

## THE IMPOSITION OF FINAL INCOME TAX ON MSME BUSINESSES IN THE PERSPECTIVE OF LEGAL JUSTICE

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### **Abstract**

This research aims to analyze the Imposition of Final Income Tax on MSME Business Actors from a legal justice perspective. The research method used is normative legal research. Research is descriptively analytical. Data collection techniques are carried out by way of literature studies. The results showed that based on the perspective of legal justice against MSMEs in taxation (equity principle), the imposition of the Final PPh is not following the principle of fairness, because it does not reflect the ability to pay. A fair increase is that the greater the income, the greater the tax that must be paid. This is called vertical equity. The income referred to here is net income, that is, after deducting the costs of reducing gross income allowed under the applicable tax provisions. Because the Final PPh is calculated directly from gross circulation, the indulging is following with the concept of justice in the cultivation. How not, the size of the net income of a person or business entity will not affect the amount of taxes that will be paid because taxes are calculated by multiplying the direct rate against gross circulation. Even in a state of loss, with the imposition of final PPh a person or business entity still has to pay taxes.

**Keywords:** Final Income Tax, Business Actors, MSMEs, Legal Justice

## A. INTRODUCTION

Tax according to Article 1 number 1 of Law No. 28 of 2007 on General Provisions and Procedures of Taxation, is a mandatory contribution to the state contained by a person or entity that is coercive under the Law, with no direct reward for the purposes of the state for the maximum prosperity of the people.<sup>1</sup>

Efforts to increase income or tax revenue as a source of financing for state development become a severe challenge in Indonesia. If the implementation of tax collection can be put down again, then state revenues from the tax sector can be further optimized, which will eventually be able to encourage the pace of development activities and financing independence by the state.<sup>2</sup> This is because taxes are one of the main sources to finance state spending, therefore one of the functions of taxes is as a function of the budgeter, which is a function located in the public sector and taxes here is a tool (a source) to put as much money in state coffers that will in time be used to finance state expenditures.<sup>3</sup>

A tax collection system is a system that regulates the authorities in determining and collecting the amount of taxes. There are three general tax collection systems, namely.

- 1) *The Official assessment system* is a tax collection system in which the amount of tax that must be repaid or owed by the taxpayer is calculated and determined by the government (Fiscus);
- 2) *Self-assessment system* is a tax collection system in which taxpayers must calculate, deposit, and report the amount of taxes owed.;
- 3) *Withholding assessment system* it is a tax collection system whose large taxes are owed calculated and deducted by third parties. The third parties referred to here include the employer, the government treasurer..<sup>4</sup>

At the beginning of 2004, the tax collection system in Indonesia based on Law Number 6 of 1983 was (*Self Assessment System*). *Self Assessment System* is a tax collection system that authorizes taxpayers in determining for themselves the amount of taxes owed annually by applicable tax laws and regulations. In this system, initiatives and activities to calculate and collect taxes are entirely in the hands of taxpayers. Taxpayers are considered able to calculate taxes, able to understand the current virginity laws, and have good honesty, and realize the importance of paying taxes. Therefore, taxpayers are entrusted to:

- a. Calculate the taxes owed themselves;
- b. Take into account the taxes owed;
- c. Pay for yourself the amount of taxes owed;
- d. Self-report taxes owed; and account for taxes owed.

The imposition of income tax is regulated in Law No. 7 of 1983 on Income Tax which has been amended several times by:

- a. Law No. 7 of 1991 on Amendments to Law No. 7 of 1983 on Income Tax;
- b. Law No. 10 of 1994 on the Second Amendment to Law No. 7 of 1983 on Income Tax;
- c. Law No. 17 of 2000 on the Third Amendment to Law No. 7 of 1983 on Income Tax
- d. Law No. 36 of 2008 on the Fourth Amendment to Law No. 7 of 1983 on Income Tax;

Income Tax as stipulated in Law No. 36 of 2008 on Income Tax is a State Tax imposed on any additional economic capabilities received or obtained by taxpayers, both from Indonesia and from outside Indonesia, which can be used for consumption or to increase the wealth of the taxpayer concerned. The imposition of tax rates for individuals is progressive which means that the higher the income you receive or earn, the higher the rate will be charged. And the imposition of a tax rate for the agency is linear, which is 25 percent. In the current development against Micro Small and Medium Enterprises ("MSMEs") the government stipulates with the final tax by Article 4 Paragraph 2 of the Income Tax Act.

