FIAT JUSTISIA
Jurnal Ilmu Hukum
Volume 16 Number 1, January-March 2022: 31-46.
FIAT JUSTISIA. Faculty of Law, Universitas Lampung, Bandar Lampung, Indonesia.
ISSN: 1978-5186 | e-ISSN: 2477-6238.
http://jurnal.fh.unila.ac.id/index.php/fiat

Justice in Income Tax Collection on Sale-Purchase

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Submitted: February 15, 2021; Reviewed: May 20, 2021; Accepted: January 13, 2022

Article Info

Keywords:
Income Tax; Land and Buildings Sale-Purchase; Object of Income Tax.

DOI:
10.25041/fiatjustisia.v16no1.2271

Abstract

The regulation of income tax on the purchase of land and buildings in Indonesia is governed by Law Number 36 of 2008 concerning Income Tax. This law specifies that one of the tax objects includes profits derived from the sale and purchase of land and buildings. This research highlights that income tax should be based on profits rather than the gross transaction values. Employing a normative juridical method, the study underscores the critical role of "profits" in calculating income tax within the context of land and building transactions. Currently, income tax is assessed on the gross amount of the transfer value, rather than on actual profits, resulting in a violation of the Income Tax Law and imposing an undue burden on taxpayers. This practice undermines the sense of justice in tax collection and creates disharmony between the law and its implementation.

A. Introduction

Taxation has been a fundamental aspect of Indonesian society long before the nation gained independence. Historically, taxes have carried a negative connotation due to their burdensome nature and the misuse of public funds by colonial authorities. Rather than benefiting the Indonesian populace, taxation under colonial rule led to significant detriment to the people.[1]

The colonial regime greatly expanded the role and function of taxation, often using various justifications to impose levies on the population. Colonizers claimed that taxes were necessary to cover all aspects of life, making them one of the largest sources of income for the colonial government, which was primarily used to serve its own objectives.

[1] Uun Lionar, Agus Mulyana, and Leli Yulifar, "Plakat Panjang Hingga Perang Kamang: Gerakan Rakyat Minangkabau Menentang Pajak Kolonial Belanda," *Historis : Jurnal Kajian, Penelitian Dan Pengembangan Pendidikan Sejarah* 5, no. 2 (2020): 113–22, https://doi.org/10.31764/historis.vXiY.3409.

Consequently, no Indonesian willingly paid taxes; the financial demands exceeded their means, leading to widespread resentment.[2]

Following Indonesia's independence, the nation was confronted with a more educated and critical society, prompting a paradigm shift in the perception and function of taxation. In the present context, taxes have evolved into the primary source of revenue for the state and serve as a crucial mechanism for funding development initiatives that align with the aspirations of the Indonesian people.[3]

In this new framework, taxation is perceived as a system of reciprocity between the government and its citizens, where tax revenues are viewed as resources that should be reinvested for the public good rather than appropriated for governmental or partisan interests. National development encompasses ongoing efforts aimed at enhancing public welfare, both materially and spiritually. To achieve these objectives, it is essential to address the challenges associated with development financing. One effective strategy for ensuring state independence in development financing involves seeking domestic funding sources, such as taxes, which can be utilized to support projects that serve the common interest.[4]

Nevertheless, there remains considerable skepticism regarding whether the term "Tax Law" accurately reflects a legitimate legal framework or if it merely represents a form of tyranny. Government authorities often misappropriate tax revenues for personal gain, undermining the foundational principle that taxation should serve the public good. Arbitrary collection of taxes from the populace amounts to deprivation rather than contribution, raising ethical concerns about the nature of tax law in practice.[5]

Taxation must be grounded in a clear legal framework, encompassing a collection mechanism, defined tariff rates, payment processes, and avenues for filing objections. The government is obligated to communicate tax-related information openly, transparently, and without coercion, ensuring that the tax collection process is reciprocal.[6] Various theories have emerged to provide a legal basis for tax collection, seeking to establish that such

[2] Abdul Wahid, "Dualisme Pajak Di Jawa: Administrasi Pajak Tanah Di Wilayah Vorstenlanden Pada Masa Kolonial, 1915–1942," *Lembaran Sejarah* 13, no. 1 (2017): 28–47, https://doi.org/10.22146/lembaran-sejarah.33510.

