

NOTARY LEGAL SERVICES AS TAXABLE ENTREPRENEURS OF VALUE ADDED TAXES IN INDONESIA: A SOCIAL PSYCHOLOGY PERSPECTIVE

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ABSTRACT

Value Added Tax (VAT) on goods and services is one type of central tax in Indonesia. In its development, VAT is regulated in Law Number 42 of 2009 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods (VAT Law). In Article 4A of the VAT Law, it is regulated that goods and services are excluded from the object of VAT. Notary services are excluded from the object of VAT. This raises the pros and cons associated with the inclusion of notary services as the object of VAT. The problem is, 1) is it correct from the juridical aspect that a notary is classified as a Taxable Entrepreneur. 2) How the Notary carries out the obligation to collect VAT for the legal services it provides. The research method used is empirical juridical method, with qualitative analysis. The results of the study show that most of the notaries who are Taxable Entrepreneurs (PKP) have collected VAT for the legal services they provide. However, most notaries are of the opinion that it is not appropriate to classify notaries as "entrepreneurs".

Keywords: Notary, Legal Services, Taxable Entrepreneur, Value Added Tax, Indonesia.

INTRODUCTION

Taxes have a very important role for countries in this world. Likewise, with Indonesia, taxes have a very important role. Taxes are the main source of state revenue. Tax collection, which has become a necessity in people's lives, is one thing that is certain to happen, therefore all the interests of the community cannot be fulfilled without taxes (Ilyas & Richard, 2018). Indonesia's tax ratio is in the range of 11% this ratio is far behind in the ranks of middle-class countries at 14-15% and developed countries at 24-26% (Permata et al., 2018; Badriyah et al., 2021; Roisah et al., 2018).

The legal basis for tax collection in Indonesia is contained in the 1945 Constitution of the Republic of Indonesia, in particular Article 23 (A). Based on this provision, it is emphasized that taxes and other levies of a coercive nature must be based on law. Regarding this tax, there are various types of tax levies in Indonesia, including Income Tax, Value Added Tax on Goods and Services, Sales Tax on Luxury Goods, Stamp Duty, Land and Building Tax, Acquisition Fee for Land and Building Rights, and so on. Value Added Tax on Goods and Services, is one type of tax levied by the central government. The Value Added Tax of Goods and Services is regulated in Law Number 8 of 1983 concerning Value Added Tax of goods and services and Sales Tax on Luxury Goods, which in its development continues to change, the last being

amended by Law Number 48 of 2009.

Value Added Tax is a tax imposed on Taxable Goods and/or Taxable Services (Rahayu et al., 2019). In principle, all goods and services are objects of VAT, but there are some goods and services that are not subject to VAT, so they are not included in the object of VAT. Goods and services that are not subject to VAT are regulated in Article 4A of the VAT Law. Based on the types of services that are exempt from VAT objects in Article 4 A of the VAT Law, it can be seen that notarial services are not included in the types of services that are exempt from the imposition of VAT. This means that notarial services are services subject to VAT. Therefore, a Notary and/or Land Deed Making Officer (hereinafter referred to as a notary) who is included in the Taxable Entrepreneurs (PKP) criteria is required to collect 10% VAT for the legal services provided. This provision has caused polemics from several notaries, who state that it is not appropriate for a notary to be included as an “*entrepreneur*”. In this regard, the problems are that from a juridical aspect, namely the appropriateness for a notary to be classified as an “*entrepreneur*” and the method of VAT collection for notary services carried out by a notary. This study intended purpose is to critically analyze the notary legal services as taxable entrepreneurs of value added taxes in Indonesia by using a social psychology perspective of compliance theory conceptually developed by Kelman’s (1996).

RESEARCH METHODS

The research method used in this study is Juridical Empirical, which is a research method that prioritizes the use of field data as primary data. In this case, it is how the enforcement or implementation of normative law in action on certain legal events that occur in society. In the words of on the other hand, how the law works in society. Empirical juridical research can also be called field research, namely examining the applicable legal provisions and what is happening in reality in society (Waluyo, 2002). Primary data was obtained through interviews with 10 notaries/PPAT, both included in the Taxable Entrepreneurs and the non-Taxable Entrepreneurs. While secondary data is obtained through literature study (official documents, books, journals, research results in the form of research reports and so on). The research specification in this research is descriptive analysis. Qualitative data analysis, carried out in 3 (three) stages, namely data reduction, data presentation and conclusions.

