

Justice in the Income Tax Collection on Sale-Purchase

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<p>Keywords: <i>Income Tax; Land and Buildings Sale-Purchase; Object of Income Tax.</i></p> <p>DOI: <i>10.25041/fiatjustisia.v16no1.2271</i></p>	<p><i>Income tax for land and buildings purchase in Indonesia is regulated in Law Number 36 of 2008 regarding Income tax. This law stipulates that one of the tax object's profits comes from land and building sale-purchase. The research would emphasise that income tax comes from other profits instead of transactions or gross prices. This research uses a normative juridical method. "Profits" has an important note in Income Tax's calculation in the land and building sale-purchase process. Income taxes are collected by calculating the transfer value's gross amount rather than profits. This calculation violates the Income-tax Law and is highly burdensome for taxpayers. Therefore, it tarnishes the sense of justice in such tax collection and disharmony between the law and its implementation.</i></p>

A. Introduction

Taxation was ingrained in Indonesian society long before the country's independence. The taxes had a negative connotation because they became burdensome to the people. Taxes became the reason for the colonizer misusing the people's money. As a result, instead of benefiting Indonesian society, it caused a significant loss.¹

The colonizer significantly sharpens taxes' role and function by using any reason. According to colonizers, taxes cover all life aspects. Taxes became one of the largest sources of income for the colonizer exploited for their

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.v5iY.3409>.

interests. In such cases, no Indonesians paid taxes voluntarily because the tax costs exceeded their ability.²

After independence, the Republic of Indonesia faces a more intelligent, accessible, critical society, and tax paradigm shifts from the colonial era. The taxes at this time become the country's largest source of income. Taxes become fuel for development that can run efficiently since it revolves quickly towards Indonesian people's desire. Subsequently, taxes have been transformed into something taken and returned to the people and should not be in the government's interest or any particular party.³

National development refers to ongoing activities and sustainability to increase public welfare, either material or spiritual. To achieve such goals, we must first understand development financing issues. One strategy for achieving state independence in development financing is to look internally for funds, such as taxes. Taxes are used to fund common-interest construction.⁴

Nevertheless, there is still doubtfulness whether that "Tax Law" is still worth called "law" or "tyranny"? Government authorities usually misuse taxes as personal income. The government cannot collect taxes from the people arbitrarily. This action is more likely a deprivation than a contribution.⁵

Taxes must have a legal basis, a collection mechanism, a tariff collection amount, payment, and objections submission. The government must convey publicly, transparently, and without pressure about their taxes.⁶ As a result, the tax collection process is implemented two-way. Various theories emerge to justify and grant a legal basis for tax collection and persuade that such tax collection is "lawful" and should not be viewed as an arbitrary deprivation. If not, the taxes collected would be the same as Indonesia's pre-independence period, which becomes a burden because tax payable was preeminent to other payables, so it cannot be set aside or be the second.⁷

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 Kebijakan 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>.

⁷ Sindian Isa Djjadiningrat, *Hukum Pajak Dan Keadilan* (Bandung: N.V.Eresco Dj, 1960), p. 1.

The main focus of this research is the collection of Income-tax or *Pajak Penghasilan* (PPh) on land and building sale-purchase (hereafter referred to as “Income Tax on Sale-Purchase”). Tax collection must adhere to collection principles when choosing alternative collections to achieve its purpose so that there is harmony among tax collections, namely the understanding of the particular taxation. The taxes collection should be based on the following principles:⁸

1. Equality

The taxes collection must be fair and homogeneous; namely, the taxes imposed on individuals must be comparable with their ability to pay taxes and the benefits received. Fair is intended when each Taxpayer contributes to government spending to their interests and required benefits.⁹

2. Certainty

The taxes determination is unspecified arbitrary. Therefore, any Taxpayer must understand the amount of tax due, when it must be paid, and the deadline for payment.¹⁰

3. Convenience

When such a Tax Payer must pay any tax, it is preferable to do so during non-burdensome times, such as when the Tax Payer receives any income. This collection system is called pay as you earn.¹¹

4. Economy

In an economy, the Taxpayer's collection and tax obligation fulfilment expenses are expected to be as low as possible.¹²

The principles outlined above are implemented in Income tax regulations when collecting income tax on sale-purchase transactions. Indonesian regulations adopt internationally applied principles regarding the taxes collection, which the international community considers universal principles. The Indonesian government must consider the above principles, especially

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>.