[3] FC. Susila Adiyanta, "Fleksibilitas Pajak Sebagai Instrumen Kebijaksanaan Fiskal Untuk Mengantisipasi Krisis Ekonomi Sebagai Akibat Dampak Pandemi Covid-19," *Administrative Law and Governance Journal* 3, no. 1 (2020): 162–81, https://doi.org/10.14710/alj.v3i1.162-181.

[4] Waluyo, *Perpajakan Indonesia*, 10th ed. (Jakarta: Salemba Empat, 2011), p. 2.

[5] Irlan Fery, "Jenis-Jenis Pajak Daerah, Retribusi Daerah Berpengaruh Terhadap Potensi Pendapatan Asli Daerah Era Covid-19," *Jurnal Riset Akuntansi Dan Bisnis* 7, no. 1 (2021): 72–83, https://doi.org/10.38204/jrak.v7i1.558.

[6] Happy Valentina Pranaswati and Kiswanto, "Determinan Transparansi Pelaporan Keuangan Pemerintah Daerah Provinsi Di Indonesia," *Jurnal Ilmiah Ekonomi Bisnis* 25, no. 3 (2020): 273–89, https://doi.org/10.35760/eb.2020.v25i3.2862.

practices are lawful rather than arbitrary acts of deprivation. Failure to adhere to these principles risks a return to the burdensome taxation of Indonesia's pre-independence era, where tax liabilities took precedence over other financial obligations.[7]

This research primarily focuses on the collection of Income Tax (*Pajak Penghasilan or PPh*) on land and building transactions, hereafter referred to as "Income Tax on Sale-Purchase." Tax collection must align with established principles to achieve its intended purpose while ensuring harmony in the overall taxation system. The following principles should govern tax collection: [8]

1. Equality
   Tax collection must be equitable and consistent, meaning that taxes imposed on individuals should correlate with their ability to pay and the benefits received. Fairness is achieved when each taxpayer contributes to government expenditures in proportion to their interests and the benefits.[9]
2. Certainty
   Tax obligations should be clearly defined, avoiding ambiguity or arbitrariness. Taxpayers must understand the amount of tax owed, the timeline for payment, and any relevant deadlines.[10]
3. Convenience
   Tax payments should occur at times that are least burdensome for taxpayers, ideally coinciding with their receipt of income. This collection method is known as "pay as you earn,".[11]
4. Economy
   The costs associated with tax collection and the fulfillment of tax obligations should be minimized, ensuring that taxpayers do not incur excessive expenses in meeting their tax responsibilities.[12]

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[7] Sindian Isa Djajadiningrat, *Hukum Padjak Dan Keadilan* (Bandung: N.V.Eresco Dj, 1960), p. 1.
[8] Adam Smith, *An Inquiry into the Nature and Cause of the Wealth of Nations* (London: W. Strahan and T. Cadell, 1776), p.13.
[9] Moch Yakob Hidayat and Ferry Irawan, "Pelaksanaan Penilaian Tanah Dan/Atau Bangunan Dalam Rangka Validasi Surat Setoran Pajak (Studi Pada Kantor Pelayanan Pajak Pratama Probolinggo)," *Jurnal Pajak Dan Keuangan Negara* 3, no. 1 (2021): 10–23, https://doi.org/10.31092/jpkn.v3i1.1319.
[10] Sri Dewi Sartika, "Tinjauan Yuridis Pemungutan Pajak Restoran Dalam Meningkatkan Pendapatan Asli Daerah Berdasarkan Peraturan Daerah Kota Bandung Nomor 28 Tahun 2009 Tentang Pajak Restoran," *Sistem Informasi, Keuangan, Auditing Dan Perpajakan (SIKAP)* 1, no. 1 (2016): 49–56, https://doi.org/10.32897/jsikap.v1i1.47.
[11] Damas Dwi Anggoro and Yudha Alief Aprilian, "Deficiency Prinsip Keadilan Dalam Implementasi E-Tax Kota Malang Berdasarkan Prinsip Kebijakan Pajak Yang Baik," *Jurnal Pajak Indonesia (Indonesian Tax Review)* 3, no. 1 (2019): 11–15, https://doi.org/10.31092/jpi.v3i1.229.