Micro businesses, Small and Medium Enterprises are also inseparable from the imposition of income tax. The contribution of the micro, small and medium enterprises sector to gross domestic product increased from 57.84 percent to 60.34 percent in the last five years. However, the tax authorities have not optimized the tax revenue potential for small and medium enterprises (SMEs). This is based on SME tax contributions of around Rp. 6 trillion, compared to revenues of more than Rp. 1,300 trillion. Roughly speaking, as many as 50 million SMEs, which are recorded by the Central Statistics Agency (BPS) contribute to 60% of GDP or around Rp. 8,000 trillion. If it is approached with

<sup>1</sup> Indonesia, *Undang-Undang tentang tentang Ketentuan Umum dan Tata Cara Perpajakan*, UU No. 6 Tahun 1983, LN No. 49 Tahun 1983, TLN No. 3262, Pasal 1 angka 1

<sup>2</sup> Mardiasmo, *Perpajakan*, (Yogyakarta: Andi Offset, 1988), hal. 1

<sup>3</sup> Santoso Brotodihardjo, *Pengantar Ilmu Hukum Pajak*, (Bandung: Eresco, 1984) hal. 185

<sup>4</sup>*Siti Resmi. Perpajakan 1: Teori dan Kasus*. (Jakarta: Salemba Empat, 2009), hal. 10

just 1% it is IDR 80 trillion, so 0.5% should be IDR. 40 trillion. So what is captured is about one-seventh or about 15% of the existing potential.<sup>5</sup>

The government has issued Government Regulation (PP) Number 23 of 2018 which relaxes the final income tax rate (PPH) for small and medium enterprises (SMEs) taxpayers, from 1% to 0.5% and is valid since July 1, 2018. SMEs who can take advantage of the final PPh with this special tariff are those who have a maximum turnover of Rp 4.8 billion a year. As for the changes, among others:<sup>6</sup>

1. Decrease the Final PPh rate from 1 percent to 0.5 percent of turnover, which must be paid monthly;
2. Set the period for the imposition of the Final PPh rate of 0.5 percent as follows:
  - a. For private taxpayers that is for 7 years;
  - b. For taxpayers of Cooperative-shaped Entities, Comconditer Guilds or Firms for 4 years;
  - c. For taxpayers of Perseroaan Limited Agency for 3 years.

PPH incentive policy for MSME actors is one of the fiscal facilities provided by the government to MSME actors to encourage the potential/activity of the MSME sector, but will also reduce the potential for tax revenue in the short term. The imposition of the old final tax rate for MSMEs of 1 percent is considered burdensome for MSME actors and is often complained about by MSME actors. MSME tax incentive policy provides tax relief for SMEs with a tax cut of 0.5%. In terms of business actors, the reduction of new tariffs is expected to stimulate the emergence of new MSMEs to develop and provide financial space (business opportunities) with the reduced cost burden of MSMEs to be used in business expansion.<sup>7</sup>

Not optimal SME tax revenue is influenced by many factors, especially the number of SMEs who have not registered with the Directorate General of Taxes. Of course, this is a challenge for the Director-General of Taxes to increase tax awareness for as many SMEs early on so that by itself SME tax revenues will increase. Moreover, SME actors themselves are not the main target of Taxpayers (WP) related to tax compliance, but rather to registration or registration at the Director General of Taxes. Moreover, MSME business actors based on the mandate of the Law of the Republic of Indonesia Number 20 of 2008 concerning Micro, Small, and Medium Enterprises must get legal justice and protection. The form of protection referred to here is one of them is facilitative in the imposition of Final PPH. In this thesis, I examined the Income Tax, especially the imposition of for the application for MSMEs subject to the Final PPH and there are also differences in understanding in the MSME Law and income tax law where the criteria of medium businesses are businesses that have annual gross sales of more than 2.5 billion to 50 billion while in PP 23 in 2018 that can be subject to final PPH in MSMEs that have annual gross sales of only 4.8 billion.