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>.

Kantor Pajak Pratama or Pratama Tax Office. The Tax Office must implement these principles towards the Income-tax on Sale-Purchases collection fairly, properly, and correctly.¹³

Practically, income tax in the sale-purchase process' collection is the foundation for the collection's calculation, and the Income-tax on Sale-Purchase is the parties' transaction price.¹⁴ The amount of the rights transfer value as Income tax calculation is the gross amount of the land and/or building's rights transfer value.¹⁵ The question is whether this is already correct or not because "income" should be the addition of financial ability, and "additional" is defined as the "profit" (gain), not the transaction price (gross price).

The transaction price (gross price) is further confirmed in Article 4 paragraph 1 of Government Regulation Number 71 of 2008 regarding the Third Amendment to Government Regulation of the Republic of Indonesia Number 48 of 1994 regarding the Payment of Income-tax from the Rights Transfer on Land and/or Buildings, which states:

"(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 totalling:

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 big question is whether collecting Income Tax on Sale-Purchase is correct based on the transaction price/gross price? Is such matter contrary to the taxes collection principles? Does that mechanism eventually violate the sense of justice? The second matter is the Income Tax collection time, which must be paid "before" the authorized party signs the deed, decree, agreement, or auction minutes transferring rights to land and/or buildings.¹⁶ Thus, tax has already been charged before the Taxpayer receives any income, which is burdensome and violates the convenience principle.

More specifically, the author wants to convey that a sale-purchase transaction occurred that actually "losses," either due to any pressing

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 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....".

¹⁵ 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).

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

circumstances for the seller (for example, entangled debt) or the land position (as an example: often flood). As a result, the land and/or buildings is/are sold for less than the purchase price, and the seller makes no profit (additional financial ability) but instead suffers losses. In such circumstances, the seller imposed the transaction price/gross price calculation basis, which is more burdensome because the tax payment must be completed before the seller receives any income. The phrase "has also fallen smitten by households" is appropriate in such circumstances.

In terms of originality, this paper will not discuss the issue of increasing/decreasing money, land, and/or buildings to count the profit or loss as income tax. The reason is that such calculation leans to the economic aspect over the legal aspect. However, the research would emphasise that income tax comes from other profits instead of transactions or gross prices. Each monetary, land, and/or building valuation must be submitted to the economist.

From such an overview, the author discovers some intriguing issues from the Income Tax Collection on Sale-Purchase that merit further investigation. Based on the background, the author doubts that the Pratama Tax Office fulfils the fairness principle in Indonesia. The doubts arise if the Income-tax on Sale-Purchase legal action fulfils the justice sense in society. This matter needs to be observed because, practically often, the seller and the buyer avoid the high tax payment to "manipulate" the transaction price to reduce the value. This might happen because the tax payment has been felt very heavily when calculated from the gross value instead of the profit. Therefore, the research will extend the Justice Principle's fulfilment in collecting the Income-tax for Sale Purchase. The extent fulfilment of such principle has made Indonesian society conscious and voluntary to pay tax and not try to avoid the collection of the Income-tax that is payable.

This research uses a normative juridical method that extensively examines the law and regulations and the doctrines contained in the legal literature with a coherent truth. The user will see and compare any suitability of laws and regulations in a hierarchical manner (vertical harmonization).

