the imposition of value-added tax on freight forwarding services. The value-added tax (VAT) rate based on Article 7 verse (1) is 10% so that the value-added tax rate for freight forwarding services of 1% is obtained from the basis of the imposition of VAT x freight charges ( $10\% \times 10\% = 1\%$ ). For example, a freight forwarding company to a service user of Rp. 70,000,000 will be a value-added tax of Rp. 700,000.

Preventing the mode of avoiding import duties and taxes in importing, the government issued the Minister of Finance Regulation Number PMK 112/PMK.04/2018 on the Amendments to Regulation of the Minister of Finance Number 182/PMK.04/2016 regarding Provisions on the Import of Shipments (hereinafter referred to as PMK 112/PMK.04/2018), which sets a free onboard value limit of USD 75.00. This provision makes entrusted perpetrators no longer able to break down the value of goods ordered by buyers on a shipment basis because the value of USD 75.00 is the total value of all shipments per day with an import duty rate of 7.5% and insurance costs of 0.5 % of the total price of goods and transportation costs.

## **CONCLUSION AND RECOMMENDATION**

### **Conclusion**

E-commerce business activities develop rapidly in Indonesia due to the use of technology of the internet, which has increasingly penetrated daily activities changing the pattern of business activities from conventional businesses to e-commerce businesses. E-commerce business activities are inseparable from the agreement, and the provisions regarding the legal basis of the agreement stipulated in the applied Civil Code. Besides, e-commerce business activities obtain legal certainty through Law Number 11 of 2008 on Information and Electronic Transactions, which states that electronic data transaction information is legal proof, as well as in the Law Number 7 of 2014 on Trade, which states that providers of e-commerce business services are required to provide complete and correct information on what is offered.

The broad scope of the income tax object is the first step in the imposition of income tax on e-commerce business activities regulated in SE-62/PJ/2013 and SE-06/PJ/2015, while the providers of freight services (freight forwarding) are regulated in Article 23 of Income Tax Law, which is further regulated in PMK 141/PMK.03/2015 and Article 22 of the Income Tax Law, which is further regulated in PMK 34/PMK.010/2017. The income tax rate for e-commerce business activities is in accordance with the provisions of Article 17 of the Income Tax Law grouped on

individual domestic taxpayers, domestic corporate taxpayers, and permanent establishments. Meanwhile, the income tax rate for freight forwarding is 2% based on PMK 141/PMK.03/2015.

The imposition of value-added tax on e-commerce business activities is based on the submission of taxable goods, taxable service providers, and the use of importable taxable goods. However, not all users and/or organizers of e-commerce business activities can collect value-added tax, only to taxable employers. The general value-added tax rate is 10%, but it may change according to statutory provisions to a minimum value of 5% and a maximum value of 15%. In one side, shipping services are subject to a tariff of 1% of the total bill regulated in Regulation of the Minister of Finance Number 121/PMK.03/ 2015.

### **Recommendation**

The shift in the business activity model from conventional to e-commerce business activities shows the enormous economic potential of e-commerce business activities. This phenomenon must be supported by technological developments and regulations by the government to maximize the potential for the development of e-commerce business activities. The perpetrators of e-commerce business activities classified as income taxpayers should be willing to register and report any additional economic ability to obtain a tax ID and avoid the imposition of 100% higher than the normal tax rate. More complex regulations regarding the tax treatment of e-commerce businesses are needed.

There should be socialization and coordination between the tax office and the e-commerce business actors classified as taxable entrepreneurs in the order they are willing to register and report their business activities as tax compliance. This case is because there is often the avoidance of value-added tax obligations, especially in the case of imports by individuals.

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