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Final Income Tax on Transfer of Right to Land And /Or Buildings

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ABSTRACT
In the Income Tax imposition system, Indonesia introduces a modern taxation approach adopted by several developed countries, namely the self-assessment system. This system is intended to give confidence to taxpayers to self-assess the amount of tax payable, calculate taxes that have been paid by themselves or withheld by third parties, pay off their tax shortfalls and report the fulfillment of their tax obligations at the office of the Directorate General of Taxes (hereinafter abbreviated as DJP).
This research method by collecting information or data and examining the data obtained.it will provide an overview of the research plan, including procedures and steps that must be taken.Type of research is normative juridical, focuses on the study of norms.
Final income tax is very burdensome for the company and reduces the company's profits.
In reality, the implementation of the final Income Tax rate as referred to is not that easy, there are still other issues that are disputed, the selling value of the tax object cannot be used as a guideline or standard for calculating final Income Tax payment, but must follow the transaction or the acquisition value of the tax object. This is an unfair and self-defeating fiscus behavior.
It is hoped, the Government can review the final Income Tax related to the transfer of rights to land and buildings, so as not to harm the seller and the buyer, also for justice.

Keywords: Final Income Tax, Self – Assessment, Sale and Purchase Agreement of land and building, Transaction Value, Selling Value of Tax Object

I. INTRODUCTION

1. BACKGROUND.

Every trader or taxpayer is required to understand the nature of Income Tax in Indonesia , which is to understand the basic concept that animates legislation relating to Income Tax, basic concepts of how to analyze income tax cases, so that taxpayers have a clear rationale, then income tax collection can be accepted with awareness and compliance.

In the income tax system, this system is intended to give confidence to taxpayers to calculate themselves (self-assess) amount of tax owed take into account taxes that have been paid by themselves or withheld by third parties, pay off their tax shortfalls and report the fulfilment of their tax obligation sat the office of the Directorate General of Taxes (hereinafter abbreviated as *DJP*)

Although most of the principles and rules, accounting (bookkeeping) rules and practices, held based on Financial Accounting Standards (FAS),but in order to realize the taxation mission, which serves as an instrument of government policy to influence social and economic life, and resource allocation, tax provisions have their own rules in calculating the amount of tax, that can occur is not in line with accounting practice. These regulations sometimes affect the operation of commercial bookkeeping. Understanding the rules is very helpful to find out how to organize bookkeeping according to the rules in the context of implementing self-assessment effectively, especially understanding of final Income Tax collection, in accordance with Article 4 paragraph (2) of Law Number 36 of 2008 as for the transfer of rights to land and/or buildings subject to Article 4 paragraph (2) d, the contents of which are as follows:
The following income can be recognized as final tax.

Income from property transfer transactions in the form of land and/or buildings, construction service businesses, real estate businesses, and land and/or building rentals; and….

Meanwhile, according to Government Regulation Number 34 of 2016, which is valid for 30 days from August 8, 2016, namely September 8, 2016, the rate is 2.5% of the transaction value. It means that there is a reduction in the rate for Final Income Tax Article 4 paragraph (2) d by 2.5%.

With consideration in the context of accelerating the implementation of the government's development program, for public interest, providing convenience in doing business, as well as providing protection to low-income communities, the government deems it necessary to reorganize the policy on income tax received or obtained by an individual or entity from the transfer of rights to land and/or buildings, and binding sale and purchase agreements on land and/or buildings and their amendments.

Based on these considerations, President Joko Widodo on August 8, 2016 has signed a Government Regulation Number 34 of 2016 concerning Income Tax from the Transfer of Rights to Land and/or Buildings, and Sale and Purchase Agreements on Land and/or Buildings and their Amendments.

In the Government Regulation it is stated that income received or earned by an individual or entity from:

but in order to realize the taxation mission which functions as one of the government policy instruments to influence socio-economic life and resource allocation, tax provisions have their own rules in calculating the amount of tax that can occur is not in line with accounting practices. These regulations sometimes affect the operation of commercial bookkeeping. An understanding of these rules is very helpful in knowing how to organize bookkeeping according to the rules in the context of implementing an effective self-assessment, especially an understanding of final income tax collection in accordance with Article 4 paragraph (2) of Law Number 36 of 2008. As for the transfer of land rights and/or or buildings affected by Article 4 paragraph (2) d, the contents of which are as follows:

The following income can be recognized as final tax:

Income from property transfer transactions in the form of land and/or buildings, construction service businesses, real estate businesses, and land and/or building rentals; and….

a. transfer of rights to land and/or buildings; or

b. Binding sale and purchase agreement on land and/or buildings and their amendments, is payable with final Income Tax.

Income from the transfer of rights to land and/or buildings as intended income received or earned by the party transferring the land and/or building rights through the sale, exchange, waiver, transfer of rights, auction, grant, inheritance, or other means agreed between the parties.

According to Article 1 paragraph (2) of this Government Regulation, income from the binding sale and purchase agreement on land and/or buildings along with the amendments, is income from :

a. the seller whose name is listed in the sale and purchase binding agreement when it is first signed; or

b. the buyer whose name is listed in the sale and purchase binding agreement before the change occurs or addendum to the binding sale and purchase agreement, on the change of the buyer in the binding sale and purchase agreement.

The amount of Income Tax from the transfer of land and/or building rights as referred to in Article 2 paragraph (1) of Government Regulation No 34/2016 is as much as:

(1) 2.5% (two point five percent) of the gross amount of the transfer of rights to land and/or Buildings other than the transfer of rights to land and/or buildings in the form of Simple Houses or Simple Flats carried out by Taxpayers whose main business is conducting Transfer of rights to land and/or buildings;

(2) 1% (one percent) of the gross value of the transfer of rights to land and/or buildings in the form of Simple Houses and Simple Flats carried out by Taxpayers whose main business is to transfer rights to land and/or buildings; or

(3) 0 % (zero percent) on the transfer of rights to land and/or buildings to Government, state-owned enterprises that receive special assignments from the government, or regionally-owned enterprises that receive a special assignment from the regional head, as referred to the law in governing land acquisition for development in the public interest.

