LEGAL ANALYSIS OF ENGAGEMENT FOR TAX INTERPRETATION IN LEASING AND SERVICE PROVISION

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ABSTRACT

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This study aims to: (1) To determine whether the application of Civil Law has been carried out in the Application of Tax Law. (2) To find out the interpretation of Civil Law in terms of rental agreements and service delivery in taxation. Dassain and Dansollen in this study used primary data and secondary data obtained from the field. The results of this study indicate that; (1) Tax law is a part of public law that regulates the relationship between the government (Fiskus) as a tax collector and the community, namely the taxpayers. Tax law adheres to the principle of taxation if two conditions are met, namely objective conditions and subjective conditions. Both objective terms and subjective conditions are closely related to the provisions of civil law. (2) Judge's interpretation in this tax dispute, PT Cotrans Asia proposes several arguments based on the agreement made by PT Cotrans Asia interpretation of Civil Law in terms of rental and delivery agreements services in taxation.

Keywords: examination, Supreme Court, decision

INTRODUCTION

Indonesian law, in terms of making agreements, will use Civil Law as the basis for making agreements because Civil Law is a law that regulates engagement in Indonesia and is the basis for making various agreements made in Indonesia such as buying and selling, renting, exchanging or borrowing and borrowing and also Civil Law regulates the interests between one individual and another individual, especially in terms of engagement or more. It is often said to be a treaty. Another term used is the Contract Law which is based on the Burgerlijk Wetboek (BW) or the Civil Code, especially in Book III on Alliance. This is the basis for various kinds of contracts or agreements made by business actors because contract law is a legal rule related to the implementation of agreements or agreements.

The agreement or agreements made have been regulated and recognized on the basis of Civil Law so as to obtain guarantees or legal certainty for the party who made the agreement. The agreement that occurs between the two parties has binding force for the parties who make the agreement as stipulated in Articles 1338 and 1339 of the Civil Code. The agreement made in Indonesia, will be the basis for many parties from the government to private parties to apply other regulations including regulations regulated in other laws in Indonesia from the administrative law of the country, tax law to international law. Taxpayers in Indonesia are obliged to make agreements based on the Civil Law in Indonesia so that the application of tax law will refer to the agreement based on the Civil Law. Lease agreements that are often carried out by taxpayers will use the basics of Civil Law to find out whether or not agreements are valid or invalid, for example on lease agreements or service delivery agreements.
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The application of the Binding Law or Contract Law, in the creation of agreements, should be able to be the basis for the tax authority to determine the type of engagement by looking at the agreements made. Tax authorities in various countries, including the tax authority in Indonesia, namely the Directorate General of Taxes, should use the Civil Law to find out the type of engagement made by taxpayers and will eventually know the type of income received by the Taxpayer under an agreement entered into by the Taxpayer. An agreement entered into by the Taxpayer, for example a lease agreement will make the income received under the lease agreement classed as rental income. If the taxpayer makes a service delivery agreement, then the income under the agreement will be classified as service income, where the service income can also still be distinguished depending on the type of services provided, according to the services described in the agreement made by the Taxpayer. In terms of taxation, the agreement made will have an effect on the application of taxes, both Income Tax (PPh) and Value Added Tax (VAT). For this writing, the focus given is on income tax and on lease agreements and the provision of services by looking at the case study of shipping service companies based on the Supreme Court Decision Number 425/B/PK/PJK/2012 which is basically a tax dispute over the interpretation of agreements or agreements made by shipping service companies but based on the Directorate General of Taxes, The agreement is considered a lease agreement.

In a case study based on the Supreme Court Decision Number 425/B/PK/PJK/2012, there was a tax dispute between taxpayers, namely PT Cotrans Asia, and the Directorate General of Taxes (DGT) over the classification of income based on the agreement made by taxpayers. PT Cotrans Asia, based in Balikpapan, East Kalimantan, is a company engaged in coal transportation services made and signed on October 28, 2004, the "Coal Transportation and Transhipment in Adang Bay" agreement with PT Kideco Jaya Agung ("Kideco") in which PT Cotrans Asia is obliged to deliver services by transporting coal from Kideco's coal stockpile in TanahMerah to the Mother Vessel. PT Cotrans Asia to deliver these services, has made several agreements with foreign shipping companies, namely Samika Shipping Pte, Ltd. ("Samika"), Kidecrane Transportes Maritimos LDA ("Kidecrane"), and Twinstar Shipping Limited ("Twinstar"). Based on the Income Tax Law (PPh), PT Cotrans Asia is obliged to withhold income tax, as PPh Deduction Levy or referred to as Withholding Tax (WHT) and PT Cotrans Asia classifies the income subject to the Levy Deduction Income Tax as shipping service income based on an agreement made by PT Cotrans Asia with (three) shipping companies.