The principles outlined above are integrated into income tax regulations governing the collection of income tax on sale-purchase transactions in Indonesia. These regulations adopt internationally recognized principles, which the global community regards as universal standards for tax collection. The Indonesian government, particularly the *Kantor Pajak Pratama* (Pratama Tax Office), must ensure that these principles are applied fairly, effectively, and accurately in the collection of income tax on sale-purchase transactions.[13]

In practical terms, the collection of income tax during the sale-purchase process serves as the basis for determining tax liabilities. The income tax on sale-purchase transactions is calculated based on the transaction price agreed upon by the parties involved.[14] Specifically, the amount used for calculating income tax is the gross value of the rights transferred concerning the land and/or buildings.[15] However, this raises the question of whether this approach is correct, as "income" is typically defined as an increase in financial capacity, and "additional" income is understood as the "profit" or gain derived from the transaction, rather than merely the transaction price (gross price).

The treatment of the transaction price is further clarified in Article 4, paragraph 1 of Government Regulation Number 71 of 2008, which amends Government Regulation Number 48 of 1994 concerning the Payment of Income Tax on the Transfer of Rights to Land and/or Buildings. This regulation states:

"(1) The amount of income tax from the transfer of rights on the land and/or buildings, as referred to in letter a of paragraph (1) of Article 1, totals:

a) 2.5% (two points five percent) of the gross amount of value transfer of the rights on the land and/or buildings, except for the rights transfer of the house and apartment by the Tax Payer, who has a prominent role in doing the rights transfer of the land and/or buildings; … and so on."

The fundamental question arises as to whether collecting Income Tax on Sale-Purchase based on the transaction price or gross price is appropriate.

[12] Yuana S., "Sistem Pengendalian Pemungutan Pajak Hotel Dan Pajak Restoran Beberapa Kabupaten Di Propinsi Kalimantan Barat," *Jurnal Ekonomi Integra* 6, no. 2 (2016): 56–68, https://doi.org/10.51195/iga.v6i2.85.

[13] I Gusti Ngurah Bagus Maha Iswara, Simon Nahak, and Ni Luh Made Mahendrawati, "Kepastian Hukum Pengenaan Pajak Penghasilan Transaksi Jual Beli Tanah Dan/Atau Bangunan," *Jurnal Hukum Prasada* 6, no. 1 (2019): 42–51, https://doi.org/10.22225/jhp.6.1.2019.42-51.

[14] See Article 2 of Government Regulation Number 34 of 2016 regarding Tax Income of the Income from the Rights Transfer on the Land and/or Buildings, and Sale and Purchase Binding Agreement of the Land and/or Buildings and its Amendments (PP No. 34/2016).

[15] See the Paragraph 1 of Article 4 *Juncto* Paragraph 2 Letter D of Laws Number 36 of 2008 regarding the Fourth Amendment of the Laws Number 7 of 1983 regarding Tax Income. It is said that "what becomes the object of the tax is income, namely any additional economic capacity received or acquired by the Tax Payer....".

Does this approach contravene established principles of tax collection? Furthermore, does this mechanism ultimately violate the sense of justice? Another critical issue pertains to the timing of Income Tax collection, which is required to be paid "before" the authorized party signs the deed, decree, agreement, or auction minutes for transferring rights to land and/or buildings.[16]

More specifically, this paper seeks to highlight situations where a sale-purchase transaction results in a "loss" for the seller, either due to pressing circumstances—such as being burdened by debt—or adverse conditions affecting the property, like frequent flooding. In such cases, land and/or buildings may be sold for less than their purchase price, resulting in the seller not only failing to make a profit (or gain in financial capacity) but also incurring losses. Imposing a tax based on the transaction price or gross price under these conditions becomes particularly burdensome, as the seller is required to pay taxes before realizing any income from the sale. The phrase "has also fallen smitten by households" aptly captures the distressing situation faced by the seller.