According to Article 2 paragraph (3), the amount of Income Tax from the agreement binding sale and purchase of land and/or buildings and their amendments as referred to accordance with the tariff of the gross amount, namely:

a. the actual value received or obtained, in the event that the transfer of land and/or buildings is carried out through a transfer that is not affected by a special relationship; or

b. the value that should have been received or obtained, in the event that the transfer of land and/or buildings is carried out through a transfer that is influenced by a special relationship.

But in reality, the implementation or implementation of the final Income Tax tariff as intended is not that easy, but the practice is convoluted, the tariff still follows the existing provisions, but there are still other issues that are at issue, namely the selling value of the tax object cannot be used as a guideline. or standard for calculating final Income Tax payments, but must follow the transaction or acquisition value of the tax object. Even this does not guarantee that Acquisition Value of Tax Object is higher than Sale Value of Tax Object. Then what is the fact if the transaction value is below the Value of Tax Object, even though the real transaction is below the Sale Value of Tax Object as required by law is the transaction value, which means acquisition value of the tax object. In fact, the Government cannot accept if it turns out that the calculation of the tariff multiplied by the acquisition value of the tax object is lower than the Value of Tax Object. Sellers must follow whichever is higher, may not follow the lower, even though the law requires the tariff to be multiplied by acquisition value of the tax object This shows the inconsistency of tax regulations. This is the work or behavior of the tax authorities, not the will of the law. In practice in the office of the Land Title Registrar (*Pejabat Pembuat Akta Tanah*)it always happens every day and has been running for years without being refuted by either the taxpayer or the Land Titles Registrar (*Pejabat Pembuat Akta Tanah*). Fiskus arbitrarily forced payments according to their wishes.

II. PROBLEM FORMULATION

From what is described in the background above, there are problems and gaps that need to be studied and analyzed, the problems are:
(1) Is it appropriate that the transfer of rights to land and/or building is final for the real estate business?
(2) What is the correct way to calculate?

III. LEGAL BASIS

In the discussion of this paper, several legal bases are used that underlie the collection of Income Tax Article 4 paragraph (2) d which are final, namely:

1. Article 4 paragraph (2) d of Law number 36 of 2008, concerning the fourth amendment to Law number 7 of 1983 concerning Income Tax;
2. Government Regulation number 48 of 1994 as amended by Government Regulation number 71 of 2008 concerning Income Tax on income from the transfer of rights to land and/or buildings;
3. Regulation of the Minister of Finance number 243/PMK.03/2008 concerning the second amendment to the Decree of the Minister of Finance number 635/KMK.04/1994 concerning the implementation of income tax payments on income from the transfer of rights to land and/or buildings;
4. Regulation of the Director General of Taxes number 30/PJ/2009 concerning Procedures for Granting Exceptions from the Obligation to Pay or Collect Income Tax on Income from the Transfer of rights to Land and/or Buildings;
5. Directorate General of Taxes, Regulation of the Director General of Taxes number Per- 26/PJ/2010
6. concerning Procedures for Research on Deposits for Income from the Transfer of rights to Land and/or Buildings;
7. Circular Letter of the Director General of Taxes Number SE-80/PJ/2009 concerning the implementation of final income tax on income from the transfer of rights to land and/or buildings received or obtained by taxpayers whose main business is to transfer of rights to land and/or buildings.
8. Government Regulation Number 34 of 2016 concerning Income Tax on Income from the Transfer of rights to Land and/Buildings, and Sale and Purchase Agreements on Land and/or Buildings and their amendments, stipulated in Jakarta, on August 8, 201

IV. STUDY OF LITERATURE

Job Creation Law number 11 of 2020 greatly affects Income Tax, the aim is mainly to create a climate of business justice in the country, increasing legal certainty. However, it turns out that the Final Income Tax is not affected at all, it is actually very detrimental to the taxpayer. In this case, the benefit is only related to the payment of Value Added Tax and the payment of dividends, it does not affect the Final Income Tax.

The Final Withholding Tax (hereinafter, FWHT) requires certain taxable income to be taxed in accordance with special rules that differ from the calculation of income taxes in general, and thus, disregarding the payer's ability to pay. One concept upheld in justifying FWHT is simplicity. (Dwi : 2014)

Final Income Tax is a tax collected with a different treatment from Income Tax in general. This depends on the provisions of the law, certain objects will be mentioned in the law to obtain special treatment for the payment of Income Tax.

Income Tax: These are:
(1) the belief that taxes should be based on the individual's ability to pay, known as the ability-to-pay principle, and
(2) the benefit principle, the idea that there should be some equivalence between what the individual pays and the benefits the subsequently receives from governmental activities.
(https://www.britannica.com>topic>Principle-of-taxation) visiting on February 18, 2022

V. PREVIOUS RESEARCH.

Trisnajaya and Prastiwi (2021 : 98) in analysis of changes in the provisions of individual tax subjects in the Job Creation Act on personal income tax and mobility of human resources, they said,Tax reform in the Employment Creation Act contains new provisions regarding individual tax subjects which differ from the Income Law. These provisions have an impact on the income tax base, the adjustment of the tax system to a territorial system. It turns out that this system does not change Article 4 of the Income Tax Law

Lora and Mathon (2021 : 29) in Formal research on proof of fulfilment of Final Income Tax payment obligations on the transfer of rights to land and/or buildings, they said, in order to analyze and find out the process and description of the provisions of the Formal Research and at the same time analyze the responsibility of the Notary/ Land Titles Registrar, if there is an underpayment of Final Income Tax and Duties on Acquisition of Right to Land and Buildings.

