

Analysis Tax Regulation MoF 79/2023: Assessing Legal Certainty & Justice in Regulation and Practice

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ABSTRACT

The fundamental principles of justice and legal certainty are integral components of the rule of law, concerning the protection of individual rights, specifically in taxation. In this context, the importance of regulation demands the presence of strong legal values. Legal certainty guarantees clear rules, protects rights, and promotes trust in the judicial system. The enactment of Minister of Finance (MoF) Regulation Number 79 of 2023 serves as a responsive measure to the demands for adaptive tax regulations due to the evolution of laws. Therefore, this research aimed to analyze MoF Regulation Number 79 of 2023 using qualitative methods to explore and understand the meaning of taxpayers' perspectives relating to assessment procedures in regulation and practice to provide in-depth guidance on assessment in taxation. MoF Regulation Number 79 of 2023 is important for tax system compliance, justice, and legal certainty, serving as a multi-faceted juridical, philosophical, and sociological foundation. The results show that the regulation adheres to legal principles, influencing taxation practices regarding tangible and intangible assets, income tax, Value Added Tax (VAT), and sale agreements. Practical aspects, including the Indonesian Professional Appraisal Society (MAPPI) relationship, professional judgment, and considerations for business dissolution, enhance justice, legal certainty, and tax compliance. This research contributes to analyzing perceptions of legal certainty and fairness in Tax Policy and the importance of balancing the use of tax regulations for external purposes with internal values and principles of tax justice in practice which will impact the process of making other tax policies more effective and equitable, ultimately contributing to the promotion of social justice, economic development, and good governance. Moreover, future research can analyze the latest regulations issued as a theoretical and practical foundation for taxpayers, aid in setting valuation standards, and ensure compliance with the changing law for the professional practice of tax experts and accountants.

Keywords: Justice, legal certainty; MoF Regulation Number 79 of 2023; Taxation Practices, Tax Regulation

INTRODUCTION

Maintaining justice and legal certainty is essential to safeguard the rule of law and protect individual rights, including the subjective perspective of taxpayers. These principles support trust in the legal system, promote social stability, and ensure equal protection under the law. Persistent dedication to the assessment and adjustment of laws and legal procedures is important to ensure continued fairness, accessibility, and responsiveness to the evolving needs of society. The importance of regulation in the context of taxation demands the presence of strong legal values, in line with the perspective expressed by the prominent jurist Gustav Radbruch. According to Radbruch, tax regulations should include three basic values, namely Justice (*Gerechtigkeit*), Benefit (*Zweckmassigkeit*), and Legal Certainty (*Rechtssicherheit*). (Julyano and Sulistyawan 2019)

Legal certainty relating to the rule of law provides individuals with clear and anticipated rules to govern behavior and protect rights. (Gu 2017) The absence introduces uncertainty and ambiguity into interactions with the law, leading to a lack of trust and compromising equal treatment. This principle provides the foundation for consistent and fair decision-making by courts

and other legal authorities. (Licht, Goldschmidt, and Schwartz 2007) In a technical context, there is reluctance of taxpayers to fulfill tax obligations due to underpayment, potentially resulting in violations of laws demanding resolution.

Law is faced with the demands of adaptation. Jurists and economists pursue efficiency, adopting economic ways of thinking to improve the practice of the rule of law. Meanwhile, clarification is needed from a legal and economic perspective to advance efficiency and progressivity. (Sugianto, Mildova, and Simeon 2020) In 2023, Minister of Finance (MoF) Regulation Number 79 of 2023 was issued in response to the need for adaptive tax regulations, specifically in facing challenges from economic changes, globalization, technological advances, and the dynamics of business trends.

The philosophical foundation underlying the valuation ordinance is the need to uphold legal certainty for tax purposes. Additionally, the assessment has a philosophical basis, recognizing the importance of assurance and clarity in legal aspects, specifically due to the taxation process.

As an inseparable element of the physiological foundation, the sociological foundation plays a central role in crafting sustainable tax regulations. The sociological foundation shows the implementation of increased justice in the areas of Income Tax, Value Added Tax (VAT), Land and Building Tax (PBB), and Tax Collection by Writ of Mandate to taxpayers and supports State revenue. These measures achieve fiscal justice as an integral part of the strategy to ensure the sustainability and success of tax revenues in supporting government functions and projects. (Kemenkeu, 2023)

Ensuring the ongoing relevance of tax regulation in society or for taxpayers necessitates the important role of the state in the implementation. This significance is shown, particularly in regulations such as the MoF Regulation Number 79 of 2023, which addresses Procedures for Valuation for Tax Purposes. The background of the regulation is to determine the value of the PBB object in the context of determining the Tax Object Sale Value as well as the tangible assets, intangible assets, and businesses. This regulation should provide more justice and legal certainty regarding the implementation of appraisals to regulate the provisions regarding tax purposes. MoF regulation Number 79 of 2023 controls the value of the PBB tax object in the context of determining the Tax Object Sale Value (NJOP) as well as the tangible and intangible assets, to implement the provisions of laws and regulations in the field of taxation.

