

REDESIGN OF FINANCIAL BALANCE LAW BETWEEN CENTRAL AND LOCAL GOVERNMENTS FROM REVENUE SHARING FUNDS OF TAX SECTOR

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REDESIGN OF FINANCIAL BALANCE LAW BETWEEN CENTRAL AND LOCAL GOVERNMENTS FROM REVENUE SHARING FUNDS OF TAX SECTOR

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ABSTRACT

The constellation of revenue-sharing funds from the tax sector needs to be reviewed by the government, because it is feared that it will make local revenue conditions tend to stagnate so that it can result in non-optimal administration of government affairs organized by local governments. By using a doctrinal approach, this paper aims to redesign the financial balance law between the central government and local governments from the revenue-sharing fund for the tax sector. The results of the study indicate that the arrangement of the components of the revenue sharing fund from the tax sector in Law no. 33 of 2004 needs to be changed because based on Law no. 28 of 2009 PBB of rural and urban sectors as well as BPHTB have become local taxes whose collection authorities with district/city governments, then based on Law no. 39 of 2007 excise on tobacco products includes taxes that are shared between the government and local governments so that excise on tobacco products needs to be added as one of the components of the revenue sharing fund from the tax sector. In addition, regional financial conditions to carry out government affairs which are under the authority of regional governments currently require adequate financing, so to support this, it is necessary to add PPN and PPhBM as one of the components that make up profit-sharing funds from the tax sector.

Keywords: balancing fund, tax, profit sharing.

INTRODUCTION

Profit sharing fund is one of the types of balancing funds regulated in Law Number 33 of 2004 concerning Financial Balance between the Central Government and Regional Governments. Revenue Sharing Funds are funds sourced from APBN revenues that are allocated to regions based on presentation figures to fund regional needs in the context of implementing Decentralization. Revenue sharing is also an opportunity for regions that can be used to increase their income.

Revenue-sharing funds sourced from taxes, especially in the form of land and building taxes in the rural and urban sectors as well as for the acquisition of land and building rights, the authority to collect them has been delegated to local governments based on Law no. 28 of 2009 concerning Regional Taxes and Levies. In this way, it means that the profit-sharing funds from tax sources are only left from the collection of Income Tax (PPh) Article 25 and Article 29 for Domestic Individual Taxpayers and Article 21 Income Tax.

Data from the Directorate General of Budget of the Ministry of Finance in 2019 shows that: Several provincial governments in Eastern Indonesia have small PAD, such as the Provincial Governments of North Maluku, West Sulawesi, Gorontalo Maluku, and West Papua having PAD below Rp 500 billion. In fact, North Maluku only has PAD of IDR 190 billion or about 0.44% of PAD of DKI Jakarta and 0.12% of total PAD of 34 provinces of IDR 156.2 trillion. Therefore, it is necessary that the constellation of profit-sharing funds needs to be reviewed by the government, because it is feared that it will make local income conditions tend to stagnate due to the absence of additional sources of income so that it can result in non-optimal administration of government affairs organized by local governments.

Based on the above conditions, the reality of regional income from the balancing fund sector has an impact on optimizing the implementation of regional government affairs, so it is necessary to amend Law Number 33 of 2004 concerning Financial Balance between the Central Government and Regional Government. Through this research, will be analyzed and formulated a legal design related to the financial balance between the central government and local governments from the revenue-sharing funds for the tax sector.

Based on the background that has been described, the problems to be solved in this research are: how is the legal redesign of the financial balance between the central government and local governments from the revenue-sharing fund for the tax sector?

RESEARCH METHOD

This paper is in the corridor of normative legal research (doctrinal research) which only uses secondary data. The legal research model is a comprehensive and analytical study of primary legal materials and secondary legal materials (Mahmud, 2005). The approach to the problem uses a statutory approach and a conceptual approach. The data were analyzed qualitatively by describing the data generated from the research into the form of a systematic explanation so that a clear picture of the problem under study could be obtained.

