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ANALYSIS OF THE PROOF PROCESS, METHODS OF INTERPRETATION, AND LEGAL CONSTRUCTION IN SETTLEMENT OF VALUE ADDED TAX DISPUTES (CASE STUDY ON VAT DISPUTES OF PERUSAHAAN GAS NEGARA)

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ABSTRACT

In the VAT system adopted in Indonesia, conceptually all delivery of goods and services is the delivery of taxable goods or services. However, with certain considerations, the government excludes some goods and services from VAT objects. One item that is exempt from VAT objects is mining or drilling products that are taken directly from the source, as stipulated in Article 4A of the VAT Law. However, there are differences in interpretation of the article, causing several disputes related to the article. One of them is the dispute between PGN and DGT which will be discussed in this research. Based on an analysis of the evidence and facts revealed, it can be concluded that the natural gas pipelines sold by PGN are not subject to VAT. Meanwhile, LNG and gas that have been further processed by PGN are subject to VAT, because they are not taken directly from the source. In addition, even though it was not stated explicitly, it was also proven that there was an element of providing natural gas transportation services (toll fees), which are taxable services on invoices billed by PGN. Therefore PGN should collect VAT on the delivery of natural gas transportation services.

Keywords : *Value Added Tax, VAT, Natural Gas, Toll Fees , Tax Disputes*

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1. INTRODUCTION

In tax audits, there are often differences of opinion between taxpayers and the tax audit team. If this difference of opinion cannot be resolved before the end of the examination, this may result in a dispute. According to Law No. 14 of 2002, a tax dispute is a dispute that arises in the field of taxation between a taxpayer or a tax bearer and an authorized official as a result of the issuance of a decision that can be appealed or sued to the Tax Court based on tax laws and regulations, including lawsuits against implementation of collection based on the Law on Tax Collection by Forced Letter (Law No. 14 of 2002 concerning the Tax Court, 2002).

There are several main disputes in the VAT dispute experienced by PGN. One of the biggest issues is the problem of perspective in the interpretation of Article 4A Paragraph (2) letter a of the VAT Law. Where the DGT determines that the sale of natural gas by PGN is a VAT object. Meanwhile, PGN is of the opinion that natural gas is not a VAT object. The legal basis used by both parties in supporting their respective arguments is the same, namely Article 4A Paragraph (2) letter a of the VAT Law, which reads like this.

“Article 4A

(2) Types of goods that are not subject to VAT are certain goods in the group of goods as follows:

a. goods resulting from mining or drilling results taken directly from the source”.
(Law No. 42 of 2009 Concerning Value Added Tax, 2009)

In that article, there is a phrase that gives rise to multiple interpretations, namely the phrase "taken directly from the source." In addition, the next multi-interpretation point is in the elucidation of the article, which reads like this.

"Goods from mining or drilling results that are taken directly from the source include:

b. natural gas, excluding natural gas such as LPG which is ready for direct consumption by the public. (Law No. 42 of 2009 Concerning Value Added Tax, 2009)

From the explanation above, there are two phrases that cause ambiguity. Namely the phrase "including natural gas such as LPG" and the phrase "which is ready for direct consumption by the public".

2. LITERATURE REVIEW

2.1. VALUE-ADDED TAX

According to Alan Tait (1988), added value is the value generated by producers (which can be factories, distributors, advertising agents, hairdressers, farmers, trainers, or circus owners), which is added to raw materials or purchases (other than wages). before the product is sold. Basically all inputs can be raw materials, transportation, rent, etc. Then the workers are assigned to work in processing these inputs, before finally being sold. In this process, generally there is profit left over from the sales process. Therefore, in calculating added value, two approaches can be used, namely wages plus profit, or output minus input. So it can be formulated as follows.

$$\text{Value added} = \text{wages} + \text{profit} = \text{output} - \text{input}$$

If the concept of added value is related to the concept of tax collection, then there are four theories of tax collection mechanisms that can be used by tax authorities in a country, namely:

- 1) $t(\text{wages} + \text{profit}) \rightarrow$ Additive-direct method
- 2) $t(\text{wages}) + t(\text{profit}) \rightarrow$ Additive-indirect method
- 3) $t(\text{output} - \text{input}) \rightarrow$ subtractive-direct method
- 4) $t(\text{output}) - t(\text{input}) \rightarrow$ subtractive-indirect method

Where t is the rate of Value Added Tax (VAT) set in a country.