Based on the search conducted, previous research related to "The Imposition of Final Income Tax On MSME Business Actors in legal justice perspective" has never been done. But to show the novelty in this study, research will be presented related to the Effect of the Final PPH Rate Change Policy on Taxpayer Compliance of MSMEs. Research conducted by Cinantya Kumaratih, Budi Ispriyarso, shows the existence of a policy on the income tax rate of MSMEs of 1% through Government Regulation No. 46 of 2013. However, the enactment of this regulation has pros and cons among the community. As a result, in 2018 the government changed the amount of tax rate by 0.5% through Government Regulation No. 23 of 2018. The policy regarding reducing income tax rates for MSMEs has an influence on the level of compliance of MSMEs as Taxpayers. Research conducted at the West Semarang Primary Tax Service Office shows an increase in compliance of MSME actors in performing their tax obligations.<sup>8</sup>

In addition, related to criticism of the Final Income Tax For Small and Medium Micro Enterprises, Ni Wayan Maharatih stated that the application of a rate of 1% of income for MSMEs

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<sup>5</sup> Hal ini disampaikan Pengamat perpajakan dari Center for Indonesia Taxation Analysis (CITA) Yustinus Prastowo, dalam "Penerimaan Pajak UKM Belum Optimal", <https://economy.okezone.com/read/2019/01/09/20/2001988/penerimaan-pajak-ukm-belum-optimal>, diakses 7 Oktober 2021

<sup>6</sup>Direktorat Jenderal Pajak, "Tarif Khusus Pajak Penghasilan Bagi UMKM", <http://www.pajak.go.id/sites/default/files/%5BEKSTERNAL%5D%20PPH%20Final%20UMKM%20Setengah%20Persen-LENGKAP.pdf>, diakses 7 Oktober 2021

<sup>7</sup>Sari, Rafika. *Kebijakan Insentif Pajak Bagi Usaha Mikro Kecil dan Menengah*. (Jakarta: Pusat Penelitian Badan Keahlian DPR RI, 2018)

<sup>8</sup> Cinantya Kumaratih, Budi Ispriyarso, "Pengaruh Kebijakan Perubahan Tarif PPH Final Terhadap Kepatuhan Wajib Pajak Pelaku UMKM, *Jurnal Pembangunan Hukum Indonesia*, Volume 2, Nomor 2, Tahun 2020

cannot be understood as small, considering that this income is calculated not from profit results, because it cannot be guaranteed if the income is large then surely the profit is large. The results showed that according to Article 2 paragraph (1) of Government Regulation No. 46 of 2013 mentioned business actors who generate income that does not exceed Rp. 4.8 Billion in one tax period is taxed at 1% of the amount of gross circulation (income) each month. But in reality, the tax is 1% for MSMEs who earn Rp. 300jt-Rp. 4.8M is not effectively implemented. Moreover, the imposition of 1% of this income is considered unfair because it is charged without seeing whether this MSME actor is in a state of profit or loss, and is also applied to all MSME actors.<sup>9</sup>

Furthermore Bernita Siallagan, Ventje Ilat, Tresjee Runtu discussed the valuation of Micro Small and Medium Enterprises (MSME) Tax Revenue After the Issuance of Government Regulation No. 23 of 2018 in Tomohon City were in this study stated that there was an increase in taxpayers who made MSME tax payments of 74 taxpayers with a percentage of 41.20%. The acceptance of MSME PPh after the enactment of Government Regulation No. 23 of 2018 decreased due to a decrease in the rate of Small and Medium Micro Enterprises (MSMEs) from 1% to 0.5% but the decrease that occurred was not too large. This shows that the efforts of the Directorate General of Taxes to increase the awareness of taxpayers in making MSME tax payments after the enactment of Government Regulation No. 23 of 2018 have begun to be achieved.<sup>10</sup>

## B. IDENTIFY PROBLEMS

Based on the background description above, then the focus of the problem in this writing is how to Impose a Final Income Tax on MSME Business Actors from the Perspective of Legal Justice?

## C. RESEARCH METHODS

This writing is normative legal research, which is research conducted by reviewing applicable laws and regulations or applied to a particular legal problem. Normative research is often referred to as doctrinal research, which is research whose object of study is a document of laws and regulations and library materials. Library research, which is research on secondary data. This research is conducted to find data on the issues to be studied, consisting of Primary Legal Materials, which are legal materials that are binding, including related laws and regulations and Secondary Legal Materials, which are materials that provide explanations of primary legal materials, such as books, literature research results and scientific works. This research uses data analysis techniques with deductive logic, deductive logic or processing of legal materials in a deductive way that explains a general thing and then draws it into a more specialized conclusion.<sup>11</sup>

## D. THEORETICAL FRAMEWORK

This study will be used the theory of justice. As for the reason for the Selection of The Theory of Justice as the Basis of Theory, is:

1. A fair equation of opportunity is mainly used given the difference in definitions given in PP Number 23 of 2018 with the Definition of MSMEs in Law No. 20 of 2008. In analyzing the Comparison of DEFINITIONS of MSMEs imposed by the Final PPh in PP Number 23 of 2018 with the Definition of MSMEs in Law No. 20 of 2008, so that one of the concepts used in discussing it is about the concept of justice in looking at the comparison of definitions in legislation. Using the theory of justice, it will be analyzed the difference in the definition of Micro, Small, and Medium Enterprises (MSMEs) based on PP Number 23 of 2018 with the provisions of the category of Micro, Small, and Medium Enterprises as stipulated in Law No. 20 of 2008 on Micro, Small, and Medium Enterprises, so that it can be known whether with the existence of PP Number 23 of 2018 with the provisions of the Micro-Enterprise category, Small, and Medium enterprises have provided justice to micro, small, and medium enterprises that must get protection.
2. Associated with the formulation of the second problem is that it will certainly be the imposition of Final PPH that cannot provide a sense of legal justice and protection for MSME business actors

<sup>9</sup> Ni Wayan Maharatih, "Studi Kritis Pengenaan Pajak Penghasilan Final Bagi Usaha Mikro Kecil Menengah", *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, Vol. 8 No. 1 Mei 2019, 105-115

<sup>10</sup> Bernita Siallagan, Ventje Ilat, Tresjee Runtu "Evaluasi Penerimaan Pajak Usaha Mikro Kecil Dan Menengah (UMKM) Pasca Penerbitan Peraturan Pemerintah Nomor 23 Tahun 2018 Di Kota Tomohon", *PETITUM*, Vol. 7, No.2, Oktober2019, pp 72-81

<sup>11</sup> Zainuddin Ali, *Metode Penelitian Hukum*, (Jakarta: Sinar Grafika, 2016), hlm. 22

after the issuance of PP Number 23 of 2018. With this regulation, of course, the government imposes taxes on small and medium enterprise units (MSMEs). One of them is the issue of justice. This theory will see if with the policy this government has provided justice in the imposition of final tax rates. So that these business actors are certainly not allowed to feel discrimination, especially in business actors who belong to the micro, small and medium scale.

John Rawls conceptualized justice as fairness, which contains the principle that every free and rational person who desires to develop his interests should get an equal position at the time of starting it and that is the basic condition for entering the assembly they desire. Justice according to John Rawls is, the parameters that must be met to meet the balance between individual interests and group interests. There are (3) three elements of justice, among others, equal liberty of principle, differences principle, and equal opportunity principle<sup>12</sup>.

These three principles sometimes cannot be realized together because if they are realized together, one principle clashes with the other, John Rawls prioritizes that the same principle of freedom that is lexically applicable first than the second and third principles. And the principle of equality over opportunity should take priority over the second principle. Thus the theory of justice according to John Rawls can be concluded as follows<sup>13</sup>:

1. Maximizing independence, restrictions on independence are only used for the benefit of independence itself;
2. Equality for all people, both equality in social life and equality in the form of the utilization of natural wealth. Restrictions in this case can only be allowed when there is a greater possibility of profit;
3. Equality of opportunity for honesty, and elimination of inequality based on birth and wealth.

There are two goals of the theory of justice according to John Rawls, namely:<sup>14</sup>

1. This theory is to articulate a series of general principles of justice that underlie and explain the various moral decisions that are seriously considered in our particular circumstances. What he means by "moral decision" is a series of moral evaluations that we have made and if it causes our social actions. Moral decisions that are seriously considered point to the moral evaluation we make reflexively.
2. Rawls wanted to develop a theory of social justice that was superior to the theory of utilitarianism. Rawls meant "average utilitarianism." The point is that social institutions are said to be fair if they are left to maximize profitability and usefulness. Average utilitarianism contains the view that social institutions are said to be fair if only encoded to maximize the average gain per capita. For both versions utilitarianism "profit" is defined as the satisfaction or gain that occurs through choices. Rawls said that the basis of the truth of his theory made his views superior to both versions of utilitarianism. The principles of justice he put forward are superior in explaining ethical-moral decisions over social justice.

The two principles of justice above can be explained as follows; The first principle; Everyone has the same right to the broadest basic freedoms, as wide as the same freedoms for all people. The second principle; social and economic inequality that exists during society, must be regulated in such a way that;

- a) It can be expected to benefit everyone.;
- b) All positions and positions are open to everyone..