This research is expected to serve as a foundation in terms of theory and practice for taxpayers and provide in-depth guidance for establishing valuation standards in the implementation of tax law provisions. Recent research has highlighted the complex interplay between justice and legal certainty in tax law including highlights the essential requirement for achieving equilibrium between economic justice and legal justice, especially concerning tax regulations (Dusarduijn, 2020) and other research expresses apprehensions regarding the flexibility inherent in the tax text within the tax omnibus law, which may compromise legal certainty (Burton, 2020). This research contributes to analyzing perceptions of legal certainty and fairness in Tax Policy and the importance of balancing the use of tax regulations for external purposes with internal values and principles of tax justice in practice which will impact the process of making other tax policies more effective and equitable, ultimately contributing to the promotion of social justice, economic development, and good governance.

LITERATURE REVIEW

Theory of Justice and Legal Certainty

Justice and legal certainty are fundamental pillars of a well-functioning rule of law. (Rato 2010) The law shows a very dynamic nature, which does not hinder the effective implementation of tasks and functions due to a lack of legal certainty. In the legal context, the existence of legal certainty is a crucial necessity to ensure the smooth and effective implementation of tasks and functions. (DJKN 2023).

Legal certainty is a fundamental principle of the rule of law where every individual has clear and predictable rules to guide behavior and protect rights (Voigt 2012). In addition, it demands a transparent, consistent, and accessible legal framework since the concept focuses on the importance of clear laws, efficient judicial processes, and accountability of legal institutions. Legal certainty can be generated through excellent and clear norms in the form of comprehensive laws and

regulations. In the context of legislation, progressive legal innovations are needed to ensure justice for all parties. Therefore, new measures should strengthen legal protection and provide clarity regarding the dispute resolution process for optimal functioning of collective labor agreements. (Gaffar et al. 2021)

Theories of justice, intended to guide practical decisions, advocate for actions that serve the most significant number of people. However, decisions related to these principles are often constrained by limitations of authority, resources, and institutional objectives (Siders 2022). Justice includes fair and impartial application of the law as well as accessibility to legal remedies and protection of human rights. This requires strong systems, legal aid, and mechanisms to address inequality and discrimination.

Minister of Finance Regulation Number 79 of 2023 Procedures for Valuation for Tax Purposes

Tax compliance is influenced by taxpayers' perceptions of fairness towards tax payments. Perceptions of fairness increase the willingness to pay taxes, while injustice increases the tendency for non-compliant behavior. (Virginia, 2024) The Directorate General of Taxes states that tax compliance is the level at which taxpayers comply with tax laws and administration without the need for law enforcement activities. the need for law enforcement activities. But the problem that often occurs is that the number of people who cannot fulfill their tax obligations so that the level of mandatory compliance. A major problem faced by Indonesia and other countries in terms of taxation is the low level of tax compliance and the loss of tax revenue due to high tax evasion. (Arizah, 2024)

Regulators and practitioners must remain updated on regulations and best practices within the field considering the complexity and continuous evolution of tax law. Regulations serve as guidelines for tax professionals, providing clarity and consistency in the application of the law (Internal Revenue Service, 2019; Tax & Accounting Research Wolters Kluwer, 2021).

The Minister of Finance (MoF) Regulation Number 79 of 2023 Procedures for Valuation of Tax Purposes regulates general provisions, the scope of valuation for taxation, valuation warrant and appraisal team, valuation procedures, transitional provisions, and closing provisions The application of this rule, one of which affects the land and building tax. In the collection of land and building tax, there are principles that guide the land and building tax. earth and building tax. There are 4 principles of land and building tax, namely: (1) Provide convenience and simplicity; (2) There is legal certainty; (3) Easy to understand and fair; (4) Avoid double taxation. (Mardiasmo , 2019)

METHOD

Qualitative studies are used to explain experiences or views. This technique allows the disclosure of findings that are not reached by statistics or other quantitative methods. Qualitative research can convey in-depth opinions from sources, create a thorough, comprehensive picture using words, and be prepared on a scientific basis. (Creswell, 2018) We used Qualitative method to explore and understand the meaning of the taxpayers' perspective relating to the assessment procedures through the MoF Regulation Number 79 of 2023. The process includes the perspective of taxpayers and regulators, and data is collected in the participation settings. Primary data used is in the form of transcripts of notes from key persons and direct observations, while secondary data is obtained through literature studies from journals and other sources related to the object of research, specifically regarding the Valuation Procedure for Tax Purposes.

