

Juridical Study of Imposition of Taxes on Transfer of Rights to Land and Buildings in a Merger of Companies

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ABSTRACT

This study aims to determine and analyze the provisions on the imposition of taxes on the transfer of rights to land and/or buildings in the merger of companies, to know and to analyze the legal certainty of PPh final PHTB in the use of the pooling of interest method in the merger of companies, to know and to analyze the fairness of tax imposition of transfer of rights to land and/or buildings in the merger of companies. This type of research is normative juridical law research. This study uses a statute approach and a comparative approach related to their relationship with other regulations and their relation to their application in practice. Data collection tools used in this study were document studies or library materials. In horizontal justice, a tax collection is said to fulfill justice if taxpayers who are in the same condition are treated equally, whereas in vertical justice, the principle of justice is fulfilled if taxpayers who have different economic additions are treated unequally. The results of this study indicate that the imposition of final income tax on the transfer of rights to land and/or buildings does not fulfill the principle of horizontal and vertical justice because using the purchase method is subject to tax, while using the pooling of interest method is not subject to tax. On the other hand, there is fairness in the imposition of BPHTB, because the use of the purchase method or pooling of interest is subject to tax.

Keywords: BPHTB, Merger, PHTB, Tax

INTRODUCTION

Entering the era of free trade, business competition that is growing so rapidly has increasingly encouraged company owners or management to develop their business with both short and long term business strategies. Business changes are also evolving to be able to meet changing market needs and compete for the best capable management. One way is by merging several businesses. Basically, a company merger is a form of merging one company with another company in order to gain control over assets and operations.

According to Law No. 40 of 2007 concerning Limited Liability Companies (UU PT) in Chapter I Article 1 paragraph (9) "Merger is a legal act committed by one or more companies to merge with another company which results in the assets and liabilities of the merging company being transferred due to the law. to the company that accepts the merger and subsequently the status of the merging company legal entity ends because of the law".

By merging several businesses, it is hoped that the company can increase its market share, diversify its business, or increase the vertical integration of existing operational activities and so on. The merger of several businesses is also considered as a discourse to achieve business goals and interests that provide relatively fast growth or win new market shares so that it is more attractive than normal business development (Iskandar, 2015).

The general objective of the company merging with other companies, among others, is to increase market share and added value through efforts to create better efficiency, increase operational synergy, financial synergy, and strategic realignment, and for public banks there is a Q-ratio reason which means comparison of the company's stock capitalization with the replacement cost of the company's assets for land and/or buildings. Apart from that, the merger of companies is also intended to direct the company to operate efficiently. This motif is often used as the main indicator of a company merger policy (Gustina, 2017).

Some business practitioners argue that the policy of merging companies can be said to be successful if the merger of these companies can at least produce what is called a new synergy, in the sense that the merger of two or more companies, not only produces the sum as in the merger of conglomerate companies but will produce a new math, where the profits achieved will be far greater than the profits achieved individually before the merger. This condition will certainly increase the level of economies of scale, so that various existing resources can complement each other and better coordination between the various stages of production (Jojonomic, 2020).

A company merger is akin to a couple getting along well. Prior to the merger of the company, the two parties had undertaken an exploration in the hope that the two of them would live in prosperity forever. Common problems faced in every decision to merge companies are related to control problems over the company, determining the relative contribution of the joining companies, profit percentage, determining fair prices, determining the acquisition price, the source and amount of investment funds for the taking over company and so on (Sawir, 2004).

The legal basis for the imposition of Final PPh PHTB on companies as corporate taxpayers who transfer their rights to land and/or buildings is Article 4 paragraph (2)

of Law Number. 7 of 1983 regarding Income Tax as lastly amended by Law Number 36 of 2008 (hereinafter referred to as the PPh Law) Junto Article 1 paragraph (2) of Government Regulation Number 34 of 2016 concerning Income from Transfer of Rights to Land and/or Buildings and Agreement on Sale and Purchase of Land and/or Buildings and its amendments (hereinafter referred to as PPh PHTB-PPJBTB) (Irawan, 2008).

