Contemporary Accounting Case Studies

Volume 3, Nomor 1, March 2024 Article 28

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Contemporary Accounting Case Studies,
March 2024, Vol. 3, No. 1, pg. 542-563

EVALUATION OF THE IMPLEMENTATION OF THE EXEMPTION POLICY ON THE IMPOSITION OF VALUE-ADDED TAX ON THE DELIVERY OF LIQUEFIED NATURAL GAS (LNG) BY PT X

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ABSTRACT

Further research is required on the tax incentives for oil and gas activity due to their stimulating effect on oil and gas investment and utilization. This study aims to examine the primary considerations and evaluate the implementation of the exemption policy on the imposition of value-added tax (VAT) on the delivery of liquefied natural gas (LNG) performed by PT X. Through PP 48/2020, the delivery of LNG is exempt from VAT. This study uses a qualitative research approach with case studies. The data were collected via interviews and documentation from PT X. Descriptive, content, and thematic analysis techniques were also employed. The study results show that the implementation of this policy could be more effective due to its ongoing impacts on the seller side. These include input VAT that cannot be credited and LNG prices that are higher than they would otherwise be. However, the policy implementation is efficient, with no complicated administrative requirements. In terms of adequacy, this incentive policy is the same as non-Taxable Goods delivery. Meanwhile, its distribution among groups could be improved. The government has been responsive in providing feedback to those who felt the previous policy required revision before implementation. In terms of accuracy, this policy has yet to fully effect an increase in the electrification ratio.

Keywords: *Evaluation, Liquefied Natural Gas, Tax Incentives, Value-Added Tax*

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1. INTRODUCTION

Oil and gas are fossil energy sources widely used by various countries worldwide. Oil and gas are strategic, non-renewable natural resources and vital commodities that affect the livelihoods of many people and play a critical role in the national economy. The National Energy Council stated that fossil-based energy accounts for 90% of the energy mix in Indonesia. Oil and gas are also predicted to hold the largest share, at 53% (Indonesia, 2019), until 2025. Indonesia's oil and gas production for 2010–2019 is shown in Table 1.1.

Table 1.1
Oil and Natural Gas Production
(2010-2019)

Year	Crude Oil and Condensate (thousand barrels)	Natural Gas (MMscf)
2010	344.888,00	3.407.592.30
2011	329.249,30	3.256.378,90
2012	314.665,90	2.982.753,50
2013	301.191,90	2.969.210,80
2014	287.902,20	2.999.524,40
2015	286.814,20	2.948.365,80
2017	292.373,80	2.781.154,00
2018	281.826,61	2.833.783,51
2019	273.494,80	2.647.985,90

Source: Badan Pusat Statistik, 2021

Recent years have seen a persistent downward trend in the level of Indonesia's oil and gas production. The decline in oil production can be attributed to continued reliance on old wells, which have naturally become less productive over time. The fall in gas production is due to the low absorption of final consumers (CNN Indonesia, 2021). To compensate for the decline in oil reserves and maximize the use of natural gas, the latter has become increasingly significant as a substitute for petroleum. Natural gas is an essential source of energy and competes with other commodities, including oil, coal, and new and renewable energy sources. The government is aggressively encouraging the use of domestic natural gas, including through the construction of natural gas infrastructure (pipes and LPG/CNG/LNG) to stimulate domestic industry and maintain a cleaner environment (Directorate General of Oil and Gas, 2018).

Demand for natural gas will also increase in line with the country's growing population. In terms of benefits, natural gas has many uses, including fuel production and ammonia, or as the main component in manufacturing fertilizers. In addition, natural gas plays a vital role in the lives of the Indonesian people, such as in supporting industry, power generation, commercial use, and daily life (Pertagas, 2020). Table 1.2 illustrates the types and number of natural gas customers in Indonesia during the period 2014–2019.

Table 1.2
Types and Number of Natural Gas Customers

Type of Customers	2014	2015	2017	2018	2019
Household	92.858	123.891	135.138	185.698	143.623
Commercial	1.904	1.857	1.991	2.384	1.847
Industry	1.344	1.597	1.695	1.894	1.771
Power Plants	12	13	10	10	14
Gas Filling Station	43	14	16	16	13
Total	**96.161**	**127.372**	**138.850**	**190.002**	**147.268**

Source: Badan Pusat Statistik, 2021

One type of natural gas is liquefied natural gas (LNG). LNG has many benefits that can be used in everyday life, such as an alternative fuel for the transportation and household sectors expected to reduce fuel consumption, reduce subsidies, and save foreign exchange. Judging from its use as a fuel, LNG is cheaper than the price of non-subsidized diesel. In addition, LNG can also be used for household stoves because it guarantees the safety and cleanliness of the emissions produced compared to liquefied petroleum gas or LPG (ESDM, 2012).

Indonesia has been one of the world's largest exporters of liquefied natural gas (LNG) since 1977. However, along with the decline in gas production and the government's policy to prioritize the use of gas in the domestic market, its contribution to the LNG market has continued to decline (SKK Migas, 2020). Therefore, the government must increase the production and use of LNG and implement a policy to support the country's demand for gas.

Since August 2020, the government has supported increasing the national electrification ratio, accelerating the more efficient fulfillment of electricity needs, and ensuring affordable electricity prices for the wider community. Through Government Regulation Number 48 of 2020 concerning Amendments to Government Regulation Number 81 of 2015 concerning the Import and Delivery of Certain Strategic Taxable Goods Exempted from the Imposition of Value Added Tax (GR 48/2020), the government provides facilities, one of which is the exemption of value-added tax (VAT) on the delivery of certain strategic Taxable Goods in the form of LNG. The regulation is expected to encourage domestic gas absorption and ease the burden on producers, sellers, and buyers. A VAT exemption on the delivery of LNG by PT X to consumers will certainly result in lower LNG prices.