The problem is focused on regulations regarding Formal Research. In order to approach this problem, a normative juridical method is used, namely describing, analyzing, and analyzing the regulations regarding Formal Research and analyzed qualitatively. This study concludes that in the event of a tax underpayment due to the correctness of the transaction price stated in the Duties on Acquisition of Right to Land and Buildings, the responsibility is borne by the Taxpayer and the Tax Insurer because the correctness of the transaction price is not the responsibility of the Notary/ Land Titles Registrar. Formal research activities cause the signing of the deed to be delayed because the signing of the deed cannot be carried out before the issuance of the Formal Research Certificate.

Ghozali and Ma’ruf : 2019, conduct research on the Implementation of Final Income Tax on payment of transfer of rights to land and building based on Government Regulation no. 34 of 2016 at PT. Citra Lestari Propertindo in Cirebon Regency. The Land Title Registrar has signed the Sale and Purchase deed without obtaining proof of payment of Final Income Tax from the *Pratama* Tax Service Office which has been validated. The method used is sociological juridical, using descriptive analysis, using primary and secondary data taken from law books, regulations. As a result of the Land Title Registrar not yet receiving the Final Income Tax validation, PT. Citra Lestari Propertindo lacks the required documents should be attached, so that the sale and purchase deed that has been signed by the Land Title Registrar Deedis invalid, it is considered a violation of Article 1869 of the Civil Code, and the Land Title Registrar receives sanctions.

VI. DISCUSSION

From what has been described in the background above, and the legal basis that has been used, it is necessary to discuss and study the legal issues that arise.

6.1. UNDERSTANDING THE AGE OF GLOBALIZATION

Globalization comes from the word "globe" which means round or comprehensive, meaning that globalization is a condition where all humans on earth can interact (interact) quickly. This situation is as if the world is a unified whole, so distance is no longer a problem because of increasingly sophisticated transportation and communication with modern technological advances.

According to Aart Scholte, globalization can be understood in various categories, namely globalization as internationalization, liberalization, universalization, westernization or modernization, and as deterritorialization. (Batheria, 2015 : 39)

Indonesia as a country that cannot be separated from the influence of globalization, must take advantage of the opportunity to offer goods and services as well as culture, besides that it is necessary to improve the quality of human resources in order to produce quality human resources in order to produce quality goods and be able to compete with other countries. Other countries.

In facing this era of globalization, Indonesia must establish relations with countries in the world, because the Indonesian people also take part in the economic, social, cultural and political fields as well as security and the environment.
(www.http//globalisasi, visiting on 01 November 2021)

6.2. INFLUENCE OF GLOBALIZATION ON INCOME TAX.

Globalization has had a tremendous impact on the economy / trade in Indonesia, by itself affecting the recipients of the state from the tax sector. Many other nations invest their capital in Indonesia, or carry out international transactions involving cross-border trade relations, so that Indonesia is a source country, which means there is additional income from foreign investors, apart from Indonesian taxpayers.

The existence of free trade, namely trade without being subject to import duties, causes tourist trips to be more crowded, economic competition is getting tougher, all countries can set up companies in any country (investment), this is seen from the positive side. On the other hand, if viewed from a negative perspective, globalization brings a threat to Indonesia, as a result of free trade, including the possibility of illegal (illegitimate) immigrants from other countries, the emergence of international network crimes, smuggling of incoming goods, the arrival of foreign workers in large numbers. the greater, resulting in unemployment for local workers. As a result, many crimes occur everywhere. Likewise, the Government has issued a regulation regarding foreign citizens being allowed to buy land and/or buildings in Indonesia, with certain criteria, meaning that if a foreigner buys an apartment, the minimum value must be Rp. 5,000,000,000,- (five billion rupiah) and subject to final income tax, according to Article 1 point 3, Law no. 25 of 2007 concerning Investment ("Law 25/2007"),
Article 1 point 6:

Foreign Investment is an activity of investing to conduct business in the territory of the Republic of Indonesia carried out by foreign investors, both those who use fully foreign capital or those in joint ventures with domestic investors. Foreign investors are individual foreign nationals, foreign business entities, and/or foreign governments making investments in the territory of the Republic of Indonesia.
If Indonesia really has established cooperation with modern countries that have the potential to invest in Indonesia, of course, the state's income in the tax sector will increase, as long as there is a need for strict supervision by the government in the taxation sector, so that Indonesia is not harmed.

6.3. MAIN ROLE OF TAXES

Taxes have a very important main role, because taxes have 2 (two) functions, namely:
1. **Budgetair/receipt function**
Taxes function as a source of funds intended for financing government expenditures, both routine expenditures and development expenditures.
2. **Regular functions / regulate.**
Taxes function as a tool to regulate or implement policies in the social and economic fields.
In its development, this role has become wider with the redistribution and democracy functions.
The redistribution function is a function that emphasizes the elements of equity and justice in society.
This function shows the existence of layer of tariffs in the imposition of taxes, namely a higher tax for a higher level or layer of income. (Mardismo, 2009 :1-2)

Meanwhile, the function of democracy is one of the incarnations or forms of the mutual cooperation system, including government and development activities. (Wardoyo & Amin Subiyakto, 2016:1)
This function is now often associated with the level of government services to the public, especially taxpayers.
If the tax has been implemented properly, the government must provide the best service in return.
In terms of tax collection, there are many obstacles, which can be categorized as:
1. **Passive Resistance**.
The public or taxpayers are reluctant to pay taxes, because of the intellectual and moral development of the community. The tax system is difficult to understand, the supervisory system is not implemented properly.
2. **Active Resistance**.
All efforts and actions that are directly addressed to the tax authorities with the aim of avoiding taxes, in the form of:
a. Tax avoidance, an effort to ease the burden of packing by not violating the law;
b. Tax evasion, an effort to lighten the tax burden by violating the law /tax evasion (Mardiasmo, 2009 : 8-9)

By understanding the importance of taxes as the main source of state treasury revenue, the Government needs to socialize every new tax regulation to the public, especially business actors in order to increase awareness of their obligations and compliance in paying taxes.

