



Arrangement of Tax Administrative Sanctions on Digital Tax (E-Commerce) in the Context of Forgiveness in Indonesia

Retno Catur Kusuma Dewi¹; Muhammad Naufal Arifiyanto²

¹ Law Faculty, Merdeka University, Madiun, Indonesia

² PGRI Jombang University, Jombang, Indonesia

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Abstract

In the results and analysis of the discussion of several things, the researchers found several aspects, including First, the legis ratio of the existence of tax amnesty laws and regulations based on economic inequality which causes a lack of state revenue in the tax sector, so that there is a need for certainty and economic strengthening by imposing tax programs amnesty. If you use the actual tax revenue indicator against its potential, then Indonesia only has about half of what is its potential. This study uses empirical juridical methods, or sociolegal research, which are analyzed using legal science and economics approaches. This condition is based on the following: a. The number of taxpayers who have not reported their assets at home and abroad and have not been taxed in Indonesia. b. The low compliance of taxpayers in reporting their tax obligations. c. The Directorate General of Taxes has limited authority over access to banking data; Second, the legal considerations for tax collection on e-commerce have been regulated in PP RI No. 80 of 2019 concerning PMSE as last amended by Regulation instead of Law of the Republic of Indonesia Number 1 of 2020 concerning State Financial Policy and Financial System Stability for handling the 2019 Corona Virus Disease (covid-19) pandemic and or in the context of dealing with dangerous threats national economy and/or financial system stability (hereinafter referred to as Perpu RI No. 1 of 2020). The openness of e-commerce has become a new business model in various countries due to the efforts of business people who want to increase their sales and income. The driving factors for the development of e-commerce are divided into two, namely (1) competitive and (2) cost incentives.

Keywords: *Digital Taxes (E-Commerce); Regulation of Tax Administration Sanctions; The Tax Amnesty System*

Introduction

The self-assessment system is a tax collection system where determining the amount of tax owed is entrusted to the taxpayer himself, who reports regularly the amount of tax owed and paid according to tax laws and regulations. If it has been entrusted to the taxpayer, the amount of tax payable does not depend on the existence of a tax assessment letter, or SKP. The issuance of tax assessment letters is only

limited to certain taxpayers due to errors in filling out tax returns or because the tax office finds fiscal data that is not reported by the taxpayer (Putri et al., 2022). This tax collection system using a self-assessment system also applies to the tax amnesty policy, where this policy is reminiscent of the enactment of Law of the Republic of Indonesia Number 11 of 2016 concerning Tax Amnesty (hereinafter abbreviated as Law of the Republic of Indonesia No. 11 of 2016). 2016 concerning tax amnesty) was implemented from 1 July 2016 to 31 March 2017.

Along with the development of this technology by utilizing digital media, the national taxation system using digitalization has been implemented by the government within the national taxation system to date, thereby accelerating the rate of tax reporting in a good and measurable manner, but it needs to be noted that from a legal aspect, some tax laws and regulations are still a matter of polemic because there is no further regulation of the main laws and regulations, especially the issue of personal digital tax. If we look further into this problem, it is the taxation system for trade transactions via electronic systems, which is regulated in Republic of Indonesia Law No. 2 of 2020, which emphasizes tax treatment in Trading Through Electronic Systems (PMSE) activities and focuses on income tax taxation (Tofan & Trinaningsih, 2022). On the other hand, every business actor (including traders and MSMEs) carrying out PMSE is required to fulfill general requirements by statutory regulations. The general requirements referred to include business permits, technical permits, company registration certificates, taxpayer identification numbers, business conduct and code of practices, standardization of goods and/or services, and tax obligations in the sector tax.