There are two methods for merging companies, namely the pooling of interest method and the purchase method. The pooling of interest method or pooling of interests is a method which sees that the ownership of the companies that are merged is one unit and remains relatively unchanged in the new entity. Net assets in a merger are recorded at the book value. Meanwhile, the purchase method is a method based on the assumption that a merger is a transaction in which one of the entities obtains net assets from the other merged companies. With this method, the buying company needs to record the assets received and the liabilities borne at fair value, which is income which is a tax object (Kristanto, 2010).

Basically, the corporate merger strategy carried out by several companies provides many benefits, but there are also risks that must be borne by the companies that carry out the merger, namely the number of tax provisions imposed by the government requiring tax subjects or taxpayers to clearly understand the rules. In principle, the Directorate General of Taxes does not allow the use of the pooling of interest method for the merger of companies on the grounds that the pooling of interest method in transferring rights to land and/or company buildings in a company merger is not subject to PPh Final PHTB, while BPHTB is subject to tax. It is different with the purchase method, when the transfer of rights to land and/or buildings in a merger company is subject to Final PPh PHTB and BPHTB subject to tax based on market value.

As in other countries, the book value assessment in the context of merging companies must also meet several requirements, namely the business ownership structure that does not change at least 80%, there is a similarity in business segmentation between companies that are merging companies and have good business objectives. Of course, as long as it is for the purpose of strengthening business synergy, the Directorate General of Taxes will be fair in inviting mergers of companies to use book value and get the value of tax incentives such as non-payment of PPh Final PHTB (Kemenkeu, 2020).

As an example of the merger of five companies, namely, PT Indosentra Pelangi, PT Gizindo Primanusantara, PT Indobiskuit Mandiri Makmur, PT Ciptakemas Abadi, and PT Indofood CBP Sukses Makmur. In the merger, PT Indofood CBP Sukses Makmur will continue to exist as the merged company, while the other four companies will dissolve or end by law. In terms of using the method of merging companies, PT Indofood CBP Sukses Makmur (CBP) proposed to the Director General of Taxes to use the pooling of interest method or book value. The Director General of Taxes has approved the use of book value in the transfer of rights to land and/or buildings with the issuance of a Tax Free Certificate (SKB) (IDX, 2020).

The use of these two methods, as stated above has the potential to cause injustice to companies that are merging companies because the Pooling of Interest method is not subject to final PPh PHTB and the Purchase Method is subject to final PPh PHTB.

This study aims to determine and analyze the provisions on the imposition of taxes on the transfer of rights to land and/or buildings in the merger of companies, to know and to analyze the legal certainty of PPh Final PHTB in the use of the pooling of interest method in the merger of companies, to know and to analyze the fairness of tax imposition of transfer of rights to land

and/or buildings in the merger of companies.

RESEARCH METHODS

This type of research is normative juridical law research. According to Sugiyono (2009) descriptive research is a method used to describe or analyze a research result but is not used to make broader conclusions.

This study uses a statute approach and a comparative approach related to their relationship with other regulations and their relation to their application in practice. The approach method used is by analyzing the provisions governing matters that are problematic based on statutory regulations, using the statute approach and the comparative approach in relation to other regulations and their relation to implementation in practice. In this case, the approach method in this research is used to analyze the imposition of taxes on the transfer of rights to land and/or buildings in the merger of companies.

Data collection tools used in this study were document studies or library materials.

RESULT

In horizontal justice, a tax collection is said to fulfill justice if taxpayers who are in the same condition are treated equally, whereas in vertical justice, the principle of justice is fulfilled if taxpayers who have different economic additions are treated unequally.

Justice in Imposing Final PHTB PPh

Final income tax began to bloom since 1995. In article 4 paragraph (2) PP number. 34 of 2016, the Government is given very broad powers, some call it a blank check, to impose final taxes on various types of income. The rates used to get the effective rate in final PPh are single rates. For some experts, a single tariff does not reflect vertical fairness. It should use progressive rates such as: 5%, 10%, 15%, 25%, and 35% as regulated in Law no. 36 of

2008 for individual taxpayers. This means that "small" taxpayers pay less tax because the rate is also smaller. Conversely, the "big" taxpayer will pay more because the rate is also higher. The greater the income, the greater the tariff. This is what is meant by vertical justice.