6.4. TAX POLICY

In business practice, entrepreneurs generally identify tax payments as a burden, so they will try to minimize the burden in order to optimize profits. In order to increase efficiency and competitiveness, a manager must reduce costs as optimally as possible. Likewise with the obligation to pay taxes, because the cost of taxes will reduce profit after tax (after tax profit), rate of return (rate of return), and cash flows (cash flows). In this case, it is often referred to as tax management, as a tax saving strategy, tax mitigation, and tax shelter. So the tax assumption as a cost will affect the profit (profit margin), while the tax assumption as a profit distribution will affect the rate of return on investment.

Efforts to make tax savings legally can be done through tax management. But keep in mind that the legality of tax management depends on the instrument used. Tax management is a means to fulfill tax obligations properly, but the amount of tax paid can be kept as low as possible to obtain the expected profit and liquidity.

The purpose of this tax management can be achieved through the functions of tax planning, implementation of tax obligations and tax control. (Suwandi, 2011 : 6)

Tax policy is an alternative to the various targets to be addressed in the tax system. From various aspects of tax policy, there are factors that encourage tax planning, especially regarding the tax system adopted by a country, and the attitude of the tax authorities in interpreting tax regulations, both domestic laws and tax policies.(Argo, 2017 : 5)

In the current of globalization, the level of competition is getting higher, taxpayers in fulfilling their obligation to pay taxes are required to really master the situation at hand, both from an internal and external perspective and are always updated with changes that occur so that tax payments can be made appropriately. and comprehensively on situations and transactions that have an impact on taxation. (Saidi, 2007 : 8)

6.5. FINAL INCOME TAX.

What is meant by taxes are people's contributions to the State treasury based on law (which can be enforced) without receiving reciprocal services (contra-achievements) that can be directly shown and which are used to pay general expenses. (Mardiasmo, 2009 : 1)

Income Tax is the collection of income earned by individuals or non-profits obtained by business entities. This collection is based on Article 23 paragraph (2) of the 1945 Constitution. (Gade & Djamaluddin Gade, 1995 : 74)

According to Rochmat Soemitro, this tax is a transfer of wealth from the people to the government for which no direct reward can be appointed, but the benefits can be felt by the people, because basically money is income. (2009 : 8)

From the tax sector is used for development, while this development is for the people, so that indirectly the people feel the benefits of development. Tax levies reduce the income/wealth of individuals or business entities, but on the contrary it is the community's income which is then returned to the community. (Soemitro, 1988 : 2)

Income from the transfer of assets in the form of land and / or buildings, as well as certain other income is the object of tax. (sambodo, 1999 : 15)

The government needs to make every effort to provide various conveniences and procedures for paying taxes that are simple, uncomplicated to the public as taxpayers, so that taxpayers can pay their obligations easily, without feeling difficult.

According to Article 4 paragraph (2) of the Income Tax Law No. 36 of 2008:

The income tax imposed on income which is the object of Article 4 paragraph (2) Income Tax is final, so that if the taxpayer has withheld Article 4 paragraph (2) income tax, the evidence of the withholding cannot be credited.

According to Article 4 paragraph (2) d:

Income that may be subject to final tax is: income from property transfer transactions in the form of land and/or buildings, construction services business, real estate business, and land and/or building rental. Here the

obligation arises for the withholding of final Income Tax Article 4 paragraph (2), which is carried out at the latest at the end of the month:
o Paid income;
o Provided for the payment of income;
o The maturity of the payment of the income in question depends on the events that occurred first.
- Making proof of withholding income tax Article 4 paragraph (2);
- Provide evidence of withholding to the party withholding Income Tax Article 4 paragraph (2)
- Deposit Income Tax Article 4 paragraph (2) no later than the 10th of the following month after the end of the tax period to the perception bank or post office.

This provision is supported by Government Regulation No. 34 of 2016, which aims to make all taxpayers able to take advantage of the final Income Tax on fixed objects in the form of transfer of rights to land and/or buildings, where there are still a lot of fixed objects that have been purchased and controlled yet behind the names in the Land office, and unpaid income tax. It was proven that initially the final Income Tax for the transfer of land and/or building rights was 5%, now with Government Regulation No 34 of 2016 it is 2.5 %

6.6. FINAL INCOME TAX SUBJECT AND OBJECT

Indonesia is one of the countries that adheres to the classical system where there is a separation between business entities and their private owners (shareholders) which will result in double taxation.

6.6.1. Final Income Tax Subject (Asa Mandiri, 2009 : 329 – 330)

According to the provisions of Article 2 paragraph (1) of the Income Tax Law number 36 of 2008, the tax subjects are:
a. Private persons and undivided inheritance;
b. Body;
c. Permanent Establishment.

Even these tax subjects are divided into domestic tax subjects and foreign tax subjects. In the implementation of tax regulations, the facts show that there is no law that regulates every problem perfectly. Therefore, in its implementation it is always followed by other provisions (Government regulations, Presidential Decrees, Decrees of the Minister of Finance and Decrees of the Director General of Taxes), not infrequently the implementation provisions are contrary to the law itself because it is adjusted to the interests of policy makers in achieving other goals. which he wants to achieve. As a result, a gap is opened for taxpayers to analyze the opportunity carefully as a good plan.

6.6.2. Final Income Tax Object

The existence of different tax treatment on tax objects that are economically essentially the same will lead to tax planning efforts so that the tax burden is low. Tax objects are the tax bases for the amount of tax, so to optimize the allocation of sources of funds, management will plan taxes that are no more and no less, so as not to have to pay sanctions which means a waste.