The DGT argues that the classification of income as shipping service income is inappropriate and argues that the income received by the shipping company is rental income. Income from shipping companies, if classified as shipping service income, will be subject to Income Tax Deduction Levy based on Article 15 of the Income Tax Law, namely the final income tax with an income tax rate of 2.64% of gross income. Meanwhile, if the income received by the shipping company is classified as rental income, then the income will be subject to Article 23 income tax with an effective rate of 4.5% of gross income but is not final.
Based on the transshipment service agreement which is part of mining business activities and mining support services, PT Cotrans Asia carries out coal transportation from PT Cotrans Asia ships to Mother Vessels carried out by Twinstar, Samika and Kidecrane. The income received by Twinstar, Samika and Kidecrane is classified as rental income rented by DGT while PT Cotrans Asia classifies this income as shipping service income where PT Cotrans Asia classifies income based on agreements made by PT Cotrans Asia. This difference in interpretation between DGT and PT Cotrans Asia as taxpayers resulted in tax disputes. PT Cotrans Asia uses civil law bases, particularly engagements, to support the argument that the income provided is shipping services income and not rental income. In Decision No. 425/B/PK/PJK/2012 by the Supreme Court, it was explained that PT Cotrans Asia uses the basis of Article 1548 of the Civil Code to define leases and uses the legal basis of Article 453 paragraphs (1), (2) and (3) of the Trade Law which is part of the Fifth Chapter on Ship Chartering. The case study will look at how the application of the Binding Law in making agreements under the Civil Code can be applied in taxation by looking at the existing case studies of the Supreme Court Decision.

The objectives of the study were:
1) To find out to what extent the Civil Law, in particular the Law of Engagement, is applied in terms of agreements to the Tax Law;
2) To find out how lease agreements and service delivery agreements are applied in the Tax Law;
3) To see whether tax regulations in Indonesia have applied the Binding Law, in consideration of the application of tax regulations; and
4) To find out whether tax regulations, in particular Income Tax, can use the basis of the Binding Law in making agreements to impose Income Tax.

METHOD
This research used a qualitative method by looking at existing case studies, namely tax disputes from PT Cotrans Asia as a shipping company in the delivery of shipping services which are considered as lease transactions by the DGT by examining Court Decision No. 425/B/PK/PJK/2012 from the Supreme Court.

Management Role as a Researcher
When researchers carry out activities in the field of tax disputes from PT Cotrans Asia as a shipping company in the delivery of shipping services which are considered as lease transactions by the DGT by examining Court Decision No. 425/B/PK/PJK/2012 from the Supreme Court.

Research Location
The research location was carried out at the Central Jakarta District Court with the location selected as a representative of the entire examination of Court Decision No. 425/B/PK/PJK/2012 from the Supreme Court on the grounds that so far no research has been conducted on the examination of Court Decision No. 425/B/PK/PJK/2012 from the Supreme Court.
Data Types and Sources
The types of data sources you want to use are primary data and secondary data. The primary data here is data obtained directly from respondents and informants obtained in the field using data collection techniques. Secondary data are obtained from the results of literature studies (literature and laws and regulations) as well as data and examination decisions of Court Decision No. 425/B/PK/PJK/2012 from the Supreme Court (documents and archives) related to the Decision.

The population of this study is PT Cotrans Asia as a shipping company in the delivery of shipping services which is considered a lease transaction by the DGT As for the population mentioned above, it is impossible to study all of them, therefore the researcher determined the sample to be used as respondents and informants. Each population has the same opportunity or opportunity to be selected as a sempel in this study, so the researcher uses a random sampling technique, the community as the population of this study is not selected but equalized or equalized. The basis for consideration is that the capacity and competence are quite representative.