In terms of originality, this paper does not intend to delve into the intricacies of calculating increases or decreases in the value of money, land, and/or buildings to assess profit or loss for income tax purposes. Such calculations tend to prioritize economic considerations over legal frameworks. Instead, this research will emphasize that income tax should derive from genuine profits rather than simply the transaction or gross prices. Valuations of money, land, and/or buildings should be determined by economists, highlighting the need for a clear distinction between tax obligations and the underlying financial realities of taxpayers.

This research employs a normative juridical method, which involves a comprehensive examination of relevant laws, regulations, and legal doctrines found in existing literature to establish coherent truths. The analysis will enable a thorough assessment and comparison of the alignment of various laws and regulations within a hierarchical framework, focusing on vertical harmonization.

B. Discussion

According to the insights derived from Pancasila, the legal system is an integral component of the broader social life system, characterized by reciprocal influences and interactions with other societal systems. The formation of the legal system does not adhere to a deterministic model as suggested by historical materialism, which focuses solely on material power. Instead, the development of the legal system requires a conscious and thorough approach that aligns with an ideological orientation. As the

[16] See Paragraph (1) of the Article 3 of Government Regulation Number 34/ of 2016.

national ideology, Pancasila establishes the following foundational provisions:[17]

1. The legal system is based on Pancasila values.[18] Thus, Pancasila shall not follow any legal positivism or relativism. The social life regulation finally gets any meaning and aspirations based on Pancasila's orientation that craves humane, fair, and prosperous conditions.
2. The legal system shows its interpretation as far as manifesting justice.[19] The law is not identical to justice, but it actualizes many people's interests. The law is not solely a power tool, not a legitimate to the exploitation that can be such injustice itself.
3. The legal system's function is to protect the dynamics of people's lives.[20] Thus, the law for keeping society's order has not actualized solely to sustain the status *quo* but to allow progress to be reflected in the changing and renewing process. As a result, the law also needs to grant the future perspective.
4. The legal system ensures self-realization for all people in the development process.[21] Society development must avoid alienation, technocracy, or interdependence. In this matter, legal regulations can play a role in ensuring society maintains its personality and balance.[22] The customs and traditions factor can positively contribute to forming the national legal system.

The government prioritizes the interests of the people within the framework of modern state law, which is characterized as a "welfare state."[23] This paradigm necessitates active participation from the government to maintain social cohesion and address the needs of all citizens. Consequently, a welfare state government is tasked with extensive responsibilities aimed at

[17] Soerjanto Poespowardojo, *Filsafat Pancasila (Sebuah Pendekatan Sosio-Budaya)* (Jakarta: PT. Gramedia, 1989), p. 161-2.

[18] Yuli Asmara Triputra, "Implementasi Nilai-Nilai HAM Global Ke Dalam Sistem Hukum Indonesia Yang Berlandaskan Pancasila," *Jurnal Hukum IUS QUIA IUSTUM* 24, no. 2 (2017): 279–300, https://doi.org/10.20885/iustum.vol24.iss2.art6.

[19] Achmad Hariri, "Dekonstruksi Ideologi Pancasila Sebagai Bentuk Sistem Hukum Di Indonesia," *AJUDIKASI : Jurnal Ilmu Hukum* 3, no. 1 (2019): 1–14, https://doi.org/10.30656/ajudikasi.v3i1.1055.

[20] Hernawati RAS and Dani Durahman, "Aspek Hukum Dalam Penyelenggaraan Bisnis Perhotelan," *Jurnal Ilmiah Universitas Batanghari Jambi (JIUBJ)* 20, no. 3 (2020): 1033–37, https://doi.org/10.33087/jiubj.v20i3.1093.

[21] Surajiyo, "Keadilan Dalam Sistem Hukum Pancasila," *IKRA-ITH HUMANIORA : Jurnal Sosial Dan Humaniora* 2, no. 3 (2018): 21–29, https://journals.upi-yai.ac.id/index.php/ikraith-humaniora/article/view/354.