The object of income tax according to Article 4 paragraph (1) of Law number 36 of 2008 is income, namely any additional economic capacity received or obtained by the taxpayer, both originating from Indonesia and from outside Indonesia, which can be used for consumption or to increase the wealth of the taxpayer concerned, by name and in any form.

Meanwhile, the tax objects subject to final Income Tax according to Article 4 paragraph (2) of Law number 36 Year 2008 are:
a. Income in the form of interest on deposits and other savings, interest on bonds and government bonds, and interest on deposits paid by cooperatives to individual cooperative members;
b. Income in the form of lottery prizes;
c. Income from stock and other securities transactions, derivative transactions traded on the exchange, and share sales transactions or equity participation in partner companies received by venture capital companies;
d. Income from property transfer transactions in the form of land and/or buildings, construction services business, real estate business, and rental of land and/or buildings, and;
e. Other certain income, which is regulated by or based on Government Regulation. (Mulyono, 2009 : 21)

6.7. TREATMENT OF FINAL INCOME TAX ON REAL ESTATE

Understanding Real Estate, defined as land and buildings or other man-made attached to the land, it is a physical and tangible form that can be seen and touched, together with other additions that are on, above or below the ground or below the earth's surface. (Prijohandojo, 1995 : 6)

Real estate and property have the same meaning, it's just that the word property is more popular in Indonesia which means the shape of the building, while real estate is better known as a residential area.

The development of urban areas is marked by the large number of real estate developments by developers as traded goods. Real estate built by developers is usually in the form of housing, such as: residential areas, town houses and apartments/condos; places of business, such as: shop houses or office buildings, industrial and warehousing areas, and office complexes. Real Estate business is very profitable, because of the very high demand factor, both those who buy property for investment purposes or for their own use. The high profit margin from the real estate business is obtained from the difference between the purchase price of raw land that has not been ripened with the selling price of land and buildings that are equipped with various infrastructure and adequate environmental facilities.

Income received or earned by Taxpayers whose main business is to transfer rights to land and/or buildings (real estate Taxpayers) is subject to final Income Tax on the legal basis of Article 4 paragraph (2) part d of Law number 36 of 2008 concerning fourth amendment to Law number 7 of 1983 concerning Income Tax in conjunction with Government Regulation number 71 of 2008 concerning the third amendment to Government Regulation number 48 of 1994 concerning Payment of Income Tax on income from the transfer of rights to land and/or buildings juncto Director General of Taxes Circular Letter No. SE-80/PJ/2009 concerning the implementation of final income tax on income from the transfer of rights to land and/or buildings received or obtained by taxpayers whose main business is to transfer rights to land and/or buildings, related to Government Regulationnumber 34 of 2016 ;

What is meant by Taxpayers whose main business is to transfer rights to land and/or buildings (Taxpayer of Real Estate) are taxpayers who transfer rights to land and/or buildings as merchandise, including developers of residential areas, shops, warehouses, industries, condominiums. , apartments, flats and office buildings

6.7.1. Real Estate Business Final Income Tax Subject and Object

1. Subject of Real Estate Business Final Income Tax.

The subject of the Real Estate Business Final Income Tax is an individual or entity that transfers rights to land and/or buildings as merchandise (Real Estate Taxpayers) or has the main business of transferring rights to land and/or buildings.

2. Real Estate Business Final Income Tax Object.

The object of the Real Estate Business Final Income Tax is the income received or earned by the Real Estate Taxpayer from the transfer of rights to land and/or buildings as merchandise.
(Setiawan, 2005 : 12)

6.7.2. Tariff, Calculation Basis, and Time Payable for Final Business Income Tax's Real Estate.

1. Real Estate Business Final Income Tax Rate

Income Tax Rates on Real Estate Businesses or Taxpayers whose main business is to transfer rights to land and/or buildings are determined based on Article 2 paragraph (1) Government Regulation No. 34/2016, the amount of the tax rate is divided into 3 types according to the type of house being used. transferred, namely:

a. 2.5% (two point five percent) of the gross value of the transfer of land and/or building rights.

b. 1% (one percent) of the gross value of the transfer of rights to land and/or buildings in the form of simple houses and simple flats carried out by taxpayers whose main business is to transfer rights to land and/or buildings;

c. 0% (zero percent) for the transfer of rights to land and/or buildings to the Government, regionally-owned enterprises receiving special assignments from regional heads, as referred to in the law on land acquisition for development in the public interest.

Simple Flats are multi-storey buildings that are built in an environment that is used as a residence equipped with a bedroom, bathroom and a kitchen, either integrated with the residential unit or separately with communal use, including the Simple Owned Flats, which are exempted from the imposition of Value Added Tax in accordance with with the provisions of laws and regulations.

The limits for Simple Houses, Very Simple Houses, Simple Flats are regulated in Article 2 of the Regulation of the Minister of Finance number 80/PMK.3/2008, as amended by Regulation of the Minister of Finance/PMK 31/PMK.03/2011 dated 28 February 2011 as follows:

1) Simple Houses and Very Simple Houses that are exempt from the imposition of Value Added Tax as referred to in Article 1 are Simple Healthy Homesand Growing Core Houses whose acquisitions are either in

cash or financed through subsidized credit facilities or not. subsidized, or through financing based on sharia principles, which meet the following conditions:
a. selling price is less than Rp. 60,000,000,- (sixty million rupiah); and ;
b. is the first house owned, used alone as a place to live and not transferable within 5 (five) years since owned
2). Including Simple Houses and Very Simple Houses exempt from the imposition of Value Added Taxas referred to in paragraph (1) is a Simple House Healthy and a Growing Core House which submitted to the Bank in the context of financing based on sharia principles that meet the following provisions:
a. selling price is less than IDR 60,000,000 (sixty million rupiah);
b. purchased by a bank with the aim of reselling it to low-income people in the context of financing based on sharia principles;
c. the house must be resold to low-income communities within 6 months of being purchased.