B. Discussion

According to Pancasila's insight, the legal system is integral to the whole social life system. Therefore, it is related to reciprocal through various influences and interaction with other systems. The legal system formation process does not depend on the deterministic way as suggested by the historical materialism that solely relied on the product's power. This shows that the legal system formation needs to be consciously and thorough

according to ideological orientation. Thus Pancasila as the national ideology grants the following introductory 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 basically on Pancasila orientation that crave the humane, fair, and prosperous condition.
2. The legal system shows its interpretation as far as manifesting justice.¹⁹ The law is not identical to justice, but it serves to actualize many people's interests. Thus the law is not solely a power tool, not a legitimate to do 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 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 people's interests in modern state law, namely a "welfare state."²³ Therefore, a government has a consequence that forces participation actively in social relatedness for all people to stay maintained. Then, the welfare state government is granted extensive works in the public's interest. A legal state is based on the law that guarantees justice for

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 Budiarta 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 Dimiyati 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>.

its entire people. This means that all actions taken by state apparatus or authorities are based on the law. Such a matter reflects a sense of justice for its citizens' promiscuity.²⁴

The justice (primarily) always becomes a state tax collection benchmark in its fulfilment. If not mandated by law, the state never collects trash. Article 23A of the Amendment of the 1945 Constitution regulates: "Taxes and other collections which are a force for the state purposes, are regulated by the Law." The 1945 Constitution prohibits any taxes or collections that deviate from the law or without being based on the law. Thus, its tax-imposition ratio must be according to the law.²⁵

Tax is an asset transfer from the people sector to the government sector (to finance the state's needs). Therefore, an individual cannot directly appoint contraprestation. Meanwhile, an asset transfer from one sector to another without any contraprestation can occur only in the event of a grant (testament). Another possibility is that asset transfer occurs because of any violence/coercion, such as robbery or looting. In England, a proposition states, "No taxation without representation²⁶," and in America, "Taxation without representation is robbery."

Since centuries ago, many tax theories have emerged to provide a sense of justice in society through tax collection, one of which is the force theory (Teori Gaya-Pikul).²⁷ The main point of such a theory is a sense of justice, as the tax burden should be the same for everyone (Compared with the first Maxim). The tax must be paid based on someone's force style (Gaya-pikul), and the number of incomes and assets and someone's expenditure/use (spending) can be used for measuring this force. Most leading scholars still maintain this theory in Tax Law now. Ir. Mr. A.J.Cohen Stuart equates the force style principle with a bridge. The ability to give money to the state exists only if life's necessities are already available. Therefore, the force style principle must carry its weight before burdening indispensable for life.²⁸

The need to provide a sense of justice and prosperity to the Indonesian people in collecting Income Tax on the Sale and Purchase of land and/or buildings. The author focuses on the Income Tax of land and buildings as primary human needs consist of food-clothing-shelter. To ensure a clear and correct understanding, the author will first discuss what the Income Tax

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.

object means under the applicable laws and regulations. Paragraph 1 of Article 4 of the Laws Number 36 of 2008 regarding the Fourth Amendment of the Laws Number 7 of 1983 regarding Income-tax (hereinafter shall be referred to the "UU PPh") states:

"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 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 levied on losses because there is no tax object in the form of "additional" or profit. With guidance from such an Article, the "additional economic ability" that becomes the Income-tax object is its "additional." This is proved by the word "add" or "additional" stated 2 (two) times in the article and the article's explanation. The "additional" mentioned in UU PPh is a difference in profits obtained by the Tax Payer, calculated from the difference between the acquisition cost (when purchasing) and the selling price, which is the Income Tax object. Then how if there is no "additional" or profit? Because the selling price is less than the acquisition price (when purchase). To be more convinced about the meaning of UU PPh, we explore further the Letter d of Paragraph 1 of Article 4, which is excerpted below:

"... included:

- a. the profits due to 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 explained 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 asset is generally calculated between the selling and the book or acquisition price (or another price).²⁹ Income Tax collection on Sale-

²⁹ Gunadi, *Pajak Internasional* (Depok: Lembaga Penerbit Fakultas Ekonomi UI, 2007), p. 42.