[22] I Nyoman Putu Budiartha and I Nyoman Alit Puspadma, "Income Tax in the Issuing of Authentic Deed of Sale-Purchase Rights on Land by Land Deed Officer in Indonesia," *Journal of Legal, Ethical and Regulatory Issues* 22, no. 1 (2019): 1–12.

[23] Khudzaifah Dimyati et al., "Indonesia as a Legal Welfare State: A Prophetic-Transcendental Basis," *Heliyon* 7, no. 8 (2021): 1–8, https://doi.org/10.1016/j.heliyon.2021.e07865.

promoting the public interest. A legal state operates on the principle that justice must be guaranteed for its populace, meaning that all actions undertaken by state officials or authorities must be grounded in law. This legal foundation reflects a commitment to justice and equity for its citizens.[24]

Justice serves as a fundamental benchmark for the state's tax collection practices. According to Article 23A of the Amendment to the 1945 Constitution, "Taxes and other collections which are a force for state purposes are regulated by law." This provision prohibits any taxes or collections that deviate from established legal standards or are imposed without legal basis. Therefore, the imposition of taxes must adhere strictly to the law, ensuring that citizens are treated fairly and that the government's actions are legitimate and justifiable[25]

Taxation represents a transfer of assets from the private sector to the government sector, aimed at financing the state's needs. In this context, individuals cannot directly expect counterperformance for their tax contributions. Asset transfers without any form of counterperformance typically occur only in the context of gifts or bequests. Additionally, such transfers may arise through coercive means, such as robbery or looting. Historical propositions underscore the principle of representation in taxation, with the famous adage in England stating, "No taxation without representation,"[26] and in America, "Taxation without representation is robbery."

Throughout history, various tax theories have emerged to articulate a sense of justice in society concerning tax collection. One notable theory is the force theory (*Teori Gaya-Pikul*)[27], which emphasizes that the tax burden should be equitable for all individuals. This theory asserts that taxes must be paid based on an individual's capacity to contribute, which can be measured by their income, assets, and expenditures. Many leading scholars continue to uphold this theory within Tax Law today. For instance, Ir. Mr. A.J. Cohen Stuart analogizes the principle of force style to a bridge, suggesting that the capacity to contribute financially to the state exists only after basic life necessities have been met. Therefore, the principle of force style must be balanced to ensure that individuals are not unduly burdened before their essential needs are satisfied.[28]

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[24] Wiratni Ahmadi, *Perlindungan Hukum Bagi Wajib Pajak Dalam Penyelesaian Sengketa Pajak* (Bandung: PT. Refika Aditama, 2006), p. 2.
[25] R. Santoso Brotodihardjo, *Pengantar Ilmu Hukum Pajak*, 7th ed. (Bandung: PT. Eresco, 1978), p. 32-33.
[26] The meaning of "representation" as representatives of the people. In Indonesia, it is the same as the House of Representatives *(Dewan Perwakilan Rakyat)*, Brotodihardjo, p. 33.
[27] Besides the Force Style Theory, there are also Insurance Theory, Interest Theory, Absolute Tax Liability Theory or Service Theory, and Purchasing Style Theory.
[28] Brotodihardjo, *Pengantar Ilmu Hukum Pajak,* p. 28-29.

In the context of Indonesia, it is crucial to provide a sense of justice and prosperity in the collection of Income Tax on the Sale and Purchase of land and/or buildings. The author focuses on Income Tax related to these fundamental human needs—specifically, food, clothing, and shelter. To facilitate a clear understanding of this subject, the author will first delineate what constitutes the object of Income Tax as defined under the applicable laws and regulations. According to Paragraph 1 of Article 4 of Law Number 36 of 2008, which amends Law Number 7 of 1983 regarding Income Tax (hereafter referred to as "*UU PPh*"):

> "The object of the tax is income, which is an additional economic ability received or obtained by a Tax Payer, whether originating in Indonesia or outside Indonesia, that can be used for consumption or to increase the Tax Payer's assets, under whatever name and form, including: ... "

The official explanation of *UU PPh* for such an article is as stated:

> "This Law adheres to the principle of income taxation in a broad definition, namely, a tax is imposed on any additional economic ability received or obtained by the Tax Payer from any source that can be used for consumption or to increase the Tax Payer's assets … "

Income Tax cannot be imposed on losses, as there is no tax object in the form of "additional" income or profit. This principle is supported by the provisions outlined in the relevant legislation, which emphasizes that the object of Income Tax is rooted in the concept of "additional economic ability." The terms "add" or "additional" appear twice in the article and its accompanying explanations, reinforcing this notion.