To anticipate the rise in demand for natural gas, PT Z seeks to further expand its LNG business (Kompas, 2021). As a subsidiary of PT Z, PT X supports PT Z's core business as a reliable gas supply provider and develops LNG infrastructure for areas with no pipeline access. The primary strategy of PT X is to provide LNG at competitive prices and construction and operation services for LNG facilities (PT X Annual Report, 2019). The background of PT X endorses the author in conducting

this research. Furthermore, little prior research has been conducted on the tax incentives for gas activity. Hence, this study aims to explore the importance and real impact of the VAT exemption on the delivery of LNG and draw comparisons with the previous facility.

Based on the introductory explanation above, the authors chose to evaluate the implementation of the exemption policy on the imposition of VAT on the delivery of LNG by PT X in the form of a study. This led to the formulation of the following main research elements:

1) Analyze the basis of the government's considerations in determining the policy of exemption from the imposition of VAT on the delivery of LNG.
2) Evaluate the VAT exemption policy for the delivery of LNG by PT X.

2. LITERATURE REVIEW

2.1. PUBLIC POLICY

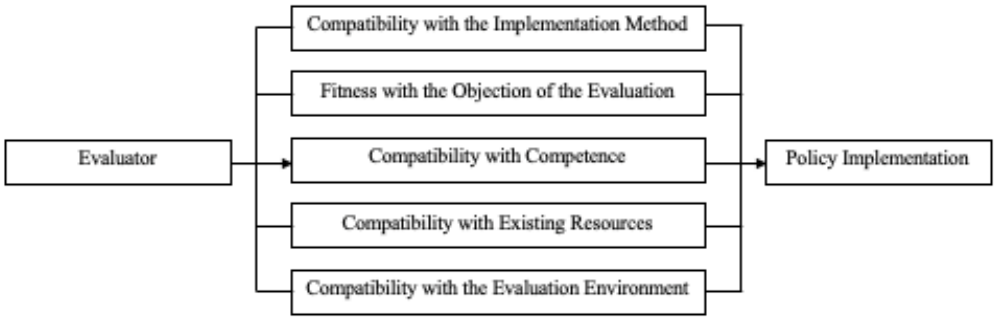
Public policy is an instrument of government, not purely in the sense of government as part of the state apparatus but also governance that touches on the management of public resources. Policies are decisions or choices of action that directly regulate the management and distribution of natural, financial, and human resources for the public interest. Policy results from synergy, compromise, or even competition between the various ideas, theories, ideologies, and interest claims that represent a country's political system (Suharto, 2008).

According to Frederick, as cited in Nawawi (2009), public policy is a direction of action proposed by a person, group, or government in a certain environment that contains obstacles and opportunities for the proposed policy to both seize and overcome to achieve a goal or realize a specific purpose. The public policy process includes identifying policy problems, setting agendas, formulating, ratifying, and implementing policies, and evaluating (Dye, as cited in Widodo, 2021).

2.2. PUBLIC POLICY EVALUATION

A good policy evaluation must include several basic criteria: i) it must seek to identify strategic aspects to improve policy performance; ii) the person concerned must be able to distance themselves from policymakers, policy implementers, and policy targets, and iii) evaluation procedures must be methodologically accountable. Practical guidelines for evaluating the implementation of public policies can be summarized as shown in Figure 2.1 (Nugroho & Riant, 2006):

Figure 2.1
Public Policy Implementation Evaluation Instructions



Source: processed by the author, 2022

Evaluating a program or public policy requires a criterion to measure the success of A set of criteria against which to measure success is essential when evaluating a program or public policy. Dunn (2018) proposed the following evaluation criteria:

1) Effectiveness refers to achieving results that have value. In this context, an effective policy makes further positive adjustments to the quality of life for the community.
2) Efficiency refers to the amount of effort required to produce a certain level of effectiveness. In this context, an efficient policy achieves greater net benefits.
3) Adequacy refers to a policy that achieves a specified threshold of effectiveness or efficiency and relates to achieving the desired result to solve the problem.
4) Equitable is related to legal and social rationality, which refers to the distribution of results and efforts among different groups of people.
5) Responsiveness refers to the extent to which policies meet the needs, preferences, or interests of certain groups.
6) Appropriateness is closely related to substantive rationality since the question of a policy's feasibility is not concerned with an individual criterion but two or more criteria taken together.

2.3. TAX POLICY

Tax policy is fiscal policy in a narrow sense. Broadly, fiscal policy uses tax collection instruments and state expenditure to influence people's production, employment, and inflation. More narrowly, it determines what will be used as a tax base – i.e., the total amount of income, assets, and economic activity that will be subject to tax – and what will be used as a tax object – i.e., will be subject to a tax

assessment – in addition to exclusions and the procedure for implementing the tax liability payable (Rosdiana & Irianto, 2012).

As a source of revenue for the state, taxes are crucial to the development process. In this case, the following functions must operate alongside the tax function (Simanjuntak & Mukhlis, 2012):

1) Budgetary function
   A tool to collect funds that will later be used to finance government expenditures, either routine expenditures, development expenditures, or transfers to the regions.
2) Regulerend function
   A tool to achieve certain goals outside the financial sector, among others, as a means of achieving the equal distribution of income.