Notaries as Taxable Entrepreneurs

The word Notary is from Notarius (Notarui) means “*a person who does writing work*” (Notodisoerjo, 1993). Historically, the notary institution is one of the oldest branches of the legal profession in the world (Tanuwidjaja, 2012). The existence of a notary in modern life is currently needed related to the existence of an authentic deed as written evidence containing legal circumstances, events or actions, in order to provide legal certainty in social life. Notaries and/or PPATs are officials who are authorized by law to make the authentic deed (Yubaidi, 2020; Budiarta & Puspadma, 2021; Mayurov et al., 2020). The definition of a Notary in Article 1 point 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of a Notary (hereinafter referred to as UUJN) determines “*Notary is a public official who is authorized to make authentic deeds and has other authorities as referred to in Article 1 paragraph (1) in this Law or under other Laws.*” A

notary is a public official who is authorized to make an authentic deed as long as the making of a certain authentic deed is not reserved for other public officials (Hendra, 2012; Nasirin & Lionardo, 2021). Based on UUJN, a notary as a public official gets the authority by attribution, because the authority is created and granted by UUJN itself. So, the authority obtained by a notary does not come from an institution.

Based on Article 15 paragraph (1) UUJN, the authority of a notary is to make an authentic deed. This authentic deed contains all actions, agreements, and stipulations required by laws and regulations and/or desired by the interested parties to be stated in the authentic deed, guarantees the certainty of the date of making the deed, keeps the deed, provides grossed, copies and quotations of the deed, all of them that as long as the making of the Deed is not assigned or excluded to other officials or other people stipulated by law.

In addition to a notary who is authorized to make an authentic deed, there are other professions which by law are given the authority to make an authentic deed. The profession is Land Deed Making Officer (hereinafter referred to as PPAT). These two professions have fundamental differences, especially with regard to their authority. The definition of a notary is contained in the UUJN, which states that a notary is an official authorized to make authentic deeds and other deeds (Article 1 point 1 UUJN). Land Deed Making Official (PPAT) is a Public Official who is given the authority to make authentic deeds regarding certain legal actions regarding land rights or Property Rights on Flat Units (Article 1 paragraph 1 Government Regulation of the Republic of Indonesia Number 37 of 1998 Juncto Ministerial Regulation State Agrarian Affairs/Head of the National Land Agency Number 4 of 1999 concerning Position Regulations for Land Deed Maker Officials PP Number 37 of 1998 concerning Regulations of Positions of Land Deed Maker Officials in its development was amended by Government Regulation Number 24 of 2016. Usually, this position is held concurrently by a Notary who has fulfilled requirements to become a PPAT (Yulia et al., 2020; Santiago, 2017; Suparji, 2020).

In the field of taxation, particularly related to the Value Added Tax on goods and services regulated in Law Number 8 of 1983 which in its development continues to change, the last amendment was Law Number 42 of 2009 concerning Value Added Tax on Goods and Sales Tax on luxury goods (hereinafter called VAT), notarial services are included as services subject to VAT. This can be seen from the provisions stipulated in the VAT Law, in particular Article 4A paragraph (3) concerning Types of Services Not Subject to VAT, namely medical health services; social services; postage service with postage; financial services; insurance services; religious services; education services; arts and entertainment services; non-advertising broadcasting services; public transportation services on land and in water as well as domestic air transportation services which are an inseparable part of foreign air transportation services; labor services; hotel services; services provided by the government in the context of running the government in general; parking space provision services; public telephone services using coins; money transfer service by postal money order; and catering or catering services. Based on the list, notarial services are not included as exempt services, this can be interpreted those notarial services are services subject to VAT. VAT is a tax imposed on the consumption of goods and services within the customs area. The imposition of VAT is charged to entrepreneurs who have become Taxable Entrepreneurs (PKP). Regarding the tax collection system in VAT, what is applied in VAT is a self-assessment system. The tax collection system is a way to determine the authority in calculating the amount of tax that must be paid by taxpayers (Suastika, 2021; Sadma, 2021).

Self-assessment System, a tax collection system, the state gives full trust to Taxpayers to register, calculate, deposit, and report their tax obligations (Kahpi, 2020; Sukhovenko, 2020). The

results of the study show that not all notary services are subject to VAT, only notaries and/or PPAT are subject to VAT which are included as PKP (Taxable Entrepreneurs). Meanwhile, notaries who do not include PKP are not subject to VAT. Regarding this PKP, based on the Minister of Finance Regulation (PMK) No. 197/PMK.03/2013, entrepreneurs with sales (turnover) of more than Rp. 4.8 billion a year must have the status of a Taxable Entrepreneur (PKP). This means that the PKP has the obligation to collect, deposit, and report the VAT payable.

Based on the results of the research, notaries to become PKP, then in accordance with the self-assessment system adopted in the VAT Law, they (notaries) who have met the requirements as PKP whose turnover is above Rp. 4, 8 billion, report their efforts to obtain confirmation/registration. Taxable employers. Regarding the inclusion of notaries as “*Taxable Entrepreneurs*”, based on the results of interviews with notaries (10 notaries), they stated that it is not appropriate for notaries to be included as entrepreneurs. This is because based on the applicable provisions of the UUJN, it is emphasized that a notary is a “*public official*” who is authorized to make an authentic deed. Notaries in carrying out their positions are appointed by the government on behalf of the state, so it is not appropriate to classify them as entrepreneurs. In addition, notary clients are not consumers. Therefore, notary services are not appropriate if they are included as services subject to VAT.