In the context of Law Number 36 of 2008 regarding Income Tax (*UU PPh*), "additional" refers specifically to the profit realized by the taxpayer, which is determined by the difference between the acquisition cost (i.e., the purchase price) and the selling price. Consequently, the Income Tax object is defined as this profit. However, a critical question arises: what occurs in situations where there is no "additional" income or profit? For instance, if the selling price is lower than the acquisition price, no profit is realized.

To further clarify the implications of the *UU PPh*, we can examine Letter d of Paragraph 1 of Article 4 as follows.

a. The profits due to the sale or transfer of property are included:
    1. Profit because ...
    2. profit because ...
    3. profit because ...
    4. profit because ...
    5. profit because ... "

The object of Income tax is the "profit," which is mentioned numerous times in any sub letter d as such quoted above, and in the official explanation of Income Tax Law explains what is meant by such profit, I quote its explanation as follows:

"Letter d

The price difference is a profit if the Taxpayer sells assets at a price higher than the book value or the price or acquisition value."

The valuation of an asset is typically determined by the difference between its selling price and its book or acquisition cost, or other relevant pricing metrics.[29] Income tax levied on transactions related to the sale and purchase of assets is often referred to as capital gains tax, a concept that is clearly articulated in the Income Tax Law (*UU PPh*). This concept is also reflected in Article 13 of the Organization for Economic Cooperation and Development (OECD) guidelines, particularly in the excerpt of Paragraph (1), which states:

"(1) the profits obtained from the alienation of immovable assets as referred to in Paragraph 2 of Article 6, shall be imposed the tax in the country where the immovable asset is located." [30]

This affirms that the tax object is profits (gains). Income Tax collection on Sale-Purchase based on additional economic ability/profits/difference/gains has fulfilled the Pancasila Philosophy's sense of justice, specifically the second precept. Furthermore, the income tax is based on Article 23A of the 1945 Constitutional Amendment. Regulation is the result/product of the executive and legislative. It is also in line with the force style principle in taxation theory because the Tax Payer bears what he receives as profit. However, it differs from the content and purpose of *UU PPh*. Its implementing regulations do not adhere to the same understanding regarding the Income Tax on Sale and Purchase objects, even deviating from what is mandated in *UU PPh*.[31] The implementation regulations are the following:

1. The first is in Paragraph 1 of Article 2 PP 34/2016:
   "(1) the amount of the Income-tax from the transfer of the right on the land and/or buildings as referred to the letter a of Paragraph (1) of Article 1 is totaling:
      a. 2.5% (two points five percent) of **the gross value of the transfer** of the rights to the land and/or buildings, except for the rights transfer of the Basic House and the Basic Apartment done by the Tax Payer, who has the main business to rights transfer of the land and/or buildings; … and so on."
2. The second is in Paragraph 1 of Article 2 of the Minister of Finance Regulation Number 261/PMK.03/2016 regarding Procedures for Depositing, Reporting, and Exceptions from the Imposition of Income

[29] Gunadi, *Pajak Internasional* (Depok: Lembaga Penerbit Fakultas Ekonomi UI, 2007), p. 42.
[30] Soumitra, p. 254.
[31] Alannuari Afid Amasi, Akhmad Khisni, and Amin Purnawan, "Juridical Review of Income Tax Restitution (PPH) against Cancellation of Sale and Purchase Agreement Based on Government Regulation Number 34 of 2016," *Sultan Agung Notary Law Review* 3, no. 1 (2021): 215–25, https://doi.org/10.30659/sanlar.3.1.215-225.