Meanwhile, Indonesia uses a subtractive-indirect approach, namely $t(\text{output}) - t(\text{input})$. The $t(\text{output})$ minus $t(\text{input})$ approach adopted by Indonesia can be seen in Article 9 Paragraph 2 of Law No. 42 of 2009 concerning Value Added Tax. In that article, it is stated that the input tax in a tax period can be credited with the output tax in the same tax period (Indonesia, 2009). This approach was chosen because it is considered more practical, because taxes can be calculated directly based on the value of sales and purchases without waiting for the results of calculations regarding profits, which are usually known only at the end of the period. In addition, because VAT is attached to transactions that occur, the dependence on the dynamics of accounting standards is also minimal. This can suppress tax avoidance practices carried out by taxpayers. Of course it is different from the concept of Income Tax (PPH), which still depends on accounting standards. So that many tax avoidance practices occur by taking advantage of loopholes in tax regulations and combining them with creative accounting.

2. 2. PREVIOUS RESEARCH

In this study, a literature review was carried out, some of which came from related previous research to serve as a comparison. The table below describes several previous studies which have become a source of inspiration and consideration for researchers in carrying out this research.

No	Description	Information
1.	Researcher Name	Budi Harson
	Research Year	2018
	Research Title	Overview of Disputes over Coal as Taxable Goods or Non-Taxable Goods (Harsono, 2018)
	Research Problems	<ol style="list-style-type: none"> 1. What are the causes of tax disputes because they are related to laws and regulations? 2. What is the cause of the dispute taxes because it is related to the application of laws and regulations? 3. What is the cause of the dispute taxes because it is related to systems, procedures and policies ?

		4. What is the cause of the tax dispute because it is related to the quality of inspection/integrity of tax officials?
	Research methods	Qualitative approach
	Research result	<p>1. The causes of disputes are more caused by laws and regulations and are also related to the application of regulations which form the legal basis.</p> <p>2. As for tax disputes caused by system, process and policy factors, researchers do not conclude because they do not get data and information to support them.</p> <p>3. The causes caused by the quality of inspection/integrity of tax officials cannot be analyzed in this study and can be further in-depth research.</p>
	The difference with the research conducted.	In the research that will be conducted, this will examine the tax treatment of natural gas. In contrast to the above research which examines the tax treatment of coal. In addition, the above research only examines tax disputes over coal in general. Not comprehensively researching the articles that have the potential to cause coal VAT disputes.
2.	Researcher Name	Tamariska Rebekah
	Research Year	2020
	Research Title	Analysis of Tax Dispute Decision Number 3137/B/PK/PJK/2020 between the Director General of Taxes and PT Perusahaan Gas Negara (Ribka, 2020)
	Research Problems	What is the application of procedural law by the Supreme Court in passing a decision on the application for review of the Tax Court Decision Number PUT-000517.16/2018/PP/M.XVIB Year 2019, August 29 2019?
	Research methods	Qualitative Research
	Research result	In terms of administration, examination, and decision making by the Supreme Court in this case, it has complied with the provisions of the Tax Court Law.
	The difference with the research conducted	The research above only examines the fulfillment of the formal elements of the disputes discussed. While in the research that will be carried out, the researcher will also discuss the material elements in a comprehensive manner complete with various opinions from the sources.

3	Researcher Name	Nurma Ari Widyaningrum
	Research Year	2012
	Research Title	Implementation of Value Added Tax (VAT) Policy on <i>Liquified Petroleum Gas</i> (LPG) Subsidies for 3 Kilogram Tubes (Widyaningrum, 2012)
	Research Problems	<ol style="list-style-type: none"> 1. How is the implementation of the VAT subsidy for 3-kilogram LPG cylinders when the tax is borne by the government? 2. What is the government's policy in responding to the warning given by the Supreme Audit Agency which stated that the implementation of the Government-borne 3-kilogram LPG Subsidy VAT is not in accordance with the VAT Law in force in Indonesia?
	Research methods	Qualitative research
	Research result	<ol style="list-style-type: none"> 1. Implementation of the policy of providing VAT incentives for subsidies for 3-kilogram LPG cylinders Borne by the Government uses the legal basis of Law no. 10 of 2010 concerning the 2011 State Budget and implementing regulations for PMK No. 88/PMK.011/2011. At this time this policy can no longer be implemented, because actually in the VAT Law No. 42 of 2009 does not regulate government-borne taxes. This was the finding in the audit conducted by the BPK. 2. There is a BPK audit result which states that the implementation of the policy of providing VAT incentives for subsidies for 3-kilogram cylinder LPG is not in accordance with VAT Law No. 42 of 2009, does not necessarily make the government stop the policy. The government took action by changing the basic policy implementation of Law no. 10 of 2010 concerning the 2011 State Budget became Law no. 11 of 2011 concerning the 2011 Revised State Budget. The new legal basis contains VAT on subsidies for 3-kilogram cylinder LPG.

