

MAPPING OF LEGAL FRAMEWORK AND LEGAL REGIME OF LOCAL GOVERNMENT AUTHORITY IN THE REGIONAL TAX COLLECTION

Budiyono¹, *Ade Arif Firmansyah¹, Ahmad Saleh¹ and Muhtadi¹

¹Faculty of Law, University of Lampung, Indonesia.

*Corresponding Author

ABSTRACT: This study aims to map and analyze the legal framework and legal regime of regional government authority in regional tax collection. This is important because local taxes are one of the main sources of support for local revenue (PAD). The study conducted with this doctrinal method resulted in the following findings: Legal framework and legal regime of regional government authority in collecting regional taxes are spread in eight laws and regulations in the form of laws, government regulations to ministerial regulations. The type of authority is the attribution authority directly outlined in Law Number 28 of 2009 concerning Regional Taxes and Regional Retributions. The legal regime of its authority is also obtained from two types of regimes, namely the regional government legal regime and sectoral legal regimes in the area of regional taxes and levies.

Keywords: Framework, regional, tax, authority, regime.

1. INTRODUCTION

The implementation of regional government is a process of administering a government that is oriented towards accelerating the realization of community welfare through improving services, empowerment, and community participation, as well as increasing regional competitiveness by taking into account the principles of democracy, equity, justice and specialization of a region within the Unitary Republic of Indonesia. Law No. 23 of 2014 concerning Regional Government and Law No. 33 of 2004 concerning Financial Balance Between the Central Government and Regional Government, has laid a strong legal basis for the regions to implement real and responsible regional autonomy. Giving autonomy to the regions is directed at accelerating the realization of public welfare through improving services, empowerment and community participation in implementing government affairs.

The breadth of the scope of government administration which is divided into the affairs of the central government, provincial government and reGENCY/city government requires the principles of efficiency and effectiveness in order to achieve optimal results for the welfare of the people. The division of functions between the central, provincial and reGENCY/city governments has been regulated in Law No. 23 of 2014. The implementation of government affairs by the Central Government and Regional Governments requires funding as a means of driving development, whose plans in the regions are set forth in Regional Regulations concerning the Regional Revenue and Expenditure Budget (APBD).

One element of regional income in the Regional Budget is from the sector of regional taxes and retributions as an element of Regional Original Income (PAD). Regional taxes and levies are a form of levies by the state to the people, therefore Article 23A of the 1945 Constitution stipulates that "Taxes and other levies that are compelling for state purposes are regulated by law". Based on this provision, any compulsory levies are regulated by local laws or regulations as a form of legitimacy from the people's representatives' agreement which sits on the representative council. Based on these conditions, this paper will describe the mapping of the legal framework and the legal regime of regional government authority in collecting local taxes as the direction of legal policy in local tax collection by the regional government.

2. LITERATURE REVIEW

Tax is one of the sources of state revenue which is very important for the implementation and improvement of national development as a Pancasila experience that aims to improve prosperity and people's welfare (Rusjidi, 2008). According to Rochmat Soemitro, taxes are people's contributions to the state treasury based on the law (which is forced) by not getting lead services (counter-achievement) which can be directly directed and used to pay for public expenditure (Yuswanto, et.all, 2013). According to the Law of KUP, Tax is a compulsory contribution to the state owed by an individual or entity that is a force based on the Law by not getting compensation directly and used for state needs for the greatest prosperity of the people ". As according to Ahmadi (2006) Tax as a source of funds to fulfill the community's living facilities organized by the government requires a rule of law so that it can be implemented legally and can be obeyed by the community. Provisions regarding taxes must be based on the Act carried out with the approval of the people through their representatives, namely the House of Representatives (DPR).

In terms of law, tax is an engagement in the scope of public law where one of the parties is a State that has the authority to force (Pudyatmoko, 2004). According to Brotodiharjo (2010), the characteristics inherent in taxes include the following:

- a. Tax is levied based on/with the strength of the law and the rules for its implementation,
- b. In the payment of taxes it cannot be shown that there is an individual counterpart of the government,
- c. Taxes are collected by the State, both by central and regional governments,
- d. Tax is intended for government expenditures, which if the income is still in surplus, is used to finance public investment,
- e. Tax can also finance goals that are not budgetary, namely regulating.

The state has the authority to collect taxes in the event that the implementation of such authority is intended solely to fill the State treasury or for other purposes to be achieved which are not directly related to filling in the State treasury is the relevant State policy (Sugiharti and Muttaqin, 2005).

According to Bagir Manan (2000), authority in legal language is not the same as power (*macht*). Power only describes the right to do or not act. In law, authority also means rights and obligations (*rechten en plichten*). Philipus M. Hadjon (1994), argues that authority is obtained through three sources, namely: attribution, delegation, and mandate. The authority for attribution is usually outlined through the distribution of state power by the Constitution, the authority of delegations and mandates is the authority that comes from delegation.

3. RESEARCH METHODS

This research is done by corridor of doctrinal research which only use secondary data. The legal research model is a comprehensive and analytical study of primary legal materials and secondary legal materials. The problem approach uses a statutory approach and a conceptual approach (Mahmud, 2005). The data were analyzed qualitatively by describing the data generated from the research into the form of explanation systematically so as to obtain a clear picture of the problem under study, the results of data analysis then concluded deductively.

4. DISCUSSIONS AND ANALYSIS OF RESULTS

Mardiasmo stated that in the framework of implementing financial autonomy and decentralization, local governments are expected to have greater independence (Yuswanto, 2012). One form of independence is sustained by aspects of regional income in the form of regional tax revenues. Local tax collection is based on the aspects of authority owned by the regional government, and the authority is obtained through legislation.