Tax on Income from the Transfer of Rights to Land and/or Buildings, and Sale and Purchase Agreements on Land and/or Buildings and its Amendments (hereinafter shall be referred to the "PMK No.261/2016"):

"(1) The amount of Income Tax from the transfer of land and/or building rights as referred to in Article 1 paragraph (1) letter a is as much as:
   a. 0 % (zero percent) … and so on
   b. 1% (one percent) of **the gross value of the transfer** of land and/or buildings rights … and so on
   c. 2.5% (two point five percent) of **the gross value of the transfer** of land and/or buildings rights … and so on."

3. The third is in Paragraph (3) of Article 1 of Director-General of Taxes Regulation Number 30/PJ/2009 dated 27 April 2009 regarding Procedures for Granting Exemptions from Payment or Collection Obligations Income Tax from the Transfer of Rights to Land and/or Buildings; and
4. The fourth is in Letter E of Number (1) and Letter b of Circular Letter Number SE-30/PJ/2013 regarding the Implementation of Final Income Tax from the Transfer of Rights to Land and/or Buildings Obtained by Tax Payer.

The regulation specifies the "gross value of the transfer." This gross amount, as outlined in the implementing regulations, encompasses the total received by the taxpayer, including both the capital from the acquisition value and any profits realized from the sale. However, this approach diverges from the content and intent of the Income Tax Law (*UU PPh*). According to the *UU PPh*, the tax object is defined as "additional" or profits/gains, which is explicitly the difference between the selling price and the acquisition value, not merely the gross amount.[32]

These implementing regulations, which deviate from the fundamental principles of the *UU PPh*, create confusion regarding the collection of income tax on sales and purchases. This confusion results in significant injustices for taxpayers, particularly those selling land or buildings at prices below their acquisition value.

For example, consider a house acquired for IDR 100,000,000 and later sold for IDR 125,000,000. Under the *UU PPh*, the income tax should be assessed on the "additional economic capacity" (profit), which amounts to IDR 25,000,000—the difference between the selling price and the acquisition value. However, if the gross transfer value is considered the selling price of IDR 125,000,000, the tax burden becomes disproportionate.

[32] Angeline Gautami Fernando, Bharadhwaj Sivakumaran, and L. Suganthi, "Comparison of Perceived Acquisition Value Sought by Online Second-Hand and New Goods Shoppers," *European Journal of Marketing* 52, no. 7–8 (2018): 1412–38, https://doi.org/10.1108/EJM-01-2017-0048.

The taxpayer's actual capacity to pay tax is limited to the profit of IDR 25,000,000.

To further illustrate this injustice, consider a scenario where the house is sold for IDR 90,000,000, which is below the acquisition value, potentially due to financial hardship. In this case, there is no additional economic capacity (profit) from the sale. Nevertheless, the seller is still liable for the income tax on sales and purchases based on the gross transfer value of IDR 90,000,000. This situation imposes a significant tax burden on the taxpayer, who, despite incurring a loss, remains subject to taxation based on the gross sale amount.

Such tax collection practices foster a sense of injustice, as the tax burden becomes disproportionately heavy for taxpayers, regardless of their capacity to pay or the income they have actually earned. This situation can lead to taxpayer non-compliance, particularly among those selling assets for less than their acquisition value. The considerations outlined in the dictum of Government Regulation Number 71 of 2008 emphasize "ease and simplicity" as the sole basis for calculating income tax on income derived from the transfer of rights to land and/or buildings, neglecting any mention of justice. This raises a critical question: can the element of justice be sidelined and deemed insignificant in comparison to ease and simplicity? How can implementation regulations deviate from essential elements such as fairness while prioritizing convenience?

The arbitrary nature of tax collection arising from income tax levied on the gross transfer value violates fundamental principles of tax law, encapsulated in the adage, “No taxation without representation,” in England and “Taxation without representation is robbery” in America. The imposition of income tax based on the gross amount of the transfer value lacks justification and is in direct conflict with the *UU PPh*, which stipulates that the tax object should be the additional economic capacity, profit, or the difference between the sales price and the acquisition value (gain). Therefore, the collection of income tax on sales and purchases from the gross transfer value, which includes the acquisition value, is entirely unfounded and inconsistent with the law, existing only within the realm of implementing regulations that fall below statutory provisions.