RESULTS

Policy Analysis on Minister of Finance Regulation Number 79 of 2023 on Justice and Legal Certainty

Regulations play an important role in ensuring compliance and justice in the tax system due to the provision of clear expectations and obligations. It is important to understand that tax regulations are not static, but subject to change due to legislative updates, court decisions, and evolving interpretations of the laws (Wolters 2021).

Minister of Finance (MoF) Regulation Number 79 of 2023 serves a fundamental role as a juridical basis since the law carries legal recognition when formulated within the bounds of

authority and in the context of fiscal management exercise. Additionally, it has the task of formulating fiscal policy and macroeconomic framework. From a philosophical and sociological context, the regulation provides legal certainty regarding valuation for tax purposes and improves justice in the field of taxation.

MoF Regulation Number 79 of 2023 has fulfilled legal principles, including legal certainty, justice, and expediency. The legal certainty principle provides a strong basis for the implementation of tax laws related to value and appraisal reports. In the principle of justice, the regulation shows a fair and equitable relationship between the Appraiser and the Taxpayer by outlining references and procedures aimed at improving the quality and quantity of appraisals. This focuses on clarity in standards, procedures, and timeframes while optimizing appraisals to safeguard state revenue.

DISCUSSION

Appraisal Procedure for Tax Purposes from a Regulatory Perspective

MoF Regulation Number 79 of 2023 was established to determine the value of land and building tax objects, specify the Tax Object Sales Value (NJOP), and assess tangible and intangible assets, as well as businesses. This initiative aims to enhance justice and legal certainty in the implementation of valuation within the field of taxation. In general, the appraisal workflow for tax purposes begins with a trigger based on legal rules or statutory rules. The Land and Building Tax (PBB) assessment is triggered in Article 1 Number 3 and Article 6 Paragraph 2 on the NJOP. Meanwhile, the Value Added Tax (VAT) law is triggered by Article 1A, Article 2 Paragraph 1, Articles 16C and 16D on the valuation of self-build activities (KMS), and asset valuation. This law serves as the trigger necessitating assessments concerning the NJOP of tangible property, intangible property, and businesses, using both office and field valuations under prescribed valuation procedures. Therefore, the action in the form of NJOP assessment produces an output in the form of a report used in supervision activities, preliminary evidence examination, investigation, Mutual Agreement Procedure (MAP), Advance Pricing Agreement (APA), objection, reduction of PBB, cancellation, and collection.

The scope of valuation for taxation includes the determination of the NJOP of PBB, which is regulated in MoF Regulation Number 186/PMK.03/2019 concerning the classification of Tax Objects and Procedures for Determining the NJOP of PBB. Subsequently, it is amended by MoF Regulation Number 234/PMK.03/2022 of 2022 to determine the value of tangible and intangible properties, as well as business using office and field valuation. A professional appraisal activity is required for the determination of PBB NJOP used for supervision, inspection, objection, reduction, examination of preliminary evidence, and investigation. Even though urban and rural PBB has been handed over to the local government, the Directorate General of Taxes manages PBB in the P3 sector. Assessment activities are used to determine NJOP because the tax imposition process should have a strong basis appropriate to applicable legal principles. NJOP assessment is also required based on PBB Tax Assessment Letter (SKP), decision letter on the settlement of PBB objections and reduction of incorrect assessments, as well as calculation of losses to state revenue.

VAT and Tax Collection with Forced Letters (PPSP) have also been regulated concerning the valuation of tangible, intangible, and business assets that refer more to Income Tax (PPh). The valuation in Income Tax is assessed based on compensation (Article 4 paragraph 1 letter A), income from transactions (Article 4 paragraph 2), acquisition or sales price (Article 10 paragraph 1), market price (Article 10 paragraphs 2 and 3), market value (Article 10 paragraphs 4 and 5), acquisition price or residual book value (Articles 11 and 11A), income and deduction (Article 18), transaction price (Article 18 paragraph 3a), and market value or fair value (Article 19). VAT is also assessed based on fair market prices (Article 1A Paragraph 1 letter A and Article 2 Paragraph 1) and the amount of costs incurred (Article 16C), as well as market prices (Article 16 E). Meanwhile, PPSP is regulated based on the auction limit price (Article 2 Paragraph 3), the estimated value of the goods (Article 14 Paragraph 2), and the selling price (Article 25 Paragraph 2).