Purchase under the additional/profits is frequently mentioned as capital gains, or gains have been very aptly poured in the UU PPh. This matter has even been poured into Article 13 of the Organisation for Economic Cooperation and Development (OECD)³⁰, that the excerpt of Paragraph (1) is as follows:

“(1) the profits that 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.”³¹

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 object, even deviating from mandated in UU PPh.³² The implementation regulations are 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 totalling:

- 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 that 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 Tax on Income from the Transfer of Rights to Land and/or Buildings, and

³⁰ OECD (Organization for Economic Cooperation and Development) is a commission formed based on the Paris Convention dated 14 December 1960. This organization has the task of making a model tax treaty (Model treaty or *Musterabkommen*) which contains general principles and definitions. Moreover, the OECD has a form and content that can guide its member states to establish double tax prevention agreements between countries. See Rochmat Soemitro, *Hukum Pajak Internasional Indonesia* (Bandung: PT. Eresco, 1977), p. 17.

³¹ Soumitra, p. 254.

³² 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>.

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 Implementation of Final Income Tax from Transfer of Rights to Land and/or Buildings Obtained by Tax Payer.

The regulation state the "gross value of the transfer." The gross amount mentioned in such implementation regulations above is the amount received by the Tax Payer, including capital when the Tax Payer made the purchases (acquisition value) and profits (if any), whether this is under the content and purpose of UU PPh? Of course not. Even such implementation regulations have deviated significantly from UU PPh, which states that the tax object is "additional"/profits/gains, defined as the difference between the selling price and the acquisition value rather than the gross amount.³³

Implementation regulations that deviate from the content and purpose of UU PPh confuse the Income Tax collection on Sales and Purchase. Such confusions bring injustice to the Tax Payer, especially those who sell land and/or buildings below the acquisition value. This simple example will demonstrate the injustice of collecting Income Tax on Sales and Purchases, which is highly burdensome for Taxpayers:

The acquisition value of the House is Rp.100.000.000,- and then after a few years, it is sold for Rp.125.000.000,-. According to UU PPh, the basis for collecting Income Tax on Sale and Purchase is "additional economic capacity" (profit), namely, the difference is Rp.25.000.000,-. Purchase is the gross amount of the transfer value, which in the example is Rp.125.000.000. This is very burdensome for the Taxpayer because the carrying ability is only as big as the profit of Rp.25.000.000,-. To illustrate the injustice of this rule, the sale of the house is Rp.90.000.000, -. This is below the acquisition

³³ 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>.

value (for example, a loss due to debt). Therefore, there is no additional economic ability (profit). The seller is still subject to Sales and Purchase Income Tax based on the gross amount of the transfer value, which is from Rp.90,000,000-. This is highly burdensome for the Taxpayer because he sold the house at a loss condition and is still subject to the tax.

Such tax collection creates a sense of injustice because the tax burden is too heavy for the Taxpayer, regardless of bearing ability or acquired/earned income. The matters like this can lead to Tax Payer non-compliance in paying taxes because the burden is too heavy, particularly for Tax Payer who sells below the acquisition value. According to the consideration dictum of Government Regulation Number 71 of 2008, the only consideration in calculating Income Tax on income from the transfer of rights to land and/or buildings is "ease and simplicity." It makes no mention of the element of justice. It becomes a big question, can the element of justice be side-lined and considered insignificant compared to the elements of ease and simplicity? How could an implementation regulation deviate and only consider convenience and simplicity while omitting the essential elements?

Tax collection occurs arbitrarily results from Income Tax collection based on the gross amount of the transfer value. This violates a well-known Tax Law proposition: "No taxation without representation" in England and "Taxation without representation is robbery" in America.³⁴ This occurs because Income Tax collection from the gross amount of the transfer value is entirely unfounded, inappropriate, and in conflict with UU PPh. This law regulated that the tax object is an additional economic ability, profit, or difference between sales and acquisition value (gain). Income Tax collection on Sale and Purchase from the gross amount of the transfer value, which includes the acquisition value, is entirely unfounded, not according to the Laws, and only under any implementation regulation below the Laws.