Data Collection Procedures
Because this research is basically a study examining Court Decision No. 425/B/PK/PJK/2012 from the Supreme Court, the data collection techniques to be used are interviews and questionnaires.

Data Analysis Techniques
The data obtained from this research activity is then analyzed qualitatively descriptively, namely by describing, explaining and explaining completely and systematically according to the problems in this study. The use of this qualitative analysis technique includes all the data collected from the results of data collection techniques (interviews and questionnaires).

RESULT AND DISCUSSION
Application of Civil Law in Tax Law Cases
In understanding tax law in general, especially Indonesian tax legislation in particular such as the 1983 Kup and its amendments and the 1984 Income Tax Law and its changes, we cannot understand based on what is contained in the provisions of tax legislation alone. Some of the terms contained in tax legislation, such as in terms of tax subjects and tax objects, must refer to the Civil Code because it is expressly not explained by the tax legislation itself. What are the things that need to refer to the Civil Code in understanding the subject of tax and the object of tax, this paper will try to peel them off one by one. In the Civil Law, domicile is regulated in Articles 17 to 25 BW, while in the Tax Law, among others, the old law is Article 1 paragraph (2) of the Income Tax Ordinance 1932 jo article 1 paragraph (2) of the PPh Ordinance 1944 and in the new Tax Law Article 2 paragraph (5) and paragraph (6) of Law No. 7 of 1983 concerning Income Tax. To be clear, the articles read:
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1) Article 17 B.W: Every person shall have his residence where he places the center of his residence. In the absence of such a place of residence, then the place of residence should reasonably be considered as a place of residence.

2) Article 2 paragraph (5) of the Law. No. 7 of 1983: A person or entity located, residing, or domiciled in Indonesia is determined according to actual circumstances.

3) Article 2 paragraph (6) of Law No. 7 of 1983: The Director General of Taxes has the authority to determine whether a person or entity is located, residing or domiciled.

Tax law is part of public law that regulates the relationship between the government (Fiskus) as a tax collector and its people, namely taxpayers. Tax law adheres to the principle that taxation occurs if 2 conditions are met, namely objective requirements and subjective requirements. Both objective terms and subjective terms are closely related to the provisions of civil law. The following is a discussion of the relationship between tax law and civil law in relation to objective terms and subjective terms.

The subjective requirements as stipulated in the Explanation of Article 2 paragraph (1) of the 1984 Kup and its amendments are requirements that are in accordance with the provisions regarding the tax subject in the Income Tax Act 1984 and its amendments. In the provisions of the 1984 Income Tax Law and its amendments, the subject of tax is an individual, an undivided inheritance as a unit replacing the entitled, entity, and permanent form of business. In the Civil Code it is regulated that the subject of law is something that according to the law can have rights and obligations. The subjects of the law are human beings/private persons (Natuurlijke Persoon) and legal entities (Rechts Persoon). However, there is a specificity, namely in the determination of a Permanent Establishment as a separate tax subject because the form of a business can still be in the form of an individual (natuurlijke persoon) or a legal entity (Rechts Persoon) even though in the implementation of tax rights and obligations it is treated as a corporate taxpayer.

With these two provisions, the provisions in the Tax Law adopted by Fiskus, because they are special provisions (Lex specialis). The effect of Tax Law on Civil law as a result of Lex specialis derogat Lex generale, then in every Act, the interpretation that must be adopted first is that which is in a special place. The provisions in the Tax Law override the provisions in the Civil Law.

In Article 21 of Law No. 7 of 1983 stated in paragraph (1) Withholding tax on income in connection with work and its deposit into the State Treasury, it must be done by:

1) Employers who pay salaries, wages and honorariums under any name, in exchange for work performed by employees or other persons performed in Indonesia; and

2) And so on. If observing the provisions in the B.W. and the Tax Act at first glance as contradictory, B.W. states that the employer is obliged to pay the salary to the worker, whereas in the Tax Law the employer is given the right to deduct first the Wage/Income Tax 17a tax before receiving the salary, then in this case the provisions in his tax Act are adhered to.