The following table one will map legislation that functions as a legal framework for local governments in carrying out regional tax collection.

No.	Jenis Peraturan Perundang-Undangan Types of Legislation
1.	Law Number 6 of 1983 concerning General Provisions and Tax Procedures
2.	Law Number 19 of 1997 concerning Tax Collection with Forced Letters
3.	Law Number 33 of 2004 concerning Financial Balance between the Central Government and Regional Governments
4.	Law Number 28 of 2009 concerning Regional Taxes and Regional Levies
5.	Law Number 23 Year 2014 concerning Regional Government
6.	Government Regulation Number 58 of 2005 concerning Management of Regional Finance
7.	Government Regulation Number 69 of 2010 concerning Procedures for Granting and Utilizing Incentives for Collection of Regional Taxes and Regional Levies
8.	Minister of Home Affairs Regulation Number 13 of 2006 concerning Guidelines for Regional Financial Management, as amended by Minister of Home Affairs Regulation Number 59 of 2007 concerning Amendment to Minister of Home Affairs Regulation Number 13 of 2006 concerning Guidelines for Regional Financial Management

Source: data processed, 2018.

From the results of mapping legislation in table one, it is known that there are at least eight laws and regulations relating to the legal framework and the legal regime of regional government authority in the collection of scattered regional taxes in the form of laws, government regulations to ministerial regulations. Nationally, laws governing regional tax provisions are regulated together with provisions concerning regional retribution. The legal basis for regional taxes is regulated in Law Number 28 of 2009 concerning Regional Taxes and Regional Levies. Based on the provisions of Article 2 of Law No. 28 of 2009, there are various types of taxes in the provinces and regencys/cities which are closed lists.

Types of provincial taxes include Motor Vehicle Tax, Motor Vehicle Transfer Fee, Motor Vehicle Fuel Tax, Surface Water Tax, and Cigarette Tax. While regencys/cities are given the authority to collect Hotel Taxes, Restaurant Taxes, Entertainment Taxes, Advertising Taxes, Street Lighting Taxes, Non-Metallic Minerals and Rocks Taxes, Parking Taxes, Groundwater Taxes, Swallow Bird Nest Taxes, Rural and Urban Land and Building Taxes (PBB-PP), and Fees for Acquiring Land and Building Rights (BPHTB).

The authority outlined in Law No. 28 of 2009 needs to be responded to well by the regional government for the purpose of regional community welfare. Regional taxes can be one component that can be optimized as one of the supporting elements of PAD. Therefore the local government should be able to effectively manage the policy in the regional tax sector based on its authority.

The type of authority in accordance with the theoretical framework described earlier is the attribution authority directly outlined in Law No. 28 of 2009 concerning Regional Taxes and Regional Retributions. Regarding the legal regime, the authority is presented in the following picture.



Source: Data processed, 2018.

Fig. 1 Mapping the Regional Tax Authorization Legal Regime

5. CONCLUSIONS

The legal framework and legal regime of regional government authority in collecting local taxes are spread in eight laws and regulations in the form of laws, government regulations to ministerial regulations. The type of authority is the attribution authority which is outlined

directly from law number 28 of 2009 concerning regional taxes and regional levies. The legal regime of its authority is also obtained from two types of regimes, namely the regional government legal regime and sectoral legal regimes in the area of regional taxes and levies.

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7. REFERENCES

- Ahmadi, Wiratni., Legal Protection for Taxpayers in Tax Dispute Settlement (*Perlindungan Hukum Bagi Wajib Pajak dalam Penyelesaian Sengketa Pajak*), PT Refika Aditama, Bandung, 2006, pp. 7.
- Brotodihardjo, Santoso., Introduction to Tax Law (*Pengantar Ilmu Hukum Pajak*), PT Refika Aditama, Bandung, 2010, pp. 6-7.
- Hadjon, Philipus M., Normative Function of Administrative Law in Realizing Clean Government (*Fungsi Normatif Hukum Administrasi Dalam Mewujudkan Pemerintahan Yang Bersih*), delivered at the Inaugural Speech of Professor at Faculty of Law Airlangga University, 10 October 1994, pp. 4.
- Mahmud, Peter., Legal Research (*Penelitian Hukum*), Kencana Prenada, Jakarta, 2005, pp. xx.
- Manan, Bagir., Provincial, Regency and City Authority in the Context of Regional Autonomy (*Wewenang Provinsi, Kabupaten dan Kota Dalam Rangka Otonomi Daerah*), Paper at the National Seminar of FH UNPAD, May 13, 2000, pp. 1-2.
- Pudyatmoko, Y. Sri., Tax Law (*Hukum Pajak*), Andi, Yogyakarta, 2004, pp. 40.
- Rusjidi, Muhammad., PBB, BPHTB, & Stamp Duty (*PBB, BPHTB, & Bea Materai*), Indeks, Jakarta, 2008, pp. 3.
- Sugiharti, Dewi Kania dan Zainal Muttaqin., Tax Law (*Hukum Pajak*), Kalam Media, Bandung, 2015, pp. 7-8.
- Yuswanto, et.al., Tax Law (*Hukum Pajak*), PKKPUU FH UNILA, Bandar Lampung, 2013, pp. 3.
- Yuswanto, Law on Financial Decentralization (*Hukum Desentralisasi Keuangan*), Rajawali Pers, Jakarta, 2012, pp. 122.