As affirmed by Otong Rosadi that John Rawls' theory is very important in the context of the discussion of the incorporation of social justice principles in the process of establishing laws and regulations in Indonesia. Rawls' theory of justice is important because of two things:<sup>15</sup>

1. Achievement procedures or consensus searches that put individuals equally at odds.
2. Recognizing there are inequalities in society that must get priority attention in the preparation or establishment of laws and regulations.

Hans Kelsen in his book *General Theory of Law and State*, proposing the idea of the concept of justice, Hans Kelsen adheres to a school of positivity that recognizes the truth of the laws of nature. Therefore his thoughts on the concept of justice gave rise to a dualism between positive law and

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<sup>12</sup> *Ibid*, hlm. 22.

<sup>13</sup> *Ibid*

<sup>14</sup> John Rawls, 1973, *A. Theory of Justice*, Oxford University, London, hlm. 50-57

<sup>15</sup> Otong Rosadi, 2012, *Hukum Ekologi dan Keadilan Sosial Dalam Perenungan Pemikiran (Filsafat) Hukum*, Thafa Media, Yogyakarta, hal. 117.

natural law. This can be found in Hans Kelsen's opinion.<sup>16</sup> The dualism between positive law and natural law makes the characteristics of natural law similar to the metaphysical dualism of the world of reality and the world of Plato's model ideas. At the heart of Plato's philosophy is his doctrine of the world of ideas. Which contains profound characteristics. The world is divided into two distinct fields: the first is the visible world that can be captured through a sense called reality; The second world of invisible ideas

Two more things are the concept of justice put forward by Hans Kelsen: first about justice and peace. Justice comes from irrational ideals. Justice is rationalized through knowledge that can manifest interests that ultimately lead to a conflict of interest. Resolution of such conflicts of interest can be achieved through an order that satisfies one interest at the expense of the other or by attempting to reach a compromise toward peace for all interests.<sup>17</sup>

Second, the concepts of justice and legality. To establish based on a solid social challenge, according to Hans Kelsen the notion of "Justice" means legality. A general rule is "fair" if it is applied, while a general rule is "unfair" if applied to a case and not applied to another similar case.<sup>18</sup>

## E. RESULTS OF ANALYSIS AND DISCUSSION

### 1. The Role of Tax Law in Protection against MSME Businesses

National economic development based on Article 33 paragraph (1) of the Constitution of the Republic of Indonesia of 1945 (Uud 1945) aims to improve the welfare of the people as a whole, not the welfare of certain people or groups and groups. Therefore, the national economy must be structured as a joint effort based on the principle of the family to achieve prosperity and prosperity. To realize the welfare of the people, is done through various efforts, one of which is to increase the competitiveness of Micro Small and Medium Enterprises (MSMEs) in Indonesia at this time.

The role of MSMEs has strategic value in strengthening the national economy (people's economy) so that the government should pay proper attention (strategies and policies) for empowerment (priorities and empowerment), which is seen as a group of business units that should be integrated into the business world nationally that can later increase living rates and competitiveness. MSMEs as the forerunner of the entrepreneurship that process, need to be given more careful attention from various aspects. Since the change of the new order government from the old order, until the reform era, economic development has been a top priority of the Government of Indonesia. The severe backwardness and poverty left by the old order became the basis of the new order government's strong desire to build the Indonesian economy as a means to the progress and welfare of the people, it was also realized in the government of the reform era.

The process of industrialization as ever done by developed countries and believed to bring breakthroughs that are quickly implemented, with the hope that traditional Indonesian agricultural communities gradually become a modern industrial society. This situation for the company has given rise to the character to develop quickly without going through natural processes, but by utilizing various government facilities and unhealthy business behavior. Another effort made by the company is to seek foreign capital through high-risk commercial loans in the form of commercial papers. The loan is also made with a floating exchange rate system. Efforts to spur growth that relies on large entrepreneurs have resulted in medium and small entrepreneurs being neglected, even though in quantity these companies are much larger and include more people.<sup>19</sup>

The process of economic development changes, simultaneously followed by the formation and change of policies, regulations and institutions, and implementation mechanisms that accommodate the development of the Indonesian economy. The magnitude of the flow of economic influence on the change and formation of law in Indonesia has naturally formed its own economic law. This field then continuously received the attention of policymakers in Indonesia, since economic growth became a national development effort.<sup>20</sup> This shows that economic development before the crisis in Indonesia is very developed, and the legal policies issued by the government also help the economy.