According to the Explanation of Article 2 paragraph 3 of the 1984 Income Tax Law and its amendments, the subject of domestic tax is a natural person residing in Indonesia, a natural person...
who is in Indonesia for more than 183 (one hundred and eighty-three) days within a period of 12 (twelve) months, or an individual who in a tax year is in Indonesia and has the intention to reside in Indonesia. So the subjective condition of a private person is that he resides or is located. The 1984 Income Tax Law does not elaborate on the definition of residence specifically, therefore it is necessary to refer to the definition of residence as stipulated in Article 17 of the Civil Code is that everyone is considered to have his place of residence, where he places the center of his residence. In the absence of such a place of residence, then the place of residence should reasonably be considered a place of residence.

Dissent over the classification of income of Samika, Kidecrane and Twinstar, DGT issued a Tax Underpayment Decree Article 23 Tax Period March to October 2007 Number 00001/203/07/725/07.g.PT Cotrans Asia disagreed with DGT's arguments and opinions and carried out the tax dispute resolution process, from the tax objection process and the Appeal process through the Tax Court and finally carried out a Review process through the Supreme Court which issued Supreme Court Decision No. 425/B/PK/PJK/2012 on the tax dispute. The diagram below can illustrate the business activities of PT Cotrans Asia which performs transhipment services for coal from the mouth of the river to the mothership using the services and / or equipment provided by Samika, Kidecrane and Twinstar.

The Review Decision No. 425/B/PK/PJK/2012 made by the Supreme Court was made because PT Cotrans Asia filed an application for Judicial Review because the Appeal filed by PT Cotrans Asia was rejected by the Panel of Tax Court Judges through Decision No. 33637/PP/M.V/12/2011.

Interpretation of Civil Law in Sewah Agreements and Delivery of Services in Taxation

The issue of differences in the parties' interpretation of a written agreement or what is known as a contract, is common. According to Zamroni in the book "Judges' Interpretations in Contractual Disputes: A Study of Court Theory and Practice" (p. 2) explains, typically, that contractual relationships begin with the pre-contract stage. In this phase, the parties negotiate with each other and seek to equalize all existing differences. Thus, at the closing stage of the contract, the parties are deemed to have understood all the clauses stated in the contract.

However, differences in interpretation often still arise, especially at the stage of contract execution. It is this difference in interpretation that ushers in a contractual relationship to a contractual dispute. As Schwartz & Scott said, Therefore, in the event of a difference in the interpretation of the agreement, it is possible to interpret the agreement, that is, the determination of the meaning of the content of a contract based on the situation when the parties close the contract, which includes all the circumstances at that time, both social, economic, and other matters that may affect the will of the parties to close the contract. If the words in the agreement can be given a variety of interpretations, then given the interpretation that is most in accordance with the will of the parties to Article 1343 of the Civil Code is regulated, if the words of a treaty can be given various kinds of interpretations, then it must be investigated the intentions of both parties to the agreement. That is, the agreement must be given the interpretation that is most in accordance with the will of the parties, even if its meaning deviates from the words contained in the agreement.
In this tax dispute, PT Cotrans Asia submitted several arguments based on the agreement made by PT Cotrans Asia the interpretation of Civil Law in terms of lease agreements and delivery of services in taxation Judges' Decision in Supreme Court Decision No. 425/B/PK/PJK/2012 The Panel of Judges held that the reasons for judicial review could not be justified due to legal considerations and the Decision of the Tax Court rejecting the appeal of the Appellant against Decree of the Director General of Taxes Number KEP-59 / PJ.07 / 2009 dated February 16, 2009 concerning objections to the Income Tax Underpayment Decree Article 23 of the Tax Period of March to October 2007 Number 00001 / 203 / 07 / 725 / 07 dated December 11, 2007 on behalf of PT Cotrans Asia is appropriate and correct in accordance with the provisions of the applicable laws and regulations.

In explaining its decision, the Panel of Judges of the Supreme Court did not use the consideration of the Perikatan Law including legal arguments based on the Civil Code and Trade Law given by PT Cotrans Asia and this is similar to the consideration of the Panel of Judges of the Tax Court which also does not consider Civil Law, especially the Binding Law in considering the making of Appeal decisions. The Panel of Judges in the Supreme Court and the Tax Court, only considers the application of Article 23 paragraph (1) letter c of the Income Tax Law. Judges' decisions that do not consider legal arguments based on the Civil Code, are considered to be detrimental to PT Cotrans Asia which then submits an application for a material test of Article 23 paragraph (2) of the Income Tax Law because it considers that the enactment of Article 23 has harmed the constitutional rights of PT Cotrans Asia which creates legal uncertainty for PT Cotrans Asia Decision Constitutional Court No. 47/PUU-XII/2014.