RESULT AND DISCUSSION

Central and Regional Financial Relations

The relationship between central and regional finance as a consequence of implementing fiscal decentralization is inseparable from the national state financial system. The principles of good financial system governance must be the foundation of fiscal decentralization policies (Tim Fitra, 2012). According to Davey, the financial relationship between the Center and the Regions is about distribution. Davey interprets as previously written, that the relationship is related to the division of responsibility for carrying out certain activities between levels of government and the distribution of sources of revenue to cover expenditures resulting from these activities. The main purpose of the relationship between the center and the regions according to Davey is to achieve a balance between the various divisions, in addition to that between the potential and resources of each region can be matched (Yuswanto, 2012).

The financial balance policy between the Center and the Regions is carried out by following the distribution of authority or the money follows function. This means that the financial relationship between the Center and the Regions needs to be regulated in such a way that the expenditure needs that will be the responsibility of the region can be financed from existing revenue sources (Tim Fitra, 2012).

The financial relationship between the center and the regions begins in the two conceptions contained in the General Elucidation of Law Number 33/2004. First, the implementation of regional government functions will be carried out optimally if the administration of government affairs is followed by providing sufficient sources of revenue to the regions. Second, the regions are given the right to obtain financial sources which include: certainty of the availability of funding from the government in accordance with the submitted government affairs (Yuswanto, 2012).

A decade of decentralization is expected to bring about changes in the achievement of regional autonomy goals to improve people's welfare. The implementation of regional autonomy accompanied by fiscal decentralization has been started since 2001. Fiscal instruments as one of the supporters of decentralization in implementing regional development, include the General Allocation Fund (DAU), Revenue Sharing Fund and Special Allocation Fund. In practice, the legal instruments for fiscal decentralization have been changed twice in line with changes in the legal framework for regional autonomy. In addition to the three balancing funds in the framework of fiscal decentralization above, the Government also allocates expenditures in the context of the deconcentration principle and assistance tasks that are directly to the regions without going through the APBD (Tim Fitra, 2012).

The balance of central and regional finance is a consequence of the implementation of decentralization through the transfer of central affairs to the regions. One of the principles of the balance fund, money follow function, means that funding must follow the division of affairs and responsibilities of each level of government. Thus, it should still be a big question, whether the current financial balance policy between the Government and Regional Government has been carried out proportionally, fairly, democratically and in accordance with the potential, conditions and needs of the region. The results of research conducted by FITRA related to the intricacies of central-regional financial relations show that the current issues of balancing funds are as follows (Tim Fitra, 2012):

First, the financial balance does not reflect the money follow function principle. Even though in nominal terms, regional transfers have increased significantly in the last five years, in terms of proportion, regional transfers have not moved from 31% - 34% of the total APBN expenditure. Apart from the five matters which fully fall under the authority of the central government, the regional government is the spearhead of public services in the implementation of regional autonomy. The problem is that the financial balance policy, which should follow the division of affairs, with the current proportions does not fully reflect the money follow function principle. In terms of institutional procedures, one of the reasons is that the division of affairs and financial balance is regulated in two separate laws. The division of affairs is the domain of the Regional Government Law, which is the domain of the Ministry of Home Affairs, while balancing funds is the domain of the Ministry of Finance. It is no longer an open secret, sectoral egos between Ministries, are still the cause of the inconsistency between regulations.

Second, districts/cities depend on the implementation of regional autonomy on balancing funds. In the midst of a relatively stagnant proportion of regional transfers to the APBN, the level of regional dependence on balancing funds is still very large. At the district level above 80% of income depends on balancing funds to implement regional autonomy. At the City level, although dependence is still relatively high, it is not as high as compared to the Regency level. Meanwhile, at the provincial level, dependency is relatively lower. This illustrates that the authority to collect taxes is more flexible at the provincial level, determining the level of regional dependence. While in the City, generally have a greater potential for income, especially those from taxes, than the Regency, so they have lower dependence.

Third, regional transfer do not pay attention to the principle of equality of every citizen. Article 23 of the constitution states that the budget is managed for the greatest prosperity of the people. The philosophy of this article is that the human rights of every citizen have the meaning that the welfare of citizens is the goal of the state. Thus, the financial relationship between the center and the regions should be based on the equality of the fulfillment of the rights of every citizen. At the district level, the ratio of regional transfers receiving the highest per capita transfers (Kab. Tana Tidung) is 127 times higher than that of regions receiving the lowest per capita transfers (Bogor Regency).