Based on the theory of justice, actions that are considered unfair prejudice occur in public relations, so the law plays a very important role in reversing the situation so that the lost justice can be found by parties who have been needed unfairly (wronged, exploited), or corrective justice occurs according to Aristotle (Meuwissen, 2007). The justice that must be returned by law in John Rawls's term is "reasonably expected to be everyone's advantage."

Considering that it is stated in the Basic of the Republic of Indonesia, namely Pancasila, the Second Precepts states "just and civilized humanity" and the fifth precepts mentions "social justice for all Indonesian people". Several theories regarding justice are expected to be realized for recipient regions and also felt by regions that provide tax revenue sharing.

For tax administration, justice is always the opposite of simplicity. That is, if we want to be fair as possible, tax regulations must be made complex, comprehensive, and complicated because they have to accommodate a very varied taxpayer. On the other hand, if it is kept simple, there will be many parties that will not be accommodated. For tax administration, justice is always the opposite of simplicity. That is, if we want to be fair as possible, tax regulations must be made complex, comprehensive, and complicated because they have to accommodate a very varied taxpayer.

Although it is not fair, there is still something called horizontal justice. A single tax rate based on a certain percentage will produce horizontal equity. Taxpayers pay taxes proportionally. So, final Income Tax only has Horizontal Justice but does not have vertical justice. Because of that, some

people say that final income tax is the second best policy.

The state as an authority in terms of tax collection must be able to provide a sense of justice for every citizen as stated by John Rawls in his theory of justice which states that the law must: first, give everyone the right to freedom equal to the freedom of others, so that the benefits of society are shared. Average among members of the same society; second, if there is a situation of inequality, then the law must provide benefits to the "most disadvantaged group of society", so as to create a socio-economic balance in society. In the case of the imposition of final income tax on the transfer of rights to land and/or buildings at the merger of companies, there is injustice in the imposition of final income tax on the transfer of rights to land and/or buildings in the merger of companies, namely: that the party or business entity transfers the rights to land and/or buildings for the purpose of merging companies using the purchase method will be subject to Final Income Tax on the transfer of rights to land and/or buildings (PPH final PHTB). Meanwhile, parties or business entities that transfer their rights to land and/or buildings in the merger of companies using the pooling of interest are not subject to PPH final PHTB.

If the business merger is carried out using the purchase method, the party or business entity transferring rights to land and/or building will be subject to the obligation to pay final PPH PHTB, whereas if the business merger is carried out using the pooling of interest method, the party or business entity transferring the rights to land and/or buildings are not subject to the obligation to pay PPH final PHTB. The market price of land and/or buildings transferred by PT. A to PT. B is the same as the market price transferred by PT. X to PT. Y, amounting to Rp8.5 billion. But in the above case, PT. A is subject to PPH final PHTB while PT. X is not subject to final PHTB income tax.

This is not in accordance with the principle of justice, namely horizontal

justice. In horizontal justice all people who have the same economic capacity or get the same additional economic capacity must be subject to the same tax.

The results of this study indicate that the imposition of final income tax on the transfer of rights to land and/or buildings does not fulfill the principle of horizontal and vertical justice because using the purchase method is subject to tax, while using the pooling of interest method is not subject to tax.

Justice in Imposing BPHTB

Any transfer of rights to land and/or buildings in the context of merging companies will be subject to a fee for acquisition of rights over land and/or buildings (BPHTB). BPHTB is subject to a rate of 5% of the taxable selling value, the difference between the selling price and the non-taxable tax object selling value.

The profits received by companies in the context of merging companies are the object of BPHTB as stated in Article 85 paragraph (2) of Law no. 28 of 2009 is a tax on the acquisition of rights to land and/or buildings, which is a tax imposed on the acquisition of rights to land and/or buildings, hereinafter referred to as tax. Thus, the rates will be charged according to Article 88 paragraph (1) for these benefits.