CONCLUSION

Engagements made under the Civil Law are not only used as the basis of business activities but also used for other purposes including taxation. For lease agreements to service delivery agreements the application of Civil Law in making agreements has been used in many business activities and is also a consideration of PT Cotrans Asia Perikatan in terms of service delivery agreements made must be by PT Cotrans Asia has considered the existing Perikatan Law, especially for unnamed agreements (inominaat) in terms of service delivery which must also consider existing laws related to services submitted so that if the agreement made is the delivery of shipping services, then the Shipping Law is also part of the consideration that must be made by the party who made the agreement. PT Cotrans Asia bases the delivery of services and the making of agreements with Samika, Kidecranec and Twinstar.

Tax Law and Civil Law are interrelated and there are many terms from Civil Law used in Tax Law including the definition of rent rent which is not regulated in the Tax Law so that the Tax Law will follow the Civil Law. Likewise, in making agreements that follow the Binding Law, it is not regulated in the Tax Law so that the Tax Law will follow the Binding Law in terms of agreements. This also means that the application of tax regulations in renting leases will follow the definition of lease existing in the Civil Law including in the case of PT Cotrans Asia. Although PT Cotrans Asia argues that according to the law, in the event that there is a conflict between the
general provisions and the specific provisions, then the special provisions that should be applied or lex specialis derogat lex generali but this is not agreed by the DGT that the Tax Law is a specialist lex and is not see that the issue of engagement or agreement, especially the lease agreement and the service delivery agreement is not regulated in the Tax Law. This consideration of lex specialist is not used as a consideration of the Panel of Judges in the making of court decisions nor is it accepted as a basis by the DGT. Lex Specialist for Tax Law does not apply if the Civil Law or any other Law specifically and expressly regulates and is not provided for in the Tax Law. In the case of a lease agreement, then the lease agreement under the Binding Law can be used as a basis to see if the tax regulations for the lease can be used. If the agreement used is a shipping service delivery agreement, then the Civil Law, including the Shipping Law is also used as the basis for making agreements.

In this case, PT Cotrans Asia cannot use the Perikatan Law as the basis for applying Tax Law in Indonesia because the consideration or legal basis of the Perikatan Law is not accepted by the DGT and the Panel of Judges.

DGT should use the Perikatan Law as the main basis for looking at the application of Tax Law including in the classification of income, for example to determine whether the income provided is rental income or service income by looking at the agreements made and also using Civil Law as a reference. DGT also needs to make a law or law that is binding in the application of the Tax Law in terms of the delivery of services based on an agreement, for example on the delivery of shipping services that will use the basis of the Shipping Law in the delivery of shipping services.

The government, in this case the Directorate General of Taxes, must make further provisions on lex specialists in terms of the Binding Law which is the basis for the application of Tax Law in Indonesia, not only for the application of tax rules for renting but also for the delivery of services. In general, it is necessary to make provisions in detail about how the application of the principle of lex specialists in Tax Law is compared with Other Law in a civil manner. Socialization among fiscus or tax officers needs to be carried out about the application of Civil Law in relation to the application of Tax Law

REFERENCE

Law Number 36 of 2008 concerning the Fourth Amendment to Law Number 7 of 1983 concerning Income Tax.
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PMK number 58/PMK.03/2022 contains the Appointment of Other Parties as Tax Collectors and Procedures for Collecting, Depositing, and/or Reporting Taxes Collected by Other Parties for Procurement Transactions of Goods and/or Services through the Government Procurement Information System.

PMK number 59 / PMK.03 / 2022 concerning Amendments to the Minister of Finance Regulation number 231 / PMK.03 / 2019 concerning Procedures for Registration and Elimination of Taxpayer Identification Numbers, Confirmation and Revocation of Inauguration of Taxable Entrepreneurs, as well as Withholding and / or Collection, Deposit, and Reporting of Taxes for Government Agencies.

PMK number 60/PMK.03/2022 concerning Procedures for Appointing Collection, Collection, Deposit, and Reporting of Value Added Tax on the Utilization of intangible BKP and/or JKP from Outside the Customs Area within the Customs Area through Trade through Electronic Systems.