Fourth, the type of balancing fund is growing, has no legal basis, and has the potential to widen the gap between regions. In particular, the adjustment fund component was initially used to accommodate the balance fund underpayment, but since 2008 the adjustment fund has also been used to accommodate harmless non-hold funds, as well as ad hoc programs. In 2008 the term DISP was known (Fund for Infrastructure and Facilities), in 2009 it became the Fund for Strengthening Fiscal Decentralization for the Acceleration of Regional Development (DPDF PPD) and in 2010 the components of the Fund for Strengthening Infrastructure and Regional Infrastructure (DPIPD), Fund for the Acceleration of Education Infrastructure (DPIP) were added. Even in 2010 and 2011, adjustment funds have grown into seven types. In terms of amount, adjustment funds have continued to increase since 2010. This type of balancing fund in the adjustment fund component is completely unknown in Law No. 33/2004, and is used to accommodate various funds from the sector as a consequence of other laws and regulations. If this condition is allowed to continue, without clear regulations and formulas, these funds can undermine the objective of the balancing fund system to address regional disparities.

Fifth, the Infrastructure Adjustment Fund undermines the balancing fund system. In 2011, there were two components of the balancing fund that had the potential to damage the balancing fund system. Like the DPID in the 2011 fiscal year, it did not pay attention to the level of poverty and the fiscal capacity of a region. The DPID allocation has also widened the gap in financial capacity between regions. Where there are 87 regions that have regional financial capacity below the national average or an index below one, do not receive a DPID allocation, while there are 65 regions that have regional financial capabilities above the national average or a fiscal index above one, receive a DPID allocation.

Sixth, the regulation of balancing funds needs to be synchronized. The birth of Law no. 39 of 2007 concerning Tobacco Excise and Law no. 28 of 2009 concerning Regional Taxes and Regional Retributions (PDRD), has implications for the unsynchronized arrangements in the balancing law. The tobacco excise law regulates the sharing of tobacco excise with the regions, while in the balancing law, this has not been regulated. Likewise, with the PDRD Law which authorizes the collection of Land and Building Tax (PBB) and Building Land Acquisition Fees (BPHTB), which were previously included in the revenue-sharing component of the balance law. On this basis, the law on the balance of central and regional finances must be amended.

Redesign of the Fiscal Balance Law from the Revenue Sharing Fund of Tax Sector

Broadly speaking, the six issues related to the financial relationship between the government and local governments that have been described previously must be considered by the government to find a way out so that the condition of the financial balance between the government and regional governments is better. Of the six problems described above, one of the issues that is closely related to this study is the issue on the sixth point regarding the need for synchronization and harmonization of balancing funds legislation or in other words the need for revision of Law no. 33 of 2004.

Revision of Law no. 33 of 2004 needs to be done immediately not only related to the enactment of Law no. 39 of 2007 and Law no. 28 of 2009, which has implications for the inharmonious arrangement of the profit-sharing fund scheme in the balancing law. However, apart from that, it is necessary to add additional revenue-sharing funds from the tax sector by adding PPN and PPNBM as one type of tax that is distributed to the regions.

Article 11 paragraph (1) of Law Number 33/2004 states that DBH comes from taxes and natural resources. DBH sourced from taxes consists of: (a) PBB; (b) BPHTB; (c) Income Tax Article 25 and Article 29 for Domestic Individual Taxpayers and Income Tax Article 21. DBH sourced from SDA comes from: (a) forestry; (b) general mining; (c) fisheries; (d) petroleum mining; (e) natural gas mining; and (f) geothermal mining. With the development of laws and regulations governing the sharing of profits from the tax sector between the government and local governments, the proportions are found as presented in table one.

Tabel 1. Proportion of Revenue Sharing Fund of Tax Sector (Tim Fitra, 2012)

NO	JENIS	% UNTUK DAERAH	PROPORSI		
			PROV	KAB/KOTA PENGHASIL	KAB/KOTA LAIN DLM PROV
1.	PBB	90%	16,2%	64,8%	9%
2.	BPHTB	80%	16%	64%	
3.	PPH	20%	8%		12% *)
4.	CUKAI	2%	0,6%	0,8%	0,6%

Source: Law Number 33/2004.