2. Basis for Calculation of Real Estate Business Final Income Tax

The basis for calculating income tax on income from a real estate business is the gross amount of the transfer value of land and/or building rights.
The value of the transfer of rights as referred to is the highest value between the value based on the Deed of Transfer of Rights and the Sale Value of the Tax Object of the Land and/or Building concerned at the time of signing the deed, decision, agreement, agreement or minutes of auction for the transfer of rights to land and/or building by the authorized official. (Barata, 2003 : 11)

3. When Real Estate Business Final Income Tax is Payable

When taxes are payable on income earned or received by individuals or entities from the transfer of rights to land and/or buildings, both in their business activities and outside their business activities, it is at the time of signing the deed, decision, agreement, agreement or minutes of auction on the transfer of rights. on land and/or buildings by the authorized official.

6.8. CALCULATION OF REAL ESTATE INCOME TAX.

In calculating the final Income Tax for the real estate business, it is the rate multiplied by the Acquired Value of the Tax Object, but if the Acquired Value of the Tax Object is lower than the Selling Value of the Tax Object, the higher value must be taken. (Markus, 2002 :3)

4.8.1. Formula :

The calculation of Final Income Tax on income from Real Estate Business is as follows:

Tax Payable = Tax Rate x Tax Base
Tax Payable = 2.5% or 1% or 0% x gross amount of transfer value of land and/or building

6.8.2. Procedure for Payment of Real Estate Business Final Income Tax

For Real Estate Business Taxpayers, there are several provisions that must be considered in the context of fulfilling tax obligations as stipulated in the Circular Letter of the Director General of Taxes number. SE-80/PJ/2009 concerning Implementation of Final Income Tax on income from the transfer of rights to land and/or buildings received or obtained by Taxpayers whose main business is to transfer rights to land and/or buildings, namely;
1. Payment of Final Income Tax on the transfer of land rightsand/or building is carried out;
a. no later than the next 15 months after the month receipt of payment, in the case of payment of transfer of rights to land and/or buildings done by way of installments;
b. before a deed, decision, agreement, agreement or Minutes of auction on the transfer of rights to land and/or building are signed by the competent authority, in the event that the total payment in installments is less than the gross amount of the transfer of rights.

2. In the event that the payment or instalment on the transfer of land and/or building rights is made before January 1, 2016 and the sale of the transfer has not been recognized as income of the Taxpayer who made the transfer until December 31, 2015, the Final Income Tax on the payment or instalment must be paid before the deed, decision, agreement, agreement or minutes of auction on the transfer of land and/or building rights are signed by the authorized official.

3. In the event that the transfer of land and/or building rights is carried out at the branch, the payment of Income Tax and the submission of the Article 4 paragraph (2) Annual Income Tax Return on the income from the transfer of the land and/or building rights can be made by the branch. However, all payments of Income Tax on income from the transfer of rights to land and/or buildings carried out at the branch must be consolidated by the canter and reported in the Annual Income Tax Return.

4. In the event that there are two or more Taxpayers working together to form a Joint Operation to transfer rights to land and/or buildings, the Final Income Tax on the transfer of rights to land and/or buildings is paid by each member of the Operational Cooperation in accordance with with a share of the income received by each member of the Operational Cooperation

5. In the event that the Final Income Tax as referred to in number 4 above has been paid using a Tax Payment Letter on behalf of the Operational Cooperation or one of the members of the Operational Cooperation, the Tax Payment Letter is transferred to each member of the Operational Cooperation in accordance with the share of income received. Each member of the Operational Cooperation.

6.8.3. Special Provisions on Real Estate Business Final Income Tax

1. For corporate taxpayers, including cooperatives whose main business is to transfer rights to land and/or buildings in accordance with the Regulation of the Minister of Finance Number 243/PMK.03/2008 concerning the Second Amendment to the Decree of the Minister of Finance number 635/KMK.04/1994 concerning The implementation of Income Tax Payment on income from the transfer of land and/or building rights shall apply the following provisions;

(1) For losses from the transfer of rights to land and/or the remaining buildings up to 2008 fiscal year can only be compensated until with Fiscal Year 2008;

(2) Since the enactment of Law number 36 Years 2008, then January 2009 period is not required make payment of income tax instalments as referred to in article 25 is related to income from transfer of rights to land and/or buildings.

Government Regulation No 34 of 2016 concerning Payment of Taxes Income on Income from Transfer of Rights to Land and/or Buildings which are affirmed as:

a. Corporate taxpayers, including cooperatives, whose businesses are principally carry out transactions for the transfer of rights to land and/or buildings, which:

(1) transfer land rights and/or buildings before January 1, 2015 and above the transfer of rights has not been made a deed,decisions, agreements, agreements, or minutes auction by the uthorized official; and

(2) Income from the transfer of rights as referred to in number 1) has been reported in the Letter of Annual Income Tax Notice the relevant tax and Income Tax on the income has been paid.

The tax imposition is calculated based on the provisions of Government Regulation number 34 of 2016 concerning Payment of Income Tax on Income from the Transfer of Rights to Land and/or Buildings:

- In article 3 paragraph 2: for individuals or entities whose main business conducts transactions on the transfer of rights to land and/or buildings, the imposition of Income Tax is based on the general provisions of Law number 36 of 2008,
- In Article 8 paragraph (1) it is determined: For individual taxpayers, foundations or similar organizations, whose main business is to carry out transactions on the transfer of rights to land and/or buildings, payment of Income Tax from the transfer of rights to land and/or buildings. is final.

b. On income from the transfer of land rightsand/or buildings that meet the provisions of letter a above, are not subject to Income Tax based on the provisions of Government Regulation number 34 of 2016 concerning Payment of Income Tax from the Transfer of rights to Land and/or Building as evidenced by a Certificate of Free Payment of Income Tax which is

Final with the following conditions:

(1) The application to obtain a final Income Tax exemption certificate shall be submitted in rating by the corporate Taxpayer transferring the rights to land and/or buildings to the Tax Service Office where the corporate Taxpayer is registered in a format determined by the Director General of Taxes.