To be able to achieve this goal, tax collection should be based on the following principles (Smith in Thian, 2021):

1) Equality Principle
   Tax collection must be fair and equitable, i.e., the tax imposed on the taxpayer must be proportional to the ability to pay taxes or the ability to pay and the benefits received. Fair means that every taxpayer contributes money for government expenditures in proportion to the interests and benefits received.
2) Certainty Principle
   Taxes paid by taxpayers must be clear and uncompromising (not arbitrary). Tax determination is not determined arbitrarily, but legal certainty is prioritized regarding Tax Subjects, Tax Objects, Tax Rates, and provisions regarding the payment. Therefore, the taxpayer must know the amount of tax owed, when it must be paid, and the deadline for payment.
3) Principle of Convenience of Payment
   Taxes should be collected at the best time for the taxpayer, i.e., the time as close as possible to the receipt of the taxable income or profit.
4) Efficiency Principle
   Economically, the cost of collecting and fulfilling tax obligations for taxpayers is expected to be kept to a minimum. Likewise, the burden that the taxpayer must bear. Tax collection should be carried out as efficiently as possible, and do not let the cost of tax collection exceed the tax revenue itself.

2.4. VALUE-ADDED TAX (VAT)

According to Mardiasmo (2009), the sales tax has several weaknesses: (i) the existence of double taxes, (ii) various tariffs that are difficult to implement, (iii) it does not encourage exports, and (iv) it does not prevent smuggling. VAT, meanwhile, presents advantages, including (i) the elimination of double taxation, (ii) the use of a single tariff to facilitate implementation, (iii) neutrality in domestic competition, (iv) neutrality in international trade, (v) neutrality in the pattern of trade consumption, and (vi) the encouraging of exports.

Pohan (2016) defines VAT as a tax on the consumption of goods and services in the Customs Area which is imposed in stages in each production and distribution channel. The imposition of VAT is strongly influenced by developments in business

transactions and consumption patterns of the people who are objects of VAT. This definition is in line with the key features put forward by Liam et al. (2001), as follows:

"The key features of VAT are that it is a broad tax levied at multiple stages of production, with-crucially-tax on inputs credited against taxes on output. That is, while sellers are required to charge the tax on all their sales, they can also claim in credit for taxes that they have been charged on their input."

There are two (2) principles for collecting VAT (Nataherwin & Widyasari, 2017):

1) The principle of the destination of goods (destination principle) – VAT is levied where the goods or services are consumed.
2) The principle of the origin of the goods (origin principle) – VAT is levied at the origin of the goods or services to be consumed.

2.5. VALUE-ADDED TAX (VAT) FACILITY

Supramono and Damayanti (2010) stressed the need to provide the tax facilities required to conduct taxation activities, notably to promote the success of high-priority sectors of economic activity on a national scale, encourage the development of the business world and increase competitiveness, support national defense, and facilitate national development. Pohan (2018) further explained that maximizing the utilization of these facilities will reduce by at least 10% the amount that buyers pay for goods purchased from sellers. It will also encourage sellers to reduce their selling prices proportionally, resulting in a new market balance and the product in question due to the price efficiency obtained. As such, the system encourages lower prices for goods in the market, thus expanding their reach to the public and consequently turnover, leading to higher profits and higher tax payments.

VAT is generally imposed on all types of goods and services due to its legal character as a general consumption tax. However, the government also makes various exceptions, notably incentives through the provision of tax facilities to achieve specific goals. In line with the various VAT facilities mentioned above, two (2) types generally apply in Indonesia, as regulated in Article 16B of the VAT Law (Tait, 1988):

1) Exemption

A VAT exemption on certain BKP or JKP results in the absence of output tax on the delivery of the specified BKP or JKP. Thus, the seller cannot credit input tax from the delivery of BKP or JKP or the import of certain BKP and will therefore include it in the production costs, which will later become an element of the selling price.

2) Zero Rate

A zero rate is a mechanism in the VAT system whereby taxes are removed from the delivery of BKP or JKP or the import of certain BKP. The seller charges no VAT on the sale because it is classified at a 0% rate (Taxation VAT Comparative Approach 297). However, despite the zero rate, input tax can still be credited for the delivery of BKP or taxable services or the import of JKP that are subject to VAT.

3. RESEARCH METHODS

This research uses a case study to represent the primary considerations of the government and the implications of the VAT exemption policy on the delivery of LNG by PT X. A qualitative method was also used to build a complex and holistic picture, analyze words, report the detailed views of informants, and analyze and understand the primary considerations of the government in setting VAT exemption policies on LNG deliveries and the implications of this policy implementation.

Primary and secondary data were collected. Library studies were conducted encompassing books, articles, journals, previous research, and various regulations. In-depth interviews were also conducted with several informants as a source of primary data. The interview questions were determined in advance to obtain relevant and in-depth information. The author interviewed three (3) informants: 1) **The Fiscal Policy Agency (BKF)**, which has a strategic role as a formulator of fiscal and financial sector policies. Its scope of duties covers macroeconomics, state revenues, state spending, financing, the financial sector, and international cooperation; 2) **The Directorate General of Oil and Gas** (Ditjen Migas), responsible for policy formulation and implementation in the field of development, control, and supervision of oil and gas activities; and 3) **PT X,** the goal of which is to build an LNG business that supports the main business of the holding company, PT Z, in the transportation and distribution of gas to consumers.

Content and thematic analysis were employed to analyze the data in this study. The author analyzed the interview results and used the theory to answer the problem formulation of the case studies conducted.

4. ORGANIZATION PROFILE

PT X is a Limited Liability Company established under the laws of the Republic of Indonesia and approved by the Minister of Law and Human Rights of the Republic of Indonesia. Based in Jakarta, PT X was founded on June 26, 2012 as a subsidiary of PT Z. The LNG business objectives within the PT Z group include transportation, storage, regasification, and trading, which consists of natural gas liquefaction, LNG storage, and delivery, and natural gas regasification to support PT Z's main business in gas transportation and distribution to consumers. As part of Sub holding Gas, PT X and PT Z support each other and provide added value through the natural gas midstream business sector by considering the applicable laws and regulations and following the principles of good governance.