Policies that are more focused on achieving growth targets (economic growth) have resulted in the government prioritizing the development of large companies with the aim to generate foreign

<sup>16</sup> Hans Kelsen, *General Theory of Law and State*, diterjemahkan oleh Rasisul Muttaqien, Bandung: Nusa Media, 2011, hal. 14.

<sup>17</sup> *Ibid.*, hal.16.

<sup>18</sup> *Ibid.*

<sup>19</sup> Yoserwan, *Hukum Ekonomi Indonesia, Dalam Era Reformasi dan Globalisasi*, (Padang: Andalas University Press, 2006), hlm. 93-94.

<sup>20</sup> *Ibid.*, hlm. 220.

exchange. The policy is implemented on the assumption that growth will itself give birth to equitable welfare for the people, in accordance with the trickle down effect theory.<sup>21</sup>

MSME problems concern a number of issues, such as structural inequalities in the allocation and control of resources, the indecision of state partisanship in the efforts of people's economic development in policy and development of industrialization strategies, oligopolies market structures, relatively limited performance to the classics (human resources or human resources, capital and access to financial institutions, technology, management, marketing and information),<sup>22</sup> distortions and inconsistencies of policies concerning development efforts. Thee Kian Wie stated that MSMEs have now been widely implemented in Indonesia, this is based on considerations of equality or welfare rather than efficiency considerations. Apparently this equalization consideration sees MSMEs as weak businesses and do not have good prospects to develop into efficient businesses and have good economic viability. But because of equalization, these small businesses must be helped. On the other hand, Thee Kian Wie also stated that efficiency considerations in MSME promotion programs emphasize that many small businesses can develop into efficient and highly competitive businesses, if given appropriate assistance. This approach sees that small business promotion programs in the past were more top-down or supply-driven, i.e. more widely needed assistance programs.<sup>23</sup>

The success of MSMEs out of the economic crisis in Indonesia, can be seen as evidence that MSMEs are more independent in economic activities, because they are able to try without the support of others. This is evident from the capital and technology used is his own. Business independence is important for economic actors to be able to compete with other businesses in seizing the market. According to Sengenberger, small and medium-sized businesses are "*small enterprises or small and medium enterprises are elusive concepts. They do in fact hide a large heterogeneity in the types of the firms*".<sup>24</sup> In the context of the European Union, MSMEs or Small and Medium Enterprises are defined as a business unit in which the people involved in their business activities are no more than 250 people and the amount of turnover per year does not exceed EUR50 M and/ or the size of the balance sheet per year does not exceed 43 M.<sup>25</sup>

The definition of MSMEs can be different in each country. As the definition of MSMEs in the context of laws and regulations in Indonesia, in Law (UU) Number 20 of 2008 concerning Micro, Small, and Medium Enterprises, namely:

- a. Micro-businesses are productive businesses owned by individuals and/or individual business entities that meet the criteria of micro-businesses, namely have a maximum net worth of Rp50 million excluding land and buildings where businesses or have a maximum annual sales result of Rp300 million.
- b. Small business is a productive economic business that stands alone, conducted by individuals or business entities that are not subsidiaries or are not branches of companies owned, controlled, or become part of either directly or indirectly from medium businesses or large businesses that meet the criteria of small businesses, namely having a net worth of more than Rp50 million to Rp500 million excluding land and buildings where businesses; or have annual sales of more than Rp300 million to Rp2.5 billion.
- c. A medium-sized business is a stand-alone productive economic venture, conducted by an individual or business entity that is not a subsidiary or branch of a company owned, controlled, or become part of either directly or indirectly with small businesses or large businesses with a net worth of more than Rp500 million to Rp10 billion excluding land and buildings where the business or annual sales proceeds are more than Rp2, 5 billion to Rp50 billion.

## 1. The imposition of the Final PPH based on the principle of legal justice after the issuance of PP Number 23 of 2018

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<sup>21</sup> *Ibid*, hlm. 93.

<sup>22</sup> Musa Hubeis, *Prospek Usaha Kecil Dalam Wadah Inkubator Bisnis*, (Bogor: Ghalia Indonesia, 2015), hlm. 1-2.