(2) Applications to obtain a final Certificate of Free Income Tax Payment must be accompanied by a list of land and/or buildings whose income from the transfer has been reported in the Annual Income Tax Return in accordance with the stipulated

format which is filled in completely including the name and Taxpayer Identification number, land and/or building buyers.

In relation to the buyer's name and Taxpayer Identification number listed in the Tax Free Certificateit is emphasized that:

o The buyer's Taxpayer Identification number must be included in the Tax Free Certificate application, unless based on tax provisions the buyer is not required to have a Tax Identification number;

The name of the buyer listed in the Tax Free Certificate application is the buyer listed in the Sale and Purchase Agreement;

In the event that there is a change in Sale and Purchase Agreement so that the real estate corporate taxpayer receives or earns income from the Sale and Purchase Agreement change, the Tax Free Certificate can only be issued if the real estate corporate taxpayer can prove that the income from the Sale and Purchase Agreement change has been reported in the Annual Income Tax Return for the tax year concerned and Income Tax on such income has been paid.

(3) In the event that data or other information is found indicating the untruth of the data submitted by the Taxpayer, the Certificate of Free Payment of Income Tax that has been issued is declared invalid and the Income Tax is billed back along with sanctions in accordance with the provisions of Law number 6 of 1983 concerning General Provisions and Tax Procedures as amended several times, most recently by Law number 16 of 2009

VII. CALCULATION OF FINAL INCOME TAX

PT. ABC Real Estate built a town house of 20 houses with an area of 150 M2/250 M2 each with a selling price of IDR 1,500,000,000 per unit. On October 1, 2019, 5 units were sold, and on October 5, 2019 a deed of sale and purchase was made between the consumer and PT ABC Real Estate. Based on data from the Tax Office, the amount of the 2019Sale Value of Tax Object in Property Tax for each unit is IDR 1.3000.000.000,-

Problem: What is the final income tax payable by PT ABC Real Estate for the sale of the town house?

Analyzes:

The gross value used to calculate the final income tax on the transfer of land and/or building rights is IDR. 1,500,000,000,-, because this value is higher than the 2016 Sale Value of Tax Object in Property Tax.

Gross Value 5 units x IDR 1,500,000,000,- = IDR. 7,500,000,000, -

Final income tax payable = 2.5% x IDR 7,500,000,000,- = IDR. 187.500.000,-

So the final income tax that must be deposited is IDR. 187,500,000,-

PT.ABC Real Estate, apart from building a town hause, also built 50 simple houses with large of land/large of house 72 M2/36 M2 at a price of IDR 50,000,000 per unit, and 50 very simple houses with LT/ LB: 62 M2/21 M2 at a price of IDR 40,000,000,-. Sale Value of Tax Object in Property Tax year 2019 for type 36 is IDR 48,000,000, - and for type 21 is IDR 36,000,000, -. And in October 2019 10 units of type 36 and 15 units of type 21 were sold, the credit agreement was made on November 20, 2019.

Problem : How much Final Income Tax owed to PT.ABC Real Estate?

Analyzes:

Total Gross Value Simple House /type 36 = 10 units x IDR 50,000,000, - = IDR 500,000,000,-

Total Gross Value Very Simple House /type 21 = 15 units x IDR 40,000,000,- = IDR 600,000,000,-+

Total Gross Value IDR 1100,000,000,-

Final Income Tax payable = 1% x IDR 1.100,000,000,- = IDR 11,000,000,-

PT. SOHO HOUSING, on December 28, 2019 has sold 10 apartment units with a Sale and Purchase Agreement, with a total payment of IDR 5,000,000,000, - and for the transfer until December 31, 2019 a deed of sale and purchase has not been made before a Notary/Land Titles Registrar, but the payment has been reported in the 2019Annual Notification Letter and the income tax has been paid in full by PT. SOHO HOUSING. Then on March 10, 2020, a deed of sale and purchase was made between PT SOHO HOUSING and Mr. Wibisono.

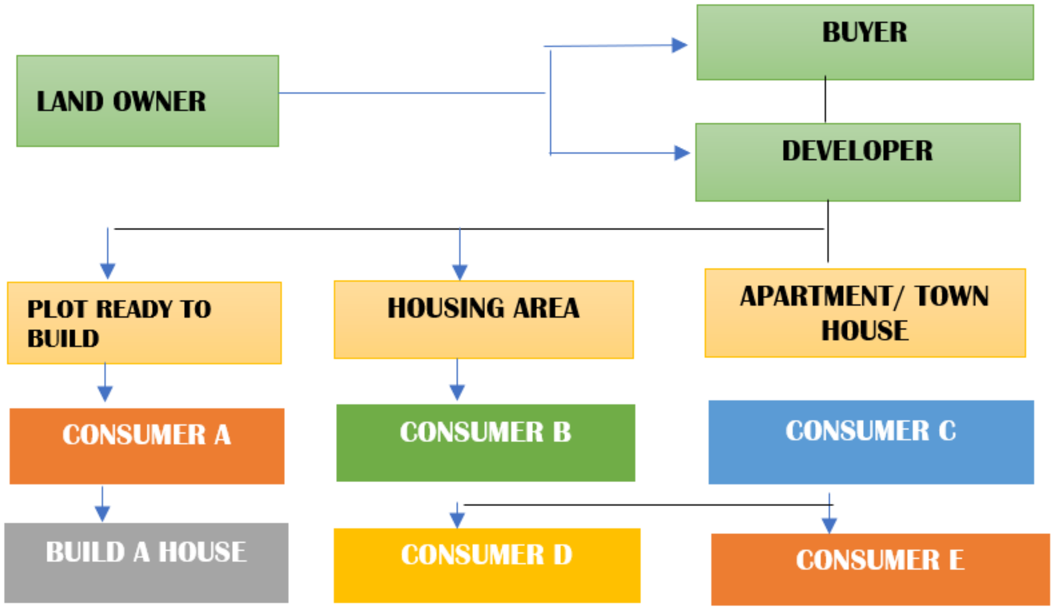
Problem: How is the imposition of income tax from the transfer of rights to land and buildings ?