PT X provides the following products and services:

1. Natural gas processing through an LNG regasification process into a gas at FSRU Lampung. FSRU Lampung is the main asset managed by the company to conduct

business activities as a supply point to maintain the continuity of gas supply for the PT Z business group.

2. LNG supply search

The company obtains LNG supplies via a Master Sales and Purchase Agreement (MSPA) between the company and LNG suppliers.

3. Utilization of the Lampung FSRU

The company has granted PT Z access to the Lampung FSRU and its supporting facilities.

4. Business development outside FSRU Lampung

The company seeks to develop new businesses through diversification from its existing operations. It has begun to offer a variety of businesses, ranging from the temporary LNG storage business, and LNG trading business to the building of new LNG infrastructure. In obtaining new markets for these businesses, the Company approaches through two methods, i.e.:

- Participate in auctions conducted by potential customers.
- Carry out new business initiatives initiated by the Company and other PT Z Groups.

The Company can procure LNG, transport LNG to the LNG Terminal, construct LNG Terminals and distribute gas directly to customer facilities. The Company is ready to take a role along the LNG supply chain, starting from the construction, operation, and commercialization of the LNG Liquefaction Plant, FSRU, Small FSRU, Land-Based LNG Terminal, Small Regas Terminal, and LNG Bunkering Terminal with various modes of transportation using LNG Carrier and or LNG Trucking.

5. RESULT AND DISCUSSION

5.1 GOVERNMENT CONSIDERATION IN DETERMINING A VALUE-ADDED TAX (VAT) EXEMPTION POLICY ON THE DELIVERY OF LNG

In its development, the management of oil and natural gas in Indonesia has experienced several policy developments. One of the policy instruments to improve people's welfare and prosperity through the management of oil and gas natural resources is a fiscal policy of increasing state revenues from oil and natural gas.

Oil and gas management policies have undergone several changes. This of course refers to and bases itself on statutory provisions that apply from time to time. In general, oil and gas policies function as a tool to ensure the availability of oil and gas supplies, maintain price stability, and formulate distribution policies so that the supply and demand cycle in the oil and gas sector runs smoothly.

As shown in Table 1.1, overall oil and gas production has fallen over the last ten (10) years. Government action is therefore required to formulate strategic policies that can address the dynamics that occur in the production and consumption of the

regulation, the aim of which is to encourage domestic gas production and absorption and ease the burden on producers, sellers, and buyers.

5.1.1 THE BACKGROUND OF THE IMPLEMENTATION OF THE VALUE-ADDED TAX (VAT) FACILITY

The implementation of tax collection in a country plays a key role in supporting governance. In their role as an instrument to supply funds to the state treasury, taxes are imposed neutrally on all levels of society, provided they meet the criteria to be taxed. Given the role of taxes in the administration of government, the government will always seek to increase tax revenues without disrupting economic growth and the investment climate in the business world. This is because when coupled with the tax approach from an economic perspective, taxes can serve as a tool to achieve economic goals, namely to provide incentives to investors, both foreign and domestic, for the development of Indonesia.

In line with the explanation above, Pohan (2018) contended that maximizing facilities will create a new market balance and the product concerned due to the price efficiency obtained. From this, it can be understood that both tax policies and facilities play an essential role in improving the economy. This is also in line with the following statement by the resource person from BKF:

In general, several policy considerations depend on the context in which they occur. It can be related to revenues, subsidies, and the development of the industrial sector, which ultimately is related to economic growth. So, all of these are things to consider when formulating a policy. The direction from the leadership is how the policy can lead to positive growth.

From the explanation above, it can be concluded that the government considers the objectives to be achieved as the basis for making policy implementation decisions.

5.1.2 LEGAL BASIS OF THE VALUE-ADDED TAX (VAT) FACILITY

The basis for establishing VAT facilities is contained in Article 16B paragraph (1) of Law Number 42 of 2009 concerning Value Added Tax as last

amended in Law Number 7 of 2021 concerning Harmonization of Tax Regulations (UU VAT). The contents of the VAT facility are given as follows:

Article 16B

(1) Taxes payable are not collected in part or in whole or exempted from tax imposition, either temporarily or permanently, for:
    a. …
    b. delivery of certain BKP or delivery of certain JKP;
    c. etc.
    regulated by Government Regulation.

(1a) Taxes payable that are not collected in part or in whole or are exempt from tax imposition either temporarily or permanently, as referred to in paragraph (1), are limited for the purposes of:
    a. …
    j. support the availability of certain goods and services that are strategic in the context of national development, including:
1. staple goods that many people urgently need;
2. certain medical health services which are in the national health insurance program system;
3. social services;
4. financial services;
5. insurance services;
6. educational services;
7. public land and water transportation services as well as domestic air transportation services, which are an integral part of foreign transportation services; and
8. labor services.

(2) Input Tax paid on the acquisition of BKP and/or JKP, imported BKP, as well as the utilization of Intangible BKP from outside the Customs Area and/or the utilization of JKP from outside the Customs Area within the Customs Area, which VAT is not collected upon delivery as referred to in paragraph (1) can be credited.

(3) Input Tax paid on the acquisition of BKP and/or JKP, import of BKP, as well as utilization of Intangible BKP from outside the Customs Area and/or utilization of JKP from outside the Customs Area within the Customs Area which upon delivery is exempted from the imposition of VAT as referred to in paragraph (1) cannot be credited.