	The difference with the research conducted	The research that will be conducted examines the VAT dispute over the delivery of gas by PGN. While the research above examines the policy of providing VAT incentives for subsidies for 3-kilogram LPG cylinders to be borne by the Government.
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Table 2. 1 Previous Research

3. RESEARCH METHODS

The research method used is a qualitative research method. According to Farida (Nugrahani, 2014), a qualitative research method is a type of research that produces a discovery that cannot be achieved using statistical procedures or other quantitative methods. The qualitative research method was chosen with the aim of developing the concept of sensitivity to a problem at hand, and explaining reality based on theoretical investigations and developing an understanding of the phenomenon being faced. In qualitative research methods, the research instrument is the researcher himself. Where researchers who go into the field actively to collect related data. Some of the data commonly used in qualitative research methods are the results of observations, interviews, and documentation (Gunawan, 2017). In qualitative research, there are no specific steps that are mandatory to follow. Researchers can make their own steps as needed based on the research to be carried out. However, according to Asep (Suryana, nd), in general, there are three main parts in qualitative research, namely the preparation/pre-field stage, the field work stage, and the data analysis stage.

The preparation/pre-field stage consists of the literature study stage, the preparation of the research design, selecting the field, and selecting resource persons.

While in the field work stage (data collection), the sampling process was carried out using the Purposive Sampling method. Purposive Sampling is a data collection method based on research needs and objectives. This technique is seen as capable of capturing the completeness and depth of data in dealing with various realities in the field (Nugrahani, 2014). Researchers must use their expertise in selecting samples selectively which will then be used in research. The use of this purposive sampling method was carried out because the specified population was not homogeneous. Because everyone has different levels of knowledge, expertise and information related to the dispute being analyzed.

The data used in this study are primary data and secondary data. Primary data is data that comes from interviews, applicable laws and regulations, and other

information obtained by researchers on the dispute issues being analyzed. While secondary data is data on tax court decisions, judicial review decisions, company annual reports, news and other data related to disputes that are analyzed. The collection was carried out by means of interviews and data collection via the internet. The data was then collected, analyzed, and then used as the basis for carrying out the next research steps. The respondents from this research consisted of three parties, namely from DGT and PGN as the parties to the dispute. And also from the academic side to provide views from the scientific side.

The data analysis phase was carried out using one of the methods in the qualitative research method group. The method used in this study is the triangulation method. Triangulation is a method of analyzing and synthesizing data from various sources. This term comes from the world of navigation and strategy in the military, which is a combination of methodologies in understanding a phenomenon. According to Bachtiar (Basri, 2010), in one of his studies he said that triangulation seeks to quickly test existing data in strengthening interpretation and improving policies and programs based on available evidence. Triangulation is done by testing information by collecting data with different methods by different groups in different populations. So that triangulation is expected to reduce the impact and risk of potential deviations in a study. The data that has been obtained in the previous stage is then analyzed in depth and inductively based on theories and laws and regulations related to taxation and other matters that are deemed relevant.

5. RESULTS AND DISCUSSION

Correction on Sales of Natural Gas – Commodity (Gas)

1. Main Dispute

The correction value for the sale of natural gas is Rp 1,294,097,608,331. This correction occurred due to different interpretations of Article 4A of Law No. 42 of 2009 (VAT Law). PGN as the party appellant, is of the opinion that the natural gas it sells is not a VAT object in accordance with Article 4A of the VAT Law. Because natural gas is one of the goods taken directly from the source. However, the DGT as the appellate party is of the opinion that the natural gas delivered by PGN is not included in the criteria for goods taken directly from the source. Because it has gone through various advanced processes which are considered to provide added value to the natural gas product. So it should be subject to tax on the added value. Some of these processes include separation processes, *treatment* processes, fractionation processes, and others.

In addition, the next multi-interpretation point is in the elucidation section of the article. The elucidation of this article also does not shed any light on the tax treatment of natural gas submitted by PGN, which includes *Liquefied Natural Gas (LNG)* and *Compressed Natural Gas (CNG)*, as well as gas flowing through pipes. In the elucidation of the article there are also two points of multiple interpretations, namely the phrases "including natural gas such as LPG" and "which are ready for direct consumption by the public". The explanation does not specify whether it is only LPG that is not subject to VAT, or whether there are other types of gas besides LPG which are also subject to VAT.

2. Analysis

From the regulations, it can be analyzed that the type of natural gas that is not subject to VAT is natural gas that is taken directly from the source. So that pipe gas distributed by PGN is not a VAT object. Then using the *Argumentum A Contrario interpretation method* of Article 4A Paragraph 2 letter a, it can be interpreted that goods resulting from mining or drilling results (including natural gas) which are not taken directly from the source are VAT objects. This is reinforced by the elucidation of the Article which emphasizes that gas that is ready to be consumed directly by the public is a VAT object. The elucidation of this article cannot be seen as a new legal arrangement. But as an affirmation of Article 4A Paragraph 2 letter a, especially in the phrase "taken directly from the source."