Analyzes :

a. Because the transaction occurred before January 1 2020, PT. SOHO HOUSING is not payable Final Income Tax on income from the transfer of land and/or building rights, and must submit in writing to issue a Final Income Tax Free Certificate to the Service Office where PT SOHO HOUSING is registered. as a Taxpayer.

b. The application for the Final Income Tax Free Certificate must be accompanied by a list of apartment units and the name of the buyer whose payment has been reported in the Annual Notification Letter year 2019 and the buyer's Tax Number Identification Number must be included in the list.

8. FLOWCHART FOR REAL ESTATE BUSINESS FINAL INCOME TAX 2.5%



Notes:
From the land owner to the developer or directly to the buyer, pay PPh = 2.5%
From land owner to developer pay 2.5% PPh, from developer to consumer/buyer pay 2.5% PPh

So seen from the flow of transfer of land and / building rights, it appears that the final Income Tax that must be paid by the real estate business is 2.5%, in addition to the Value Added Tax (VAT) and Luxury Goods Sales Tax and the Acquisition of Rights. on Land and/or Buildings , which are final in nature, so they cannot be credited. Meanwhile, the final income tax for simple houses andvery simple flats is only 1%.

8.1. RESEARCH METHODOLOGY

This research method is the steps that must be taken by researchers, by collecting information or data and examining the data obtained. With this research method, it will provide an overview of the research plan, including procedures and steps that must be taken, including data sources, then processed and analyzed.

a. Research type

The type of research is using normative juridical research. Research with normative juridical type is research that focuses on the study of norms, regulate the problems discussed in the form of legislation or jurisprudence as well as literature books related to the problem, to answer the problems studied.

b. Problem Approach

The approaches used in legal research are the statutory approach, which is an approach that uses laws and regulations related to the issues discussed and the conceptual approach is an approach that uses the opinions of legal experts as a supporting basis (conceptual approach). With the hope that this approach will provide more accurate results, and can answer legal problems in a concrete and factual manner.

c. Legal Material

The legal materials used in this paper are Primary Legal Materials and Secondary Legal Materials. Primary Legal Materials are legal materials that are binding in the form of statutory regulations relating to legal issues concerning Income Tax, Basic Agrarian Laws, Civil Codes, Regulations of the Minister of Finance, Decrees of the Directorate General of Taxes, Regulations of the Minister of Housing.

Secondary sources of legal materials, in the form of library materials consisting of various related literature, expert opinions, doctrines, and previous research (if any), scientific works, and information media related to this research.

d. Legal Material Research Steps

The step of collecting legal materials in this paper is through a literature study, which begins with an inventory of all legal materials related to the problem, then a classification of related legal materials is carried out and then the legal materials are arranged systematically to make it easier to read and study them.

The discussion step is carried out using deductive reasoning which means this writing starts from general legal knowledge obtained from legislation and literature that is implemented on the problems raised in this paper, so that specific answers can be obtained and continued with interpretation. systematically by linking the laws and regulations and the opinions of legal experts.

9. CLOSING.

Based on what has been described above, a conclusion can be drawn to answer the problem as the solution.

9.1. CONCLUSION.

Based on what has been described in the previous chapters, the following conclusions can be drawn:

(1) Final Income Tax Article 4 paragraph (2) letter d is inappropriately applied to real estate businesses related to the transfer of rights to land and/or buildings, because:

a. The real estate business is more suitable if it is excluded from the final PPh Article 4 paragraph (2) letter d, so that the income tax paid for every transaction on the transfer of land and/or building rights can be credited, so as not to burden the company too much, whose job is to buy and sell land rights. and/or buildings. This is in order to reduce the taxes that must be paid by the company;

b. This final income tax is very burdensome for the company and reduces the company's profits, as a result, many real estate businesses manipulate the selling price / transaction value, by reducing the selling price, so that the final income tax paid is also small. This will actually be detrimental to the Government, because the income to the State treasury will be reduced.

(2) The method of calculating the final income tax payment of Article 4 paragraph (2) letter d, must be guided by the Acquired Value of Tax Objects of Land and/or Building Rights, by following the tariffs contained in Government Regulation. 34 of 2016. So if the is Acquired Value of Tax Objects of Land and/or Building IDR . 2,000,000,000,-, while the Tax Object Selling Value is only IDR 1,000,000,000,-, then the final Income Tax calculation is:

2.5% X IDR 2,000,000,000,- = IDR 50,000,000,-

The entrepreneur/seller must deposit the tax directly by using the Tax Deposit Form at the perception bank before the transfer of land and/or building rights is executed. But if the Acquired Value of Tax Objects of Land and/or Building's Right value is lower than Tax Object Selling Value , then theTax Object Selling Value is used.

9.2. SUGGESTION.

It is advisable for the Government to review the final Income Tax that is applied to real estate businesses, regarding the transfer of rights to land and/or buildings, to prevent price fraud, minimize the transaction value of the transfer of rights to land and/or buildings, which has always occurred.

The government must be consistent with the implementation of Government Regulation no. 34 of 2016, which has been in effect since September 8, 2016, meaning, if it is said that the calculation according to Acquired Value of Tax Objects of Land and/or Building's Right, it should be turns out that Acquired Value of Tax Objects is lower than Tax Object Selling Value , then the Government can no longer switch to Tax Object Selling Value with a higher value.

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