In Article 85 paragraph (1) of Law no. 28 of 2009 concerning PDRD states that BPHTB is stated to be the object of tax is the approval of the right to land and/or buildings, which is thought to be with the merger of companies, further regulation in Article 85 paragraph (2.a) point 10 states that land and/or buildings are approved. subject to BPHTB including transfer of rights due to business mergers. Whereas those who are subject to tax are private persons or entities that obtain rights to land and/or buildings in the PDRD Law stipulating that the BPHTB tax rate is 5% of the tax base taken from the Tax Object Acquisition Value (NPOP). Article 87 paragraph (2) letter k of the PDRD Law states that the NPOP in the framework of a

business merger is based on market value. If the NPOP as referred to in paragraph (2) letter k is unknown or lower than the NJOP used in the imposition of Land and Building Tax in the year the acquisition is made, the basis for imposition is Land and Building Tax NJOP.

The essence of "fairness" in tax collection is based on the principle of "equity" as explained by Tjip Ismail in his literacy, including the provisions of local taxes. The principle of 'equity' here is intended to explain that the tax base and the obligation to pay must be clear and not arbitrary; the tax concerned must be horizontally fair, meaning that the tax burden must be the same between different groups but with the same economic position, it must be fairly fair. vertical, meaning that the group that has greater economic resources contributes more than the group that does not have much economic resources, and the tax must be fair from place to place, that is, there should be no large and arbitrary differences. authority in the tax burden from one area to another, unless this difference reflects a difference in how public services are provided (Ismail, 2018).

In terms of the imposition of BPHTB, we can see the essence of justice for parties or business entities that carry out the merger of companies using either the purchase method or the pooling of interest method. Parties or business entities that carry out a business merger using the purchase method or the pooling of interest method will be subject to the obligation to pay BPHTB Tax. This is in accordance with the principle of horizontal justice which states that all people who have the same economic capacity or gain the same additional economic capacity must be subject to the same tax.

On the other hand, there is fairness in the imposition of BPHTB, because the use of the purchase method or pooling of interest is subject to tax.

Business mergers made using either the purchase method or the pooling of

interest method are subject to BPHTB Tax. The market price of land and/or buildings transferred by PT. A to PT. B is the same as the market price transferred by PT. X to PT. Y amounting to Rp8.5 billion. So that from the above case, PT. B and PT. Y are both subject to BPHTB of Rp422,000,000.

This is in accordance with the principle of justice, namely horizontal justice. In horizontal justice all people who have the same economic capacity or get the same additional economic capacity must be subject to the same tax.

CONCLUSION AND SUGGESTION

Conclusion

The results of this study indicate that the imposition of final income tax on the transfer of rights to land and/or buildings does not fulfill the principle of horizontal and vertical justice because using the purchase method is subject to tax, while using the pooling of interest method is not subject to tax. On the other hand, there is fairness in the imposition of BPHTB, because the use of the purchase method or pooling of interest is subject to tax.

Suggestion

As a recommendation for the conclusions in this paper, the following suggestions are given:

1. The Service Office of the Directorate General of Taxes and the Regional Tax and Retribution Management Agency of the Regency/City should conduct socialization or counseling to corporate taxpayers and notaries/PPAT regarding the provisions of tax imposition, especially PPh Final PHTB and BPHTB transfer of rights to land and/or buildings in a company merger.
2. In order to use the pooling of interest method in merging companies, the company must comply with the provisions of Article 1 paragraph 3; Article 2 paragraph (1) paragraph (2) paragraph (3) and paragraph (4) Article 3; Article 5 paragraph (1) Article 11 Regulation of the Minister

of Finance of the Republic of Indonesia Number. 52/PMK.010/2017 concerning the use of book value for the transfer and acquisition of assets in the context of a business merger, consolidation, expansion, or acquisition as amended by Regulation of the Minister of Finance of the Republic of Indonesia Number. 205/PMK.010/2018.

3. In order for fairness in the imposition of Final PPh PHTB on the transfer of rights to land and/or buildings in the merger of companies, the exception to the provisions contained in Article 10 paragraph (3) of the Income Tax Law, Article 6 letter e PP Number 34 of 2016 concerning PPh PHTB -PPJBTB and its amendments should be revised, so that the transfer of rights to land and/or buildings in the merger of companies, both with the Pooling of Interest Method and the Purchase Method, are both subject to PPh Final PHTB.

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