The imposition of income tax based on the gross transfer value—including the acquisition cost—can be characterized as "robbery,"[33] as it derives authority solely from a government regulation rather than established law. Taxation should instead be grounded in the taxpayer's ability to bear the tax burden, which is reflected in their income or assets associated with their

[33] Thomas P. Bernstein and Xiaobo Lü, “Taxation without Representation: Peasants, the Central and the Local States in Reform China,” *China Quarterly* 163 (2000): 742–63, https://doi.org/10.1017/s0305741000014648.

living expenses. Consequently, tax should be collected based on the taxpayer's capacity to pay.[34]

Income tax collection on sales and purchases should focus on the profit or difference realized by the taxpayer. In situations where there is no profit—such as losses incurred from sales due to urgent circumstances—no income tax on sales and purchases should be owed. It is fundamentally unjust to require taxpayers to pay taxes when their transactions result in a financial loss, particularly when the basis for tax collection is the gross amount, which includes the acquisition value. Given Indonesia's commitment to the Pancasila philosophy, justice must be a core principle in tax law, with the law's purpose being to achieve fairness and equity.[35]

C. Conclusion

From the discussion, these conclusions were drawn.

1. The Income Tax object regulated in the Income Tax Law (*UU PPh*) is defined as additional economic capacity, signifying the difference or profit realized by the taxpayer (gain). In the context of the sale of land and/or buildings, this profit is specifically the difference between the transfer value (the selling price) and the acquisition value (the purchase price). This profit constitutes the basis for income tax assessment.
2. In the implementation of regulations derived from the *UU PPh*, whether manifested as Government Regulations, Ministerial Regulations, Director-General Regulations, or Circulars from the Director-General of Taxes, the gross amount of the transfer value has been incorrectly established as the foundation for assessing income tax on sales and purchases. Consequently, income tax is levied not only on profits but also on the acquisition value. This approach is inappropriate and excessively burdensome for taxpayers, as it does not align with their ability to bear such costs, thereby undermining societal perceptions of justice.
3. The collection of income tax on sales and purchases based on the total gross amount of the transfer value contravenes the provisions of the *UU PPh*, as the appropriate basis for collection should be the gain or difference between the selling price and the acquisition value. Moreover, this collection basis violates the international principle of "No taxation without representation," as income tax levied on the gross transfer amount—including the acquisition value—is inconsistent with established laws and infringes upon Article 23A of the 1945 Constitution (as amended).

[34] Juliana Tutt, "'No Taxation without Representation' in the American Woman Suffrage Movement," *Stanford Law Review* 62, no. 5 (2010): 1473–1512, https://doi.org/10.2307/25681867.

[35] Oyok Abuyamin Bin H. Abas Z, *Perpajakan, Dasar-Dasar Perpajakan ; KUP; PPh; PPN Dan PPn BM; PBB; BM; Pajak Daerah Dan Retribusi Daerah; PPSP; Pengadilan Pajak; Pengantar Perpajakan Internasional* (Bandung: Mega Rancage' Press, 2016), p. 42-63.

Recommendation

To realize justice in accordance with the Pancasila Philosophy and to achieve harmonization among laws and regulations, starting from the 1945 Constitution (as amended) and extending to Income Tax Laws, the following suggestions are proposed to enhance social compliance in tax payments:

1. It is recommended that the Ministry of Finance, along with its staff, revise the implementing regulations concerning income tax collection on the sale and purchase of land and/or buildings. These regulations should be aligned with the provisions of the *UU PPh*;
2. It is encouraged that legal and tax practitioners undertake material testing before the Supreme Court to address the disharmony between laws and their implementing regulations. This testing should be grounded in the principles of "No taxation without representation" and "Taxation without representation is robbery".
3. The broader community, including developers, should actively provide critiques and feedback regarding the imposition of income tax on the sale and purchase of land and/or buildings to the respective Primary Tax Offices to foster a sense of justice and equity in tax collection practices.

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