<sup>23</sup> Thee Kian Wie, *Prolog*, dalam Nurul Widyaningrum, *et-al, Pola-Pola Eksploitasi Terhadap Usaha Kecil*, (Yogyakarta: Yayasan Akatiga, 2003), hlm. v.

<sup>24</sup> Dikutip oleh Adejuyigbe Batope dan Danushi Olorutinimi Akintunde dalam *A Study of Small and Medium Scale Industrial Development in Ondo State Nigeria*, Departement of Mechanical Engineering, Federal University of Technology Akure, Ondo State Nigeria.

<sup>25</sup> Pendefinisian UMKM dalam *OECD Report Survey on the Taxation of Small and Medium Sized Enterprises 2007* oleh Alfons J. Weichenrieder, Johann Wolfgang Goethe Universitat Frankfurt Germany

The imposition of the final PPh is calculated based on gross income without taking into account the costs incurred to obtain the income. Taxpayers are required to pay PPh despite suffering losses, and such losses should not be compensated into subsequent tax years. The tariff used is a special tariff outside the general rate. The special rate of PPh for MSMEs under Law No.36 of 2008 only applies to business entities. As stated in Law No. 36 of 2008 article 31E stated that domestic corporate taxpayers with gross circulation up to Rp 50 billion get facilities in the form of a reduction in tariffs of 50 percent from the general rate as stipulated in article 17 paragraph (2) of the PPh Law which is charged on taxable income from the gross circulation section up to 4.8 billion.

With the current agency PPh rate of 25 percent, then for qualified domestic corporate taxpayers, the effective rate becomes 12.5 percent on income up to Rp 4.8 billion. The imposition of PPh in this case is done on taxable income calculated from the calculation of accounting profit-loss (bookkeeping) after fiscal correction is made, because based on article 28 paragraph (1) of Law No. 28 of 2007 (UU KUP), corporate taxpayers are required to carry out bookkeeping.<sup>26</sup>

The rule no longer applies after the government issued PP 46 yr 2013 which was effective in July 2013, which is the PPh rule for taxpayers with certain turnover. That any private taxpayer who conducts business and corporate taxpayers with a turnover not exceeding 4.8M is subject to the final PPh at a rate of 1% of its sales. The basis of tax (DPP) used is the amount of gross circulation each month. While the amount of the final PPh is calculated by multiplying the DPP by 1 percent.

The MSME tax rate was changed again. The MSME tax rate of 0.5 percent is contained in Government Regulation (PP) Number 23 of 2018 on Income Tax (PPh) on Income from businesses received or obtained by Taxpayers who have a certain gross circulation. This rule is in lieu of PP Number 46 of 2013. "The MSME tax rate is effectively enforced as of July 1, 2018. The provision regulates the imposition of Final Income Tax (PPh Final) for taxpayers whose gross circulation (turnover) is up to Rp 4.8 billion in one year, which is a change to the provisions of the imposition of the previous Final PPh (PP 46 the Year 2013).

The application of final PPh 0.5% to MSMEs that have a gross circulation of no more than Rp.4.8 billion a year is appropriate if only seen in terms of ease in calculating taxes for individual groups and business entities that have had difficulty organizing bookkeeping. But for individual MSMEs or business entities that have been organizing bookkeeping in an orderly manner and calculating PPh from taxable income that is actually from the results of bookkeeping after a fiscal correction is made, this provision becomes a setback for them. How not, for this group, the concept of self-assessment that gives taxpayers the confidence to calculate, account for, deposit and self-report their tax obligations clearly become meaningless. The policy of the imposition of the Final PPh on MSMEs is backward and not in line with the main objective of the self-assessment system, namely voluntary compliance).

By imposing the Final PPh based on a rate of 0.5%, MSMEs in the form of business entities are not benefited and not harmed if the percentage of Taxable Income on gross circulation can reach 8%. This can be formulated by:  $0.5\% \times \text{gross circulation a month} = 12.5\% \times 8\% \times \text{gross circulation a month}$ . The rate of 12.5% is the article 31 E rate of the PPh Law. If MSMEs in the form of business entities are able to achieve a percentage of taxable income above 8%, then MSMEs in the form of business entities will benefit from paying pph less than the previous provisions. Conversely, it will pay a greater PPh if the percentage of taxable income is less than 8% on gross circulation, even will still pay the Final PPh even in a state of loss. The minimum percentage of taxable income that must be achieved by individual MSMEs will be greater than 8% so as not to be harmed by the enactment of the final PPh of 0.5% of gross circulation, because with the enactment of PP No. 23 of 2018 Non-Taxable Income (PTKP) is no longer a reducing factor in calculating the PPh obligations of private MSMEs.