Based on the proposition "No taxation without representation," the Income Tax collection is based on the gross amount of the transfer value, which includes the acquisition value (as such implementation regulation above) can be described as "robbery," because only under Government Regulation (not Laws).³⁵

Taxation should be based on the "ability to bear the tax burden that must be paid." This ability to bear is manifested in income or assets associated with life's burden (cost). Therefore, tax is collected based on the Taxpayer's ability to pay (people). Force ability Income Tax collection on Sale and Purchase is difference/profit obtained by the Tax Payer. If there is no profit,

³⁴ 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>.

³⁵ 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>.

even losses due to selling (for example, in an urgent condition), then Sale and Purchase Income Tax is not owed. It is very unfair if the Tax Payer still pays taxes, even though the sales made are already losing money because the basis for the collection is the gross amount (including acquisition value). Because Indonesia has Pancasila philosophy, justice must be reflected in tax law. The law's purpose is to achieve justice. Then the tax law must be aimed at maintaining justice.³⁶

C. Conclusion

From the discussion, then can be concluded:

1. The Income Tax object regulated in UU PPh is additional economic capacity, which means the difference or profit obtained by the Tax Payer (gain). Profit in the sale of land and/or buildings is the difference between the sale value of the land and/or buildings (transfer value) and the acquisition value (when the Tax Payer purchased). This profit is the object of Income Tax.
2. In the implementation regulations from UU PPh, whether in the form of Government Regulation, Minister Regulation, Director-General Regulation, or Circular of the Director-General of Taxes, the gross amount of the transfer value is established as the foundation of Income Tax on Sale and Purchase. Thus, income tax is collected not only on profits but also on acquisition value. This is incorrect and inappropriate because it is highly burdensome for the Taxpayer, not within the Taxpayer's bearing ability, and thus affects society's sense of justice.
3. The Income Tax collection on Sale and Purchase based on the total gross amount of the transfer value has violated/inappropriate with the provision of UU PPh because collection basis is the gain or difference in selling value (transaction price) with the acquisition value. The collection basis also violates the international tax proposition: "No taxation without representation," because income tax collection based on the gross amount of transfer value, which includes acquisition value, is contrary to the laws and violates the provision of Article 23A of the 1945 Constitution (amendment result).

There are no harmonization of the law and regulations regarding the collection of Income-tax in the Sale and Purchase of land and/or Buildings regarding the object of imposition of the Income-tax, where the implementing regulations are contrary in real with the umbrella law thereon.

Recommendation

³⁶ Oyok Abuyamin Bin H. Abas Z, *Perpajakan, Dasar-Dasar Perpajakan ; KUP; PPh; PPN Dan PPh BM; PBB; BM; Pajak Daerah Dan Retribusi Daerah; PPSP; Pengadilan Pajak; Pengantar Perpajakan Internasional* (Bandung: Mega Rancage' Press, 2016), p. 42-63.

For realizing justice according to the Pancasila Philosophy, and harmonization of laws and regulations started from the 1945 Constitution (amendment result), Income Tax Laws, and the realization of social compliance in paying taxes, the author suggests:

1. To the Ministry of Finance and staff, so that revise the implementing regulations regarding Income tax collection on Sale and Purchase land and/or Buildings and adjust with UU PPh;
2. To the law and tax practitioners, so that make any legal efforts in the form of material testing to the Supreme Court regarding disharmony Law and its Regulations, namely with the argument “No taxation without representation” or “Taxation without representation is robbery”;
3. To the broad community and any developers, give any critiques and inputs regarding the imposition of Income-tax in the Sale and Purchase of land and/or Buildings to the Primary Tax Office, respectively, to create a sense of justice in tax collection.

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