From the elaboration of the regulations above, there are 2 (two) types of VAT facilities, namely VAT that is not collected and VAT that is exempted. The difference between VAT that is not collected and VAT that is exempt can be seen in the table below:

,

Table 5.1
The Comparison of Value-Added Tax (VAT) Facilities

VAT Not Collected	VAT Exempted
Input VAT is creditable	Input VAT is not creditable
0% Rate	No Rate
Tax Invoice Code 07	Tax invoice Code 08

Focus on a specific zone or region	Focus on strategic commodities or goods

Source: processed by the Author, 2022

As explained above, VAT facilities will be granted for certain criteria and will be further regulated in implementing regulations. Thus, this facility does not offer all activities, submissions, and acquisitions. In addition, each VAT facility also has its characteristics, so of course, it will be more optimal if the use of the facility is adjusted between the purpose and the characteristics. These objectives are contained in Article 16B paragraph (1a) of the VAT Law.

5.1.3 BACKGROUND TO THE ADDITION OF LNG AS A BKP EXEMPTED FROM VAT IMPOSITION UPON DELIVERY

Basically, BKP, which is strategic in nature, is still categorized as BKP. However, due to consideration from the Government, it is classified as strategic goods, so when it is delivered, the BKP gets an exemption from VAT (Atpetsi, 2022).

The issuance of Regulation PP 48/2020 adds one type of strategic BKP, namely LNG, which is exempt from the imposition of VAT upon delivery. Based on the Elucidation of PP 48/2020, the VAT exemption facility is granted based on consideration of the success of high-priority economic activity sectors on a national scale while still paying attention to national competitiveness. These facilities are provided temporarily. In other words, if certain sectors within the business world are already independent, there is no need to extend the provision of convenient taxation.

Since August 2020, the government has provided facilities, one of which is the exemption of VAT for the delivery of certain strategic BKP in the form of LNG through PP 48/2020. The existence of VAT exemption on the delivery of LNG to consumers will undoubtedly cause LNG prices to be lower and more competitive for business activities because it provides space for retail LNG development.

LNG, as a strategic BKP whose delivery is exempt from VAT, is a superior product with many benefits for daily life, including as an alternative fuel for the transportation and household sectors. In addition, more and more industries require LNG in line with the increasing need for new energy. The growing demand for LNG is directly proportional to Table 1.2, which shows an increase in the number of natural gas customers by type of customer over the last five (5) years. However, this is inversely proportional to Indonesia's natural gas production, which has tended to decrease over the past ten (10) years, as shown in Table 1.1.

Initially, LNG was a BKP. This is because LNG is either natural gas or natural gas that has been further processed and is then ready for direct consumption

by consumers. Natural gas itself is not subject to VAT as it is a product of mining or drilling taken directly from the source, as regulated in Article 4A of the VAT Law:

Article 4A

(2) Types of goods that are not subject to VAT are certain goods and groups of goods as follows:

a. mining products or drilling products are taken directly from the source.

Explanation of Article 4A

(2) Goods resulting from mining or drilling results taken directly from the source include:

a. …

b. Natural gas does not include natural gas such as LPG, which is ready for direct consumption by the public.

However, in 2012, the government issued and implemented Regulation of the Minister of Finance Number 252/PMK.011/2012 concerning Natural Gas Included in Types of Goods Not Subject to Value Added Tax (PMK 252/2012). This led to the inclusion of LNG within the scope of natural gas that is not subject to VAT (non-BKP), as follows:

Article 1

(1) Natural gas is a type of mining product or drilling product that is taken directly from the source and is not subject to Value Added Tax.

(2) The scope of **natural gas that is not subject to Value Added Tax as referred to in paragraph (1) includes:**

a. …

b. Liquefied Natural Gas (LNG)

c. …

From the explanation above, it is evident that there has been a policy change, whereby LNG was previously classified as BKP, as stipulated in Article 4A of the VAT Law, which was later changed to non-BKP, as stipulated in Article 1 paragraph (2) letter b.

Over time, LNG industry players have perceived an erosion of producer rights arising from the treatment of LNG as non-BKP. Producers are unable to credit input tax because they are no longer taxable entrepreneurs, given that LNG is now included among goods that are not subject to VAT. This has resulted in material losses for producers because they can no longer ask for refunds or deduct the input tax from the output tax. Furthermore, input tax must be charged as a fee to the LNG price. This raises the costs of producing LNG and renders the selling price uncompetitive, in addition to creating legal uncertainty in the effort to remember that input tax on the payment of BKP in the context of LNG production, distribution, marketing, and management can be credited in accordance with the VAT Law. In this regard, a corporate taxpayer submitted an application for a review of the laws

and regulations against Article 1 paragraph (2) letter b PMK 252/2012 to the Supreme Court.

Decision Number 05/P/HUM/2018 is a response to this case requesting a review of Article 1 paragraph (2) letter b PMK 252/2012. The Panel of Judges of the Supreme Court held the following opinion:

- Normatively, PMK 252/2012 is an implementing regulation, in particular, Article 4A paragraph (2) letter a of the VAT Law;
- Article 1 paragraph (2) letter b PMK 252/2012 has normative legal conflicts with Article 4A paragraph (2) letter a VAT Law because:

1) Types of goods that are not subject to VAT are mining products from drilling results taken directly from the source;
2) LNG should not be categorized as a result of mining or drilling, which is taken directly from the source, because it is the result of changes in the shape, nature, and use of natural gas, which is taken directly from the source through a manufacturing or production process.