Based on MoF Regulation Number 79 of 2023, a team is formed with a maximum period of three months after the issuance of the Appraisal Order. The procedure starts with preparing materials, collecting, supporting, analyzing, and applying object data, as well as compiling reports. The materials to be prepared include basic assignments, plans, and program documents, as well as facilities and infrastructure needed to conduct the assessment. In the next stage of collecting and

supporting data for the assessment, NJOP is seen from the Tax Object Notification Letter (SPOP) data. Meanwhile, the value of tangible assets can be seen from general, demand, supply, and appraisal object data. The value of intangible assets and businesses is obtained from macroeconomic, industrial sector, and valuation object data.

In the stage of analyzing and supporting data, NJOP uses earth surface, earth body, and building data analyses. In this context, the value of tangible assets adopts property market data analysis, while the intangible assets use economic analysis relevant to the object of valuation, industrial sector data and financial statements, financial statement projections, as well as valuation object data. Determination and application of the Assessment Approach should consider the object and the availability of relevant data. The provisions in the PMK-186/PMK.03/2019 regulation should be followed to determine the NOP of PBB. Meanwhile, market, income, and cost approaches must be used to regulate the value of tangible and intangible assets, as well as businesses. In the market approach, the valuation of tangible and intangible assets may use the data comparison and price multiplier method. Meanwhile, business valuation adopts the market data comparison method, including companies entering the stock exchange, mergers and acquisitions companies, as well as previous transaction data. In the income approach, tangible assets valuation can use discounted cash flow, capitalization, and gross income multiplier. For the valuation of intangible assets, discounted cash flow and excess income are used, and business valuation can adopt the discounted cash flow and income capitalization methods. New reproduction and replacement costs are used for the valuation of tangible and intangible assets. Finally, asset approach for business valuation can adopt net adjustment and excess income methods. In this context, the appraisal team prepares working papers and reports. The failure of the appraisal to yield a definitive conclusion necessitates the preparation of an Appraisal Report by the team. This report serves to suspend the assessment without arriving at a final determination regarding the value of the object. The transitional provisions are applied when an assessment is carried out and has not been completed during the provisions of the MoF Regulation. Therefore, the assessment was carried out according to the provisions of MoF Regulation Number 79, which took effect on September 23, 2023.

Appraisal for Taxation Purposes in Practice

Appraisers have an association, namely the Indonesian Professional Appraisal Society (MAPPI). The valuation in MoF Regulation Number 79 is for PBB and Income Tax, VAT, and PPSP. Tangible, biological, and intangible assets refer to PSAK 16, 69, and 19 when viewed from the scope, respectively. Business valuation, associated with stock transactions, includes the assessment of entities, investments in companies, and financial instruments. Additionally, it plays a crucial role in ensuring the accuracy and equity of financial statements.

Practices in Income Tax and VAT Assessment

Concerning the assessment of income tax and VAT, the determination of salary standards for foreign employees poses several challenges. These obstacles include inaccuracies in mandatory tax recording, where wage payments to foreign employees may not be fully recorded as repayments of Income Tax Articles 21 or 26. Additionally, the lack of data availability leads to the practice of split salaries for many foreign employees. Part of the wage is paid for living in Indonesia, while a large part is sent to the residence in the country of origin. This contradicts the principle stipulating that the expatriate income should be recognized as income received in Indonesia in its entirety. The audit of taxpayers using calculation norms includes the determination of standard values but not all aspects can be uniformed by tax agencies. Therefore, it is necessary to refer back to market value using respective professional judgment, and determining the actual value becomes a complex challenge. For example, the question of determining the value of the car becomes complex, including the determination of the market value when a taxpayer benefits from a Car Ownership Program (COP).

Practices in Natura Valuation

According to the guidelines outlined in MoF Regulation Number 66 regarding the valuation of in-kind assets, market value is used except for land or buildings. Another customary procedure pertains to instances where a company-owned car is used as a corporate asset after three years. The

transfer process necessitates a valuation adjustment, and after designation as a company asset, the car is valued at the residual book value. However, the valuation basis shifts to market value due to the transfer to the board of directors. Discrepancies between the book and market values have the potential to result in capital gains, which are attributed to the concerned employees. This practice also intersects with VAT considerations since the car is recognized as a company asset. Article 16D of the VAT regulations pertains to the taxation imposed on asset transfers by Taxable Entrepreneurs (PKP), provided the assets were not intended for sale and purchase. Therefore, employees are subject to three types of taxes, namely Income Tax, VAT, and Tax on capital gains from the difference between market and book values of company assets.