The explanation from table one is as follows: DBH from PBB and BPHTB revenues are divided between provincial, district/city, and central regions. DBH revenue from PBB of 90% for regions is broken down into three parts. First, 16.2% for the province concerned and distributed to the general treasury account of the province. Second, 64.8% is for the district/city in question and is distributed to the general treasury account of the district/city. Third, 9% for the collection fee. The share for the central government of 10% of PBB revenue is distributed on a balanced basis to all districts/cities based on the realization of PBB revenues for the current fiscal year. First, 65% is distributed equally to all districts/cities with a view to equitable distribution of financial capacity

among regions. Second, 35% is distributed as an incentive to encourage intensification of PBB collection to districts/cities whose realization in the previous year reached/exceeded the planned revenue for certain sectors, namely the urban and rural sectors.

DBH from BPHTB receipts is 80% with two details. First, 16% for the province concerned and distributed to the general treasury account of the province. Second, 64% is for the producing district/city and is distributed to the general treasury account of the district/city concerned. Regional general treasury account is an account where regional money is stored as determined by the regional head to accommodate all regional revenues and pay all regional expenditures at the designated bank. The account is managed by the head of the regional financial management work unit (Satker) as the regional general treasurer. The central government's share of 20% of BPHTB revenues is distributed to all regencies/cities in equal portions and distributed in accordance with statutory provisions (Yuswanto, 2012).

The distribution of tax sources from PPh WPOPDN and PPh 21 between the central and local governments is 80% and 20% respectively, then for the regions it is still divided again for the province by 8% and the district/municipal share 12%. From that received by the Regency/City, 8.4% is still divided for the regencies/cities where the taxpayer is registered, 3.6% for all regencies/cities within the province concerned with an equal share (Tim Fitra, 2012).

Other improvements that need to be made are related to DBH Taxes, which consist of Non-Rural Urban Land and Building Tax, personal income tax, and cigarette excise. Until now it is not clear why only this tax is distributed to the regions. There are several considerations in the Tax DBH, which raises a paradox. The authority to collect taxes in the regions on the one hand can create unfair competition in the regions and create an unfavorable investment climate. On the other hand, the indicator of fiscal decentralization is taxing power for regions to encourage increased tax collection. In some countries, such as Macedonia, Value Added Tax and Japan for Corporate Tax, is one type of tax that is also distributed among the regions. So it needs to be taken into consideration, Value Added Tax is also one of the components of the Revenue Sharing Fund, which is calculated based on the GRDP per capita of the area. Learning from China's experience, the local tax incentive model can spur economic growth (Tim Fitra, 2012).

The urgency to include PPN and PPnBM as one type of tax that is distributed to local governments is not without reason. As previously explained, PPN and PPnBM are taxes that are collected based on the object, where the transactions occur in the regions. Therefore, it is appropriate for the regions to be given profit sharing from the PPN and PPnBM sectors to maximize the administration of government affairs under their authority.

CONCLUSION AND RECOMMENDATION

Based on the descriptions that have been discussed in previous chapters, it will be concluded that the redesign of the financial balance law between the central government and regional governments from the tax sector revenue sharing fund is needed because of Law Number 33 of 2004 concerning Financial Balance between the Central Government and Regional Governments. is no longer in accordance with the development of the situation and the demands of regional autonomy. The arrangement of the components of the revenue sharing fund from the tax sector in Law no. 33 of 2004 needs to be changed because based on Law no. 28 of 2009 PBB of rural and urban sectors as well as BPHTB have become local taxes whose collection authority lies with district/city governments, then based on Law no. 39 of 2007 excise on tobacco products includes taxes that are shared between the government and local governments so that excise on tobacco products needs to be added one of the components of the revenue sharing fund from the tax sector. In addition, regional financial conditions to carry out government affairs which are under the authority of regional governments currently require adequate financing, so to support this, it is necessary to add PPN and PPnBM as one of the components that make up profit-sharing funds from the tax sector.

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