It is necessary to pay attention to this provision, which could harm the growth of PMSE business actors, especially individual traders. Currently, the presence of e-commerce platforms provides an opportunity for anyone to start an online trading business, including resellers and drop-shippers who act as brokers or brokers for actual producers or traders. Of course, licensing requirements will be difficult to fulfill for individual traders such as resellers or drop-shippers. With the presence of PP RI No. 80 of 2019 concerning PMSE, this regulation provides legal certainty in e-commerce activities to protect consumers and individual business actors. Apart from that, on the other hand, the tax amnesty policy will provide benefits for business actors to declare assets through e-commerce activities to personal income tax. The other side is that the position and activities of e-commerce carried out by individual traders and at the level of consumer protection can be carried out based on the rationale that digital transactions are regulated in the Law of the Republic of Indonesia Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE) and Regulations Government of the Republic of Indonesia Number 82 of 2012 concerning Implementation of Electronic Systems and Transactions (PP PSTE) (Stefani, 2021).

By looking at some of the regulations mentioned above, the researcher focuses more on regulating digital tax administration sanctions for e-commerce activities by implementing a tax amnesty policy. Legal problems occur in the aspect of tax law norms, and there is no further regulation regarding tax administration sanctions on taxes. Digital in the form of e-commerce through Law of the Republic of Indonesia Number 28 of 2007 concerning General Provisions and Procedures for Taxation (UU KUP), especially administrative sanctions. Tax administration sanctions consist of fines, interest sanctions, and increased sanctions. There are no clear provisions in the KUP Law., and therefore there is a need for certainty of legal norms in the KUP Law with several matters of administrative sanctions, for example, fines, interest, and increases that regulate e-commerce taxes. Second, there is no certainty regarding the regulation of e-commerce tax administration sanctions in the Tax Amnesty Law because the tax amnesty only regulates the matter of declaring assets and provides truth and honesty in reporting assets. When regulating administrative sanctions, it is necessary to establish territorial restrictions on digital goods to encourage legal certainty and guidelines for all digital actors regarding the application of tax amnesty sanctions through fines, interest, and tax increases on administrative sanctions for e-commerce activities.

Some of the potential loss of state revenue in the digital tax sector through e-commerce on business activities has big consequences and influences, so it not only regulates trade through electronic

systems and regulations on electronic transactions, but also the need for digital tax administration sanctions through e-commerce that can provide a deterrent effect on business actors through tax law actions by hiding assets, not declaring assets, and repatriating assets through tax amnesty policies. However, the tax amnesty policy does not have legal effects that can reduce the assets of business actors and increase state revenues in the tax sector; it can only affect the database of taxpayers who voluntarily and honestly submit and carry out their tax obligations through the tax amnesty policy. There are at least several countries that implement digital tax sanctions, and it is not easy to enforce them because they must be adjusted to the jurisdiction of each country and by the needs of each region of the country, including those in the continental European legal system such as Indonesia, Austria, Italy, and Spain. So in essence, the rationale for the digital tax was developed based on the Organization for Economic Co-operation and Development (OECD) through a unification approach using worldwide revenue and gross revenue (Rahman, 2023).

Methods of Research

This type of research is normative legal research (Ibrahim, J & Efendi, 2016), namely legal research, which focuses on the study and analysis of positive law and includes various aspects, namely aspects of theory, philosophy, comparison, structure and composition, scope, and material. , consistency, general explanation article by article, formality and binding force of law, as well as the legal language used. Researchers try to focus on and answer problems from a legal perspective and ignore norms other than the law. Since this type of research is normative legal research (Ibrahim, 2006), the approach used is a statutory approach and a conceptual approach. A statutory regulation approach is used because what will be studied are legal regulations related to this research.

Results and Discussion

E-commerce is a business activity that provides access to technology and information for every community in the world, including Indonesian people. The role of e-commerce is not only intended for individuals; in other business activities, partnerships and companies take part in advancing this. E-commerce business activities have also penetrated local, national, regional, and even world markets, such as the well-known brands Tokopedia, Shopee, Go-Jek, and Grab, which are growing and developing in Indonesia with various types of goods and services businesses. Individual business actors in local settings in Indonesia are no less competitive with various types of goods and services utilizing the current digitalization of e-commerce, such as Bukalapak, Lazada, JD.ID, Zalora, and Matahari, have even provided convenience for people throughout Indonesia, both in terms of productivity, sales, purchasing, and marketing.