Therefore, based on the results of the analysis above, the panel of judges should cancel the examiner's correction on the VAT for the delivery of natural gas that is channeled through the pipeline, and maintain the examiner's correction on the VAT for the delivery of natural gas in the form of CNG, LNG, and other gases that have gone through a more advanced process. further changes that change the form and/or nature of the natural gas as described in Article 1 of the VAT Law number 16 concerning "producing" activities.

Correction on Sales of Natural Gas – Non Commodity (Service)

1. Main Dispute

The Appellant (DGT) believes that there is a gas transportation service component through the transmission and distribution pipeline in the gas delivery transaction carried out by PGN, which should be a Taxable Service (JKP). So that there should be VAT collected from these services in the amount of IDR 572,126,377,044. The Appellant also highlighted the use of dual currency in invoices issued by PGN. Namely bills based on volume in units of m³ or MMSCF multiplied by rates using Rupiah, and bills based on calorie/energy value in units of MMBTU multiplied by rates using USD.

While the appellant does not agree with the opinion of the appellant. The appellant is of the opinion that the use of the USD and rupiah currencies constitutes a unitary price for natural gas commodities. In the invoice issued by the appellant to the customer there is also no transmission service billing component (Toll Fee), there is only the sale of natural gas commodities.

2. Analysis

In Law No. 22 of 2001, the midstream industry has indeed been merged with the downstream industry, which is then regulated and supervised by BPH Migas (UU No. 22 of 2001 concerning Oil and Gas, 2001). However, this does not eliminate the elements of transportation services that were previously included in the midstream industry. This transportation service is regulated by BPH Migas regulations, one of which is BPH Migas regulation No. 8 of 2013 which stipulates tariffs for the transportation of natural gas by pipeline (BPH Migas Regulation No. 8 of 2013 concerning Determination of Tariffs for Transportation of Natural Gas through Pipes, 2013), according to with those mentioned by the appellant. There are several companies engaged in the oil and gas transportation sector, one of the largest oil and gas transportation companies is PT Transportasi Gas Indonesia (PT TGI). The

treatment of the delivery of oil and gas transportation services carried out by oil and gas transportation companies is the delivery of Taxable Services which are subject to VAT. This is because the transportation of oil and gas is not a type of service that is exempt from VAT objects.

One of the principles upheld by the tax court is substance over form which emphasizes the importance of substance or material rather than formal form. Even though the invoice billed by PGN does not explicitly state the components of the delivery of natural gas transportation services, and is also not regulated by a Gas Transportation Agreement, in substance PGN has submitted natural gas transportation services. This is reinforced by evidence from PGN's annual report, BPH Migas regulations, and other data. Therefore, the panel of judges should have rejected the appeal from the appellant.

6. CONCLUSION AND RECOMMENDATION

Based on the results of the analysis of the data and various facts that were revealed, the following conclusions can be drawn:

- A statutory regulation certainly cannot accommodate all events that occur in the field. There is always the potential for uncertainty and legal vacuum in implementing a statutory regulation for events that occur in the field. In filling the legal vacuum (*rechstvaccum*), in this case Article 4A of the VAT Law, textual interpretation can be carried out. Namely interpreting the words and phrases contained in Article 4A of the VAT Law along with their explanations. In the *a quo* PGN case , both the appellant and the appellant used a textual interpretation. Even though both parties use the same method of interpretation, this does not guarantee the similarity of viewpoints from both parties. This is where the role of Tax Court judges and Supreme Court judges emerge in determining which interpretation is most appropriate to apply in resolving tax disputes.
- Both PGN and DGT have conducted evidence tests as ordered by the Tax Court judge. Both parties conducted proof tests with various supporting documents, such as *invoices* , contracts, and other documents. However, in assessing the evidence, the judge should prioritize the substance of the evidence rather than being fixated on the formal form of the documents. This is in accordance with the principle upheld by the Tax Court, namely *substance over form* .
- In preventing similar tax disputes, taxpayers can conduct an analysis of the VAT dispute cases experienced by PGN as a basis for dealing with similar tax disputes. Even though tax law does not recognize the existence of jurisprudence, previous court decisions can still be considered by judges in making a decision. In addition, taxpayers can also request an affirmation letter from the head of the KPP/Kanwil and communicate with the central DGT in order to seek legal certainty and a common interpretation from the tax authorities and taxpayers.

SUGGESTION

- In preventing similar tax disputes, apart from asking for a letter of confirmation from the head of the KPP/Kanwil, it is better if the WP opens up communication with the central DGT and related parties. This is useful for equating the perception between WP and DGT regarding a tax regulation.
- To minimize the occurrence of tax disputes, the government should make a separation between letters of affirmation which are *public* in nature, which do not create new legal norms, and *private rulings*, which are in nature to create new legal norms. So as to create legal certainty in society.

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