- Based on Article 4A paragraph (2) letter a of the VAT Law, mining or drilling products that are taken directly from the source are exempt from VAT;
- There is injustice in the application of PMK 252/2012 because it has violated the principle of benefit from the VAT credit system in calculating the VAT payable that should be utilized by taxpayers and also burdens the cash flow of taxpayers;
- Partially, Article 1 paragraph (2) letter b PMK 252/2012 violates Article 7 and Article 8 of Law Number 12 of 2011 concerning the Formation of Legislation, where lower regulations may not conflict with higher regulations (Article 4A paragraph (2) of the VAT Law). Thus, PMK 252/2012 becomes flawed and violates the law, and violates legal principles, namely the principles of legal certainty, justice, and expediency;

Thus, the regulation must be canceled, and the regulation becomes invalid or does not apply to the public, so it does not have binding legal force.

From the facts above, the government, through PP 48/2020, made LNG a strategic BKP that is exempt from the imposition of VAT. When viewed from the theory of VAT facilities, tax exemption, if granted at the intermediary level, leads to an increase in net income because the prices charged by downstream companies will reflect the free added value to cover their increased costs.

However, the fact that input tax paid cannot be credited, in principle, to the delivery of LNG as non-BKP before the regulation was enacted. It is also felt by downstream LNG producers. In addition, the selling price of LNG, which is influenced by market prices, can result in lower profit margins. Competition between LNG producers who also enjoy exemption from the imposition of VAT additionally burdens the downstream pattern industry players. At the same time, a VAT exemption facility renders input tax non-creditable, meaning no VAT can be refunded.

Over time, the government has enacted tax reform through the issuance of Law Number 7 of 2021 concerning Harmonization of Tax Regulations (UU HPP). The HPP Law was issued and implemented based on the following considerations:

to increase sustainable economic growth and support the acceleration of economic recovery through the implementation of policies to improve tax revenue performance, tax administration reform, increase the tax base, create a tax system that prioritizes the principles of justice and legal certainty, and increase voluntary compliance. For taxpayers, the HPP Law contains various policy changes that are regulated. For oil and gas players, one such provision concerns the abolition of Article 4A paragraph (2) of the VAT Law, whereby mining or drilling products that are taken directly from the source are excluded from the types of goods exempt from VAT. In other words, the commodity was categorized as a VAT object, the delivery of which is therefore subject to VAT. The following is a comparison of VAT provisions of Natural Gas and LNG:

Table 5.2
The Comparison of VAT Provisions of Natural Gas and LNG

VAT Law (42/2009)	MoF 252/2012	GR 48/2020	VAT Law – HPP Law (7/2021)
Article 4A paragraph (2)	***Article 1 paragraph (2) letter b***	***Article 1 paragraph (2) letter l***	***Article 4A paragraph (2)***
Type of goods that are ot subject to VAT are certain goods, as follows: **a. Mining products or drilling products taken directly from the source**	The scope of **natural gas that is not subject to VAT**, includes: **b. LNG**	Certain BKP that are strategic in nature whose **the delivery is exempted from VAT imposition**, include: **l. LNG**	Type of goods that are not subject to VAT are certain goods, as follows: **a. deleted**

Following the introduction of the HPP Law, the government then adjusted regulations in providing facilities in the field of VAT and PPnBM. The adjustment was enacted through the issuance of Government Regulation Number 49 of 2022 concerning Exempted Value Added Tax and Value Added Tax or Value Added Tax and Sales Tax on Luxury Goods Not Collected on Import and/or Delivery of Certain BKP and/or Delivery of Certain JKP and/or Utilization of Certain JKP from Outside the Customs Area (PP 49/2022). The delivery of LNG was among the provisions regulated in PP 49/2022, having previously been exempt from the imposition of VAT. However, with PP 49/2022, PP 48/2022 is no longer valid.

Prior to the enactment of a regulation, there are Forum Group Discussion stages and dissemination or socialization is conducted with relevant stakeholders. These are important stages in efforts to deliver more substantial improvements to the material. It also aligns with the information conveyed by the resource person from BKF, where before a regulation is published and implemented, there are stages of

discussion regarding a public test to reach an understanding and agreement on its implementation:

"Now, there is such a thing as a public test. So, before being issued, all regulations must have a public test. During the public test, the regulations are thrown out to the public. If no one has a complaint, it means that the regulation is ok. However, if there are complaints, they will be followed up, for example by conducting socialization or explanations or holding joint meetings. If the complaint is answered, it means it is finished, but if not, there will be a settlement or agreement."

Furthermore, tax facilities will only be granted by the government temporarily. In other words, they are only permissible under certain conditions and circumstances. A policy will sometimes be discontinued and/or replaced with a new policy. This is because if the facility provided does not impact the results of activities, delivery, and acquisition, it will be revoked. Meanwhile, the government will also revoke the facilities if it is felt that a business is functioning well and can operate without them. This is in line with the following explanation by the resource person from BKF:

"The government's consideration in making policies is in accordance with the context that occurs when the policy will be taken. Thus, existing policies can be changed at a later date."

Thus, it can be concluded that the mission of tax collection to increase state revenue is often perceived as burdensome for the community. However, the government provides various tax facilities to balance market conditions. Nevertheless, these will only be provided based on certain conditions and circumstances, meaning that when a business is running well, the facility is not always applied and can be revoked at a later date.