The growth of the e-commerce market in Indonesia continues to increase every year, especially this year with the pandemic. Many consumers who have never shopped online before now have to rely on digital shopping platforms to meet people's needs, including in Indonesia. This growth cannot be separated from the development of infrastructure and digital penetration in Indonesia. E-commerce has also become an alternative for many Indonesians to search for and buy products, and this year almost all internet users in Indonesia have reached 88% who have purchased products online (Rahmadani et al., 2020). It is important to realize that this business activity is also regulated by the laws in force in Indonesia, so e-commerce business activities become a benchmark and milestone for the economy, and trade is regulated in a legal country like Indonesia. If you look at and find out from a legal aspect, then you can look at e-commerce business activities from various points of view, namely first, from a consumer protection point of view, such as various legal aspects are generally not found in conventional trade but are owned by e-commerce. For example, there are regulations regarding personal data protection

and electronic payment methods. This, of course, cannot be separated from the character of e-commerce transactions, which can take place without face-to-face contact between consumers and sellers.

Business actors in the e-commerce industry need to understand the legal aspects regarding e-commerce consumer protection. This consumer protection not only fulfills consumer rights but also gives people confidence when making transactions via e-commerce. The legal umbrella for consumer protection refers to Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection (hereinafter referred to as Law of the Republic of Indonesia No. 8 of 1999 concerning Consumer Protection). Republic of Indonesia Law No. 8 of 1999 generally regulates consumer protection in conventional trade and e-commerce; however, business actors must also look at other regulations regarding e-commerce. Second, other regulations relating to e-commerce include Law of the Republic of Indonesia Number 19 of 2016 concerning Information and Electronic Transactions (ITE) (hereinafter referred to as Law of the Republic of Indonesia No. 19 of 2016 concerning ITE) and Law of the Republic of Indonesia Number 7 of 2014 concerning Trade (hereinafter referred to as Republic of Indonesia Law No. 7 of 2016 concerning Trade). Apart from that, there are also derivative regulations, namely Government Regulation (PP) of the Republic of Indonesia Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions (PSTE) (hereinafter referred to as PP RI No. 71 of 2019 concerning PSTE), Government Regulation of the Republic of Indonesia (PP) Number 80 of 2019 concerning Trading Through Electronic Systems (PMSE) (hereinafter referred to as PP RI No. 80 of 2019 concerning PMSE), and Minister of Communication and Information Regulation Number 20 of 2016 concerning Protection of Personal Data in Electronic Systems (Fista et al., 2023).

The obligations of e-commerce business actors include having good faith in carrying out their business activities, providing correct, clear, and honest information regarding the conditions and guarantees of goods and services, treating or serving consumers correctly and honestly, and not being discriminatory. Business actors are also obliged to guarantee the quality of goods and services produced and traded based on the provisions of applicable quality standards and provide opportunities for consumers to test or try certain goods and services. Business actors are also obliged to provide compensation and reimbursement for losses resulting from defective goods or goods that do not comply with the agreement.

Another thing that is no less important is the taxation aspect, where the need for e-commerce business activities is also growing among business actors, including small, medium, and large businesses. This will have to be limited from a legal perspective when we have to look at and find out in depth the income tax and value-added tax. Of course, e-commerce activities are an aspect of digital tax law that will certainly receive attention for increasing state treasury revenues, the economy, and trade with increasingly sophisticated and easier access to technology and information in the future. The legal basis for tax levies on e-commerce has been regulated in PP RI No. 80 of 2019 concerning PMSE, as most recently amended by Regulation instead of Law of the Republic of Indonesia Number 1 of 2020 concerning State Financial Policy and Financial System Stability for handling the 2019 Corona Virus Disease (covid-19) pandemic and/or to face dangerous threats to the national economy and/or financial system stability (hereinafter referred to as Perpu RI No. 1 of 2020) (Mahmudah et al., 2023).