The arrangement of a Notary as a public official as intended, is contained in Article 1 of the Regulations for Notary Positions in Indonesia, it is emphasized that a Notary is a public official who has the sole authority to make an authentic deed, it means that no other person or official other than a Notary is given the authority to make an authentic deed.

Based on the results of research in the field, interviews with ten notaries related to compliance with VAT collection by a notary for the legal services it provides, the following data are obtained showing the results that 6 notaries, do not carry out the obligation to collect VAT on the services they provide, because they are not included as Taxable Entrepreneurs, and 4 notaries, carrying out the obligation to collect VAT, because they are included as Taxable Entrepreneurs (gross circulation has exceeded Rp. 4.5 billion).

There are several reasons why 4 notaries who have fulfilled the PKP comply with the provisions of the applicable VAT Law, including 3 notaries stating that they have been included as PKP and the consequence of the PKP is that they have an obligation to collect VAT for the services they provide, if they do not implement This obligation will be subject to sanctions in accordance with the provisions contained in the VAT Law. One notary stated that he had collected VAT services for the legal services he provided, but not fully in accordance with the provisions of the VAT Law. VAT collection is carried out on clients who are large companies only, while those who are not included in large companies are not subject to VAT collection on the grounds that it is not too burdensome for the company concerned.

Some of these PKP notaries also stated that some of their clients objected to VAT being withdrawn, because the costs would be higher. Some of these clients even turned to other notaries, who did not collect VAT. They hope that the provisions of the VAT Law, which does not exclude Notary legal services as objects of VAT, will be reviewed (revised). Regarding how the implementation of VAT collection by a notary, the following data are obtained that a notary must apply as a PKP first, and after the notary is confirmed as a PKP, then he/she will only collect VAT for the legal services he/she provides PKP in Law Number 42 of 2009 concerning the Third Amendment to Law Number 8 of 1983 concerning PPN and PPnBM (VAT Law), is an entrepreneur who delivers Taxable Goods and/or delivery of Taxable Services subject to tax under this Law. Notary services are services for which VAT

is payable, so that notaries are included in the Taxable Entrepreneurs (PKP) class and are required to collect 10% VAT for services rendered. To become a PKP, a notary must have a NPWP (Taxpayer Identification Number). This NPWP will become the PKP Identification Number of the Notary concerned by receiving a letter of NPPKP (Taxable Entrepreneur Confirmation Number) issued by the KPP (Tax Service Office) where the notary is registered. Notaries after becoming PKP are obliged to carry out the obligation to report the VAT Period SPT every month. Submission of VAT Period SPT is carried out no later than the 20th of each month. SPT must be filled out correctly, completely, and clearly, in Indonesian. Notaries as PKP in rendering taxable services subject to tax are required to make tax invoices. Tax invoice as stipulated in the VAT Law is evidence of tax levy made by a Taxable Entrepreneur who delivers Taxable Goods who delivers Taxable Goods or delivers Taxable Services. The tax referred to in the tax invoice is VAT collected by the seller (in this case a notary as a service provider to clients who need notary services. Tax invoices are given to clients as proof that the client has paid taxes (Ispriyarso et al., 2021; Ispriyarso & Saadah, 2019).

Juridical Classification of Notary in Current Vat Law

Based on the description above, it can be seen that under the current VAT Law, notary services include services subject to VAT. Based on field research, many notaries (10 interviewed notaries) do not agree with the inclusion of a notary as an entrepreneur (in this case a taxable entrepreneur), on the grounds that the notary is not an entrepreneur, but a public official. The author also agrees with these notaries, that the classification of notaries as taxable entrepreneurs is inappropriate, because there are differences in understanding between entrepreneurs and officials. In general, entrepreneurs are people who carry out business activities, both buying and selling businesses, as well as production businesses whose main goal is to make profits. Meanwhile, an official is a person appointed by the state to serve the interests of the government and the public interest. In Article 1 point (14) of the VAT Law it is explained that what is meant by Entrepreneur is an individual or entity which in its business activities or work produces goods, imports goods, exports goods, conducts trading business, utilizes intangible goods from outside the Customs Area, conducts business services or utilize services from outside the customs area.