Income Tax practices related to transfer (sale, exchange, gift, inheritance) and income from Sales and Purchase Agreement

The challenge in income tax practice related to transfers is associated with the value used for transactions as well as the Deed of Sale and Purchase Agreement (PPJB). For taxpayers engaging in land transfer transactions based on ordinary sales without any special relationships, the actual value is used. However, when the taxpayer in the transaction has a special relationships, the value should be acceptable. For cases of exchange, gifts, and inheritance, tax authorities may use the value received based on market prices. This differs from income tax on land and building rentals, which uses the highest value between the market and taxable value (DPP). Assets meeting the criteria for gifts, aid, inheritance, or non-taxable contributions are valued during the transfer process. Conversely, assets not meeting these criteria are evaluated based on market value. Therefore, the recipient may incur capital gains tax when gifts, aid, contributions, or inheritance are appraised using market value. In practice, attention needs to be paid to aid, contributions, and exempted inheritance assets as income tax objects, which have been regulated in PMK-90/PMK.03/2020.

Practices Related to Depreciation and Amortization

Concerning depreciation and amortization, taxation places greater emphasis on asset acquisition costs but there is a revaluation method in PSAK 16. Acquisition costs focus on expenditures to acquire tangible and intangible assets. Regarding the destruction or sale of assets, the assessment can use the selling price minus the fiscal book value.

Practices in Special Relationships

Tax authorities have the authority to reassess the amount of income when there are special relationships according to justice and customary business practices regulated in Article 18. Taxpayers engaging in transactions with parties having special relationships should apply the Arm's length principle (ALP).

Practices in Business Dissolution

Regarding business dissolution, there are assets subject to VAT, and tax authorities can assess the selling price. During dissolution, a VAT of 20% multiplied by the rate of 11% and Taxable Value (DPP) incurred will be imposed when construction is carried out using vendors with items purchased independently.

In different practices, fairness and legal certainty aim to enhance compliance and sustainable tax revenue by establishing standard prices appropriate to each case and the respective assessment. Article 10 can be used for transactions including unreasonable prices, where sales transactions rely on actual values unless the presence of special relationships necessitates the utilization of comparative data. In the context of taxation on intangible assets not subject to quarterly development, a reasonable assessment can be conducted by a qualified professional to minimize the substantial disparities in the process.

CONCLUSIONS, IMPLICATIONS, AND SUGGESTIONS

Conclusion

In conclusion, justice and legal certainty were crucial for the rule of law and protecting individual rights, particularly in taxation. Tax regulations should be fair, easily accessible, and

responsive and the importance of regulations in the taxation context demanded the presence of strong legal values. Justice and legal certainty were fundamental pillars of a well-functioning rule of law state. These required an innovative legal framework and accessibility to legal remedies and rights protection, enhancing confidence in the legal system. The law faced demands for adaptation, and MoF Regulation Number 79 of 2023 responded to the need for adaptive tax. A qualitative method was used to analyze MoF Regulation Number 79 of 2023 to explore and comprehend the significance from the perspective of taxpayers concerning the assessment procedures outlined in the regulations and practiced methods. The research provided comprehensive insights into the assessment process in taxation, potentially serving as a theoretical framework and a practical guide for taxpayers. Additionally, it assisted in establishing assessment standards and ensuring compliance with evolving tax legal frameworks for tax professionals and accountants. MoF Regulation Number 79 of 2023 played a central role in ensuring compliance, justice, and legal certainty in the tax system. This regulation served as a juridical, philosophical, and sociological foundation, fulfilling legal principles such as certainty, justice, and utility, as well as providing a strong basis for the implementation of tax laws by considering values, assessment reports, and revenue security efforts.

Managerial Implications

In various tax practices, there are practical aspects such as the connection of assessments with the Indonesian Society of Appraisers. For example, the scope of assessment includes tangible and intangible assets, as well as challenges related to income tax, VAT, sales, and purchase binding agreements. Additionally, aspects such as special relationships and business dissolution are also within the scope. The judgment should not have significant differences because appraisals and assessments from the tax office are conducted professionally.

Suggestion

The research analyzes the latest regulations issued as theoretical and practical foundations for taxpayers, aiding practitioners in setting practice standards and ensuring compliance with changes in the tax legal landscape for professionals and accountants, such as HKPD Law and tax regulations.

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