Departing from the above, if we look more closely, PMSE is a business actor that provides electronic communication facilities used for trade transactions. PMSE is part of Trading Through Electronic Systems (PMSE). Apart from PMSE, PMSE business actors include traders and service providers who carry out trade transactions via electronic communication facilities (PMSE), either by means created and managed directly by themselves or through facilities owned by PPMSE, or other electronic means that provide PPMSE. The business model of Electronic Trading Organizers (PPMSE) includes a marketplace or platform provider as a forum where foreign traders or foreign service providers can place offers for goods and/or services. Based on PP 80 of 2019, those included in the scope of the

definition of PPMSE are all parties who provide electronic system services and/or facilities to enable transactions for PMSE business activities to be carried out.

These business actors provide their services by providing application systems to be used as a means of electronic communication to facilitate trading business activities and/or PMSE settlement, including various business models for PMSE implementation systems. The PPMSE business model includes a. online retail or traders who have their own PMSE facilities; b. marketplace or platform provider as a forum where traders can place offers for goods and/or services; c. online classified ads, namely a platform that brings together sellers and buyers where the entire transaction process occurs without involving PPMSE; d. price comparison platform; and e. daily deals (Gloria & Neltje, 2020).

If you find out about the aspects of tax treatment in electronic trading (PMSE) activities, you need to know about the imposition of VAT on the use of intangible taxable goods and/or taxable services from outside the customs area within the customs area through PMSE and the imposition of PPh, or transaction tax, electronically for PMSE carried out by foreign tax subjects who have a significant economic presence. From a sanctions perspective, the sanctions obtained if they do not carry out tax obligations related to PMSE activities include administrative sanctions and termination of access by the Minister of Communication and Information at the request of the Minister of Finance (after being given a warning). When looking at it from the perspective of tax amnesty policy, for digital e-commerce taxes, of course, there must be appropriate legal instruments and even legal arrangements that are by the mandate of establishing statutory regulations. In the tax amnesty policy, eliminating digital tax administration sanctions for the needs of e-commerce business activities must be the main agenda for the government to be able to increase economic and trade stability as well as state revenues in the tax sector.

Therefore, several things need to be considered in eliminating tax administration sanctions, including fines, interest, and tax increases for the needs of e-commerce businesses, by having to fulfill subjectivity and objectivity in finding the law if they do not report assets voluntarily or carry out tax legal actions that can be detrimental. Countries and individuals. Thus, there is a need for criteria for eliminating administrative sanctions on digital e-commerce taxes to be able to provide a deterrent effect on subjects of tax law or taxpayers who do not report assets through the tax amnesty policy system, as well as preparing e-commerce data reporting infrastructure.

If you look further at the tax amnesty policy in 2016, the elimination of tax administration sanctions is only at the level of sanctions for being late in paying taxes or submitting SPT, late paying advertising tax, or period SPT, which can be subject to interest of 2% per month from the due date. Until increased sanctions are imposed on taxpayers who commit falsification the amount of tax borne is smaller. Therefore, eliminating fines, interest, and tax increases is included in the category of administrative sanctions, but one must also consider subjective and objective sanctions criteria. The regulation of late sanctions is regulated by Minister of Finance Regulation (PMK) Number 66/PMK.03/2017 concerning Amendments to Minister of Finance Regulation Number 29/PMK.03/2015 concerning Elimination of Interest Administrative Sanctions Issued Based on Article 19 Paragraph (1) of the Law. Law Number 6 of 1983 concerning General Provisions and Tax Procedures, has been amended several times, most recently by Law Number 16 of 2009 and PMK Number 68/PMK.03/2017 concerning Amendments to Regulation of the Minister of Finance Number 91/PMK.03/2015 Regarding Reduction or Elimination of Administrative Sanctions for Late Submission of Tax Returns, Corrections to Tax Returns, and Late Tax Payments or Remittances. The two Regulations of the Minister of Finance (hereinafter referred to as PMK) are to simplify the administrative process of reducing and eliminating administrative sanctions for late tax payments due to corrections to the 2014 and previous Annual Tax Returns (SPT). The PMK also provides a legal umbrella for eliminating collection interest sanctions for paying off tax debts by issuing a tax assessment letter (SKP) before January 1, 2015, which should be paid off no later