5.2. Evaluation of Value-Added Tax (VAT) Exemption Policy on the Delivery of LNG

The analysis in this case study focuses primarily on PT X as a seller that delivers LNG, VAT facilities for the delivery of which are provided as regulated in PP 48/2020. The VAT exemption policy on the delivery of LNG in PP 48/2020 was formulated following a request for a material review of the regulations previously implemented. Prior to PP 48/2020, which designated the delivery of LNG as exempt from VAT, LNG was classified as natural gas that was not subject to VAT as stipulated in PMK 25/2015. However, PMK 252/2015 was deemed to be contrary to Article 4A paragraph (2) letter a of the VAT Law. Article 4A paragraph (2) letter a states that goods derived from mining or drilling results taken directly from the source are not subject to VAT. As such, "taken directly from the source" is the key to determining the substance of whether LNG is the result of mining or drilling that is taken directly from the source. The VAT Law does not explicitly state that LNG is not subject to VAT or is non-BKP. Furthermore, LNG is natural gas that has undergone a purification process to remove unwanted compound content and is then

liquefied at a certain pressure and temperature. LNG is therefore natural gas that is not taken directly from the source but rather natural gas that has been processed and produced as a result of mining or drilling.

The evaluation of the VAT exemption policy for the delivery of LNG can be explained based on the evaluation criteria established by Dunn, as follows:

Effectiveness

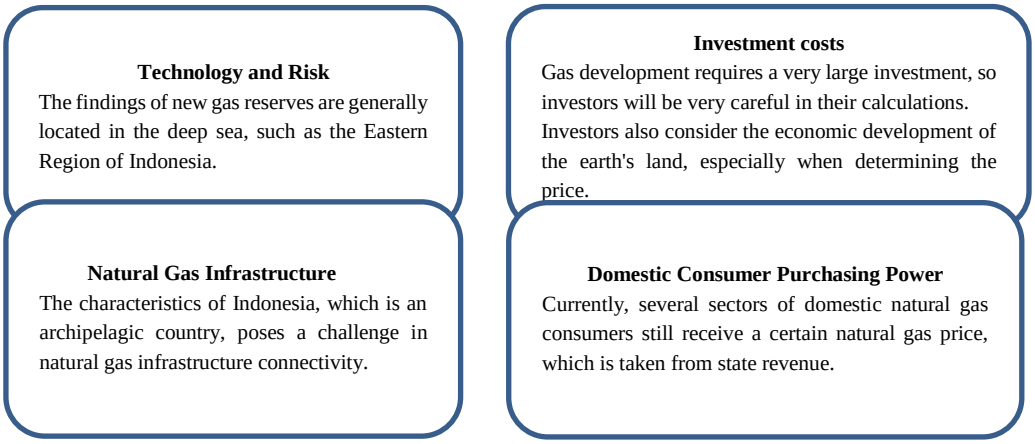
From the seller's perspective, there are similarities in the policy change from LNG not being subject to VAT to the exemption of its delivery from VAT, whereby input tax cannot be credited. This is felt by PT X, where the input tax paid on the acquisition of BKP for LNG infrastructure costs also cannot be credited because there is no output tax linked to the VAT exemption facility for LNG delivery. Input tax, notably from the acquisition of BKP for LNG infrastructure costs, which cannot be credited, will be charged to the selling price of LNG, rendering it uncompetitive in comparison to other commodities that tend to be cheaper.

Infrastructure costs are fixed costs that arise in the course of natural gas industry activities. This was explained by the resource person from PT X as follows:

The natural gas industry is synonymous with high infrastructure costs, so it has the impression that gas is more expensive than oil. It is well known that natural gas is a substitute for petroleum, but the unique thing is that it is cheaper than petroleum. However, delivering oil and gas requires infrastructure that is not cheap. So, when creating infrastructure, the VAT cannot be credited. This makes infrastructure costs expensive.

The development of the natural gas industry, which is synonymous with high infrastructure costs, indicates the challenges inherent in utilizing natural gas. Natural gas reserves in Java are dwindling, making it necessary to discover new natural gas reserves in other areas, such as Kalimantan, Sulawesi, and Papua. With rugged terrain and long distances, costs are incurred to flow or deliver these commodities. Based on the results of interviews with resource persons from the Directorate General of Oil and Gas, the challenges of using natural gas can be explained in the following figure:

Picture 5.1
The challenge of the Utilization of Natural Gas



Source: processed by the Author, 2022

According to Dunn (2018), effectiveness refers to achieving valuable results. However, in reality, the application of PP 48/2020 regarding the exemption from the imposition of VAT on LNG delivery has not been fully effective because there are still negative impacts on the seller's side, as follows:

- Input Tax that cannot be credited
- Higher prices for goods, which depend on the type of market for the goods
- The price of goods is higher if the product is sold in a monopolistic market

Efficiency

According to Dunn (2018), efficiency refers to the effort required to produce a certain level of effectiveness. In the context of the implementation of the VAT exemption policy on the delivery of LNG, efficiency is evident in the fact that there is no need for complicated administrative requirements. While PT X is obliged to issue a tax invoice when submitting LNG, it is not required to produce a VAT Certificate of Exemption (SKB) by completing some of the required information. This is in accordance with Article 3 paragraph (2) PP 48/2020, which stipulates that the granting of facilities is exempt from the imposition of VAT for LNG delivery conducted without the use of a VAT SKB, as follows:

Article 3

(2) The provision of facilities is exempt from the imposition of VAT on the import and/or delivery of certain BKP that are strategic in nature, as referred to in Article 3 paragraph (1) letter b to letter j, and Article 3 paragraph (2) letter b to letter l, carried out without using SKP PPB.

Thus, the provision of facilities can facilitate transactions between sellers and consumers. This is because the facilities can be used without an SKB, meaning it applies automatically.