Therefore, it is better in the future the provisions of the VAT Law which do not exclude notary services as services that are exempt from VAT objects, must be revised for legal certainty. In the future, notary services include services that are not subject to VAT, because notaries are not included in the “*Entrepreneur*” criteria as referred to in the VAT Law. According to the theory of legal certainty, legal certainty is a very important thing in law. After legal justice is achieved, the next thing that must be fulfilled is legal certainty. Without legal certainty, people will never understand whether the actions that people will do are right or wrong and without legal certainty, it will cause various problems, namely the emergence of unrest in society. With the existence of legal certainty, the community gets protection from arbitrary actions from various law enforcement officers in carrying out their duties in society. Legal certainty becomes a benchmark in the clarity of their rights and obligations in a law. Legal certainty must be able to prioritize evidence so that the law can be accounted for (Suhardin, 2007). Based on the theory of legal certainty, the existence of a rule in the VAT Law which includes notary services as services subject to VAT is a controversial rule because the “*notary*” profession cannot be equated with entrepreneurs, so this must be corrected.

Notary Compliance in Collecting VAT

As described above, based on research, many notaries do not agree that notary services include services subject to VAT, but in practice notaries who have been confirmed as PKP have carried out their obligations to collect VAT for the services they provide. Although not all of them do as stipulate in the VAT Law, there are also notaries who in collecting VAT are only carried out on their clients who are large companies. This shows that in practice the notaries interviewed by the author have complied with the provisions of the VAT Law related to their obligations in collecting VAT.

Compliance comes from the word obedient, which means to submit, obey, and participate. To obey means to bow down, obey, and obey. Legal compliance is the condition of a citizen who is submissive to the rules of the game (law) that apply. According to Rahardjo (2010), there are three factors that cause people to obey the law. The first is compliance, namely the expectation of a reward and an effort to avoid punishment that may arise if someone violates the provisions of the law. There is strict supervision of the rule of law. The second is identification, namely if compliance with the rule of law exists not because of its intrinsic value, but so that group membership is maintained and there is a good relationship with those who are authorized to apply these legal rules. The third is internalization, namely when someone obeys the rules of law because intrinsically the obedience has a reward. The contents are in accordance with the values of the person concerned.

In the field of taxation, Kelman (1996), states that there are three behaviors of people willing to pay taxes. Compliance attitude is a condition where people are willing to pay taxes for fear of being punished if they hide taxes or do not pay taxes. Identification attitude is a sense of pleasure and respect for government officials, especially tax officers. Internalization attitude is a condition where people pay taxes because they realize that the taxes paid are indeed useful for themselves and the wider community (Tajpour et al., 2021; Tajpourn & Hosseini, 2021).

Taxpayer compliance can be defined as the behavior of a taxpayer who complies with all his tax obligations and uses all his rights with reference to the applicable tax regulations. The criteria for taxpayer compliance according to the Decree of the Minister of Finance No. 544/KMK.04/2000 concerning Criteria for Taxpayers Who Can Be Given Preliminary Refunds of Excess Taxes that the criteria for taxpayer compliance are timely in submitting SPT for all types of taxes in the last two years; doing not have tax arrears for all types of taxes, unless they have obtained permission to make installments or postpone tax payments; never been sentenced for committing a crime in the field of taxation within the last 10 years; in the last 2 years keeping books of account and in the event that an audit has been carried out on a taxpayer, the correction on the last audit for each type of tax payable is a maximum of 5%; and, taxpayers whose financial statements for the last 2 years were audited by a public accountant with an unqualified opinion, or an opinion with an exception as long as it does not affect profit or loss.

Based on the description, it can be seen that most of the notaries interviewed by the author, they have collected VAT in accordance with the provisions of the VAT Law. This shows that they have complied with their obligations as PKP by collecting VAT for the services they provide and are in accordance with the criteria of compliant taxpayers in accordance with the Decree of the Minister of Finance No. 544/KMK.04/2000 (fulfills elements number 1 to 5). Associated with the theory of tax compliance by Kelman (1996), notary compliance is related to the collection of VAT for the legal services it provides, including Compliance Attitude, which is a notary compliance based on the fact that it is an obligation that must be carried out as specified in the VAT Law, if not implemented, they will

be subject to the applicable sanctions.

CONCLUSION

Based on the description above, it can be concluded that based on the provisions of the applicable VAT Law, notary legal services are not included as exempted services from being subject to VAT. This means that legal services are services subject to VAT. As a result, a Notary who is a PKP must collect VAT for the services he provides. From the juridical aspect, notary services are not appropriate if they are included as objects of VAT, because notaries are public officials, not 'entrepreneurs'. Notaries, who are included in PKP, have carried out the obligation to collect VAT for the legal services provided as stipulated in the VAT Law. This notary compliance is based on the reason that it is not subject to the sanctions specified in the VAT Law. If it is associated with compliance theory, it is included in the “*compliance attitude*” category. As suggestion, in the future, according to the notary's expectations, notarial services should be excluded as objects of VAT, because it is not appropriate for a notary to be classified as a “*Taxable Entrepreneur*”. Therefore, the VAT Law, which regulates this matter, needs to be revised.

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