than January 1, 2016 (reinventing policy). According to the old rules, the amount of interest sanctioned reached 2% per month of the tax debt (Wandani & Wijaya, 2023).

Apart from that, there is also something interesting that needs to be paid attention to, namely the policy of eliminating other late tax sanctions when the Ministry of Finance, through the Directorate General of Taxes, removed administrative sanctions for late reporting of the Annual Tax Return (SPT) for the 2019 tax year. This was done as one of the tax policies in connection with the spread of the Corona virus (Covid-19) outbreak. In the Decree of the Director General of Taxes Number Kep-156/PJ/2020 concerning Tax Policy about the Spread of the 2019 Corona Virus Outbreak, it is stated that, due to the spread of the corona virus, from March 14, 2020, to April 30, 2020, a force majeure situation was declared (Suherman et al., 2021). If you look at the substance, individual taxpayers who report their annual tax return for the 2019 tax year and who make payments for the amount of underpaid tax in their annual personal income tax return for the 2019 tax year up to April 30, 2020, will be given the elimination of administrative sanctions for lateness. As for individual taxpayers who are participants in the tax amnesty program and must submit a report on the realization of the transfer and investment of additional assets, the DJP has relaxed the submission of reports until April 30, 2020. In addition, taxpayers can submit a periodic income tax return withholding and collection for the February tax period of 2020, from March 21, 2020, to April 30, 2020, without being subject to late administrative sanctions.

Conclusion

The rationale and views of ratio laws RI Law No. 11 of 2016 concerning tax amnesty, especially the one that focuses on regulating sanctions for digital tax administration (e-commerce), states that the makers of this tax amnesty law do not yet have legal certainty to support tax reform or simply to increase tax revenues because, on the one hand, the main aim of establishing this law is to increase the database of taxpayers who have not yet declared their assets, repatriation of domestic and foreign assets, and honesty in tax reporting. Of course, on the other hand, tax administration in the tax amnesty law still has not been regulated in more depth or found the right regulations, so the regulation of digital tax administration sanctions (e-commerce) is by technological and information developments while it has not yet reached what the state wants. In the tax sector, the public and business actors want to obtain tax amnesty facilities. Another thing that is no less important is the taxation aspect, where the need for e-commerce business activities is also growing among business actors, including small, medium, and large businesses. This will have to be limited from a legal perspective when we have to look at and find out in depth the income tax and value-added tax. Of course, e-commerce activities are an aspect of digital tax law that will certainly receive attention for increasing state treasury revenues, the economy, and trade with increasingly sophisticated and easier access to technology and information in the future. On the other hand, the aspect of tax treatment in e-commerce business activities has been regulated as per the scope of the Law on Trading Through Electronic Systems in collaboration with the Tax Amnesty Law so that it can build an increase in the database of taxpayers who have not disclosed assets and asset declarations and provide opportunities to increase state revenues in the tax sector through PMSE and the Tax Amnesty Law, but it needs to be classified using several criteria, namely: (1) elimination of tax administration sanctions based on errors and (2) elimination of tax administration sanctions based on tax resistance. Thus, future tax security arrangements should not only be prioritized regarding tariff issues, but alternatives also need to be sorted out by including several of the criteria that have been emphasized above.

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