Adequacy

Dunn (2018) stated that adequacy refers to policies that reach a specified threshold of effectiveness or efficiency and are related to achieving the desired results that can solve problems. Assume that the adequacy criterion is associated with the implementation of the VAT exemption policy on LNG deliveries. In this case, exempted BKP deliveries are treated the same as non-BKP deliveries, whereby input tax cannot be credited. On the buyer’s side, the absence of VAT results in lower prices. However, this does not benefit producers in the downstream pattern because there is no output tax, meaning the input tax on LNG infrastructure costs cannot be credited either. As a result, costs that cannot be credited will be incorporated into the LNG selling price (markup), thereby potentially inflating LNG prices beyond where

they should be. As such, the absence of VAT results in cheaper LNG at the buyer level. The government and stakeholders should therefore coordinate further if they wish to make natural gas or LNG a substitute for petroleum commodities. The PT X resource person stated:

If you want, the price must be assisted until all, I mean like this, to sell gas, inevitably you have to go through LNG, which has high infrastructure costs.

Equity

According to Dunn (2018), equity is related to legal and social rationality, which refers to the distribution of results and efforts among various groups. The VAT exemption facility policy for LNG delivery has not been evenly distributed among groups. On the buyer's side, the price of LNG will undoubtedly be lower as there is no VAT component to be charged to the buyer. Moreover, the rate of VAT increased from 10% to 11% in April 2022. The lack of a VAT component automatically results in no output tax in connection with the delivery of LNG on the side of PT X as the seller. This means that input tax on the acquisition of BKP on the costs of obtaining LNG, such as infrastructure costs, also cannot be credited and is thus included in the LNG selling price.

Responsiveness

Aside from the imposition of VAT on the delivery of LNG through PP 48/2022, which was devised following a judicial review of PMK 252/2012 regarding LNG not being subject to VAT, the government has been responsive in providing feedback to parties who feel that PMK 252/2012 has no right to apply. However, the implementation of the policy in PP 48/2020 has also had drawbacks for certain parties. According to PT X, as previously explained, exemption from the imposition of VAT on the delivery of LNG means that input tax cannot be credited for costs incurred due to the output tax related to the delivery of LNG.

Dunn (2018) explained that responsiveness refers to how policies meet certain groups' needs, preferences, or interests. However, a rule is set by consensus and there is an optimal point in its implementation. This was explained by the resource person from BKF as follows:

Currently, the most appropriate policy aligns with the Supreme Court's decision. It's called a policy that can't fit all, meaning it can't satisfy all parties. Therefore, there must be one or two that cannot be fulfilled. However, the consensus policy adopted is PP 48/2020, and what is adopted is the most optimal point.

Based on these interviews, it can be concluded that continuous and good coordination is needed from various parties to achieve maximum results in supporting an increase in the electrification ratio nationally and accelerating the

fulfillment of broad electricity needs, by what has been announced by the Government since August 2020.

Appropriateness

The final evaluation criterion is that of appropriateness, which, according to Dunn (2018), is closely related to substantive rationality since the feasibility of a policy is not concerned with an individual criterion but two or more criteria taken together, the results, and refers to benefits linked to the goals established. As previously noted, the VAT exemption mechanism for the delivery of LNG has yet to fully effect an increase in the electrification ratio. This is because the potential exists for the input tax, which sellers cannot credit, to be marked up so that sellers can cover the cost of the infrastructure. Thus, the government needs to formulate incentives for the LNG industry, for both the upstream and downstream patterns, to maximize the development of the industry and the use of LNG in the future.

6. CONCLUSION AND DISCUSSION

Based on the analysis conducted in this study, the following conclusions can be drawn:

1. The VAT exemption facility for the delivery of LNG was developed following a judicial review of PMK 252/2012, which regulates that LNG is included in the types of goods that are not subject to VAT. Specifically, PMK 252/2012 stipulates that LNG is one of the scopes of natural gas that is not subject to VAT. However, this contradicts Article 4A paragraph (2) of the VAT Law, which stipulates that goods resulting from mining or drilling results taken directly from the source are not subject to VAT. Yet LNG should not be categorized as such since it is the result of changes in the shape, nature, and use of natural gas through a manufacturing or production process. Furthermore, PMK 252/2012 became flawed, violated the law, and was ultimately canceled. Finally, LNG became a BKP whose delivery was exempt from VAT imposition through PP 48/2020 as a basis for policy considerations.
2. Based on the six (6) evaluation criteria, according to Dunn (2018), the policy of exemption from the imposition of VAT on the delivery of LNG as a whole has not been entirely fulfilled. Only the efficiency criterion has been met, whereby PT X did not need to apply for a VAT SKB when selling LNG. However, the other criteria, namely effectiveness, adequacy, alignment, responsiveness, and accuracy, have not yet been met. This is because the input tax paid on the acquisition of BKP for LNG infrastructure costs cannot be credited as there is no output tax in connection with the VAT exemption facility for LNG delivery. Therefore, costs that cannot be credited may potentially be charged to the selling price of LNG, resulting in a price for LNG that is higher than it should be.

Based on the results of the research and the conclusions drawn, the following suggestions are made:

1. The government should be able to focus on issues in the natural gas sector, especially LNG, by reviewing the provision of VAT exemption facilities for the delivery of

LNG to ensure they are sufficient and then respond to the successful implementation of these facilities for various downstream industry players and the public.

2. To formulate a policy, a means of equalizing understanding and perceptions between the natural gas industry players and the government is required. Furthermore, with sellers' potential markup on LNG prices due to their inability to credit input tax on their infrastructure costs, stakeholders should pursue ongoing coordination to identify a win-win solution, thereby increasing the electrification ratio to meet the planned electricity needs.

This study has some limitations, namely the low level of quantitative data related to elements in the financial statements of LNG companies, which was due to limited access. A suggestion for further research is to add buyers as one of the sources.

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