Therefore, in this matter, according to the Author who is included in the scope of the imposition of PPh in accordance with PP No. 23 of 2018 this should need to be limited again. For example, for some MSME groups of private people and business entities that have been able to organize bookkeeping in an orderly manner should not need to be included in the scope of pp no. 23 of 2018. By including this group in the provisions of PP No. 23 of 2018, the urge for Taxpayers to organize bookkeeping as part of the target of this self-assessment system becomes reduced, which even though one of the duties of the Fiscus is the construction of Taxpayers including in terms of compliance with bookkeeping. This is certainly different from article 28 paragraph (1) of Law No. 28 of 2007 (KUP Law), PPh in this case is done against taxable income calculated from the calculation of

<sup>26</sup> Muhammad Yusuf, "Analisis pengenaan pajak penghasilan final Terhadap wajib pajak tertentu (Studi Kasus pada Usaha Mikro Kecil dan Menengah di Kecamatan Pancoran Jakarta Selatan), *Jurnal Lentera Akuntansi* Vol. 2 No. 1, Mei 2016, hal. 5



accounting profit-loss ta (bookkeeping) after fiscal correction, because the corporate taxpayer is required to adjust the taxable income.

Small entrepreneurs whose gross income is Rp 4.8 billion are allowed to use record keeping. The record will see his turnover exposed to the final PPh. Thus the final PPh will be profitable because it is easy in calculating taxes and companies do not need to make complicated bookkeeping. Not all MSME actors are not ready to hold bookkeeping properly so that MSME actors are easy to calculate taxes. By making it easier in calculating taxes by needing to make bookkeeping, it is expected that all taxpayers can pay taxes, thus helping the government to achieve tax revenue targets.

This is in accordance with the Small Business in the Regulation of the Minister of Finance of the Republic of Indonesia Number 99 /PMK.03/2018 concerning the Implementation of Government Regulation No. 23 of 2018, is a Taxpayer who has a certain gross circulation subject to income tax that is final 2018 is: Private taxpayer; and taxpayers of cooperatives, comconditer alliances, firms, or limited liability companies, which receive or earn income with gross circulation not exceeding Rp4,800,000,000.00 (four billion eight hundred million rupiahs) in 1 (one) Tax Year.

Consideration of determination using presumptive tax is based on the fact that most informal sector entrepreneurs do not record in accordance with applicable bookkeeping standards. Thus, to facilitate the implementation of tax collection and the implementation of tax obligations, presumptive tax is considered the most relevant way.<sup>27</sup>

In comparison, in its implementation, the Government of India passed the Government of India Finance Act 1992 which aims to introduce simple tax collection procedures or procedures for informal sector business activities. The policy comes after criticism from economists in India who argue that persistent tax incentives would create injustice and even be a disincentive to some of the informal sector's activities.<sup>28</sup>

In the long term, the existence of this provision is expected by informal sector business actors to be able to meet their tax obligations. In summary, the provisions stipulated in the Finance Act 1992 are:

1. Business activity scheme can be done optionally;
2. The scheme applies to individual entrepreneurs and family businesses that have an income of less than Rs35,000 or USD1,000 for retail business activities and have a gross circulation of up to Rs5 lakh or equivalent to USD15,000;
3. For entrepreneurs who run retail business activities that already have business circulation up to Rs5 lakhs, then the calculation of net income is deemed at 7% of the total gross business;
4. Employers who have the above provisions, earning up to Rs5,000 or USD150 are not subject to any taxes. On the entrepreneur, there is no need to fill out a Notification Letter (SPT), but must submit the identity of the entrepreneur and his business activities.

The imposition of final PPH is attributed to the principle of legal justice against MSME business actors after the issuance of PP No. 23 of 2018, it is necessary that the Principle of justice is a fairly important principle and is often a consideration in the design of tax policy. A tax system can be said to be successful if the people feel confident that the taxes levied by the government have been imposed fairly and everyone has paid their share. Rosdiana cites Otto Eickstein in his book Public Finance, that one of the reasons why the level of tax awareness in developed countries is relatively high is because they believe that taxes levied by the government are fair.<sup>29</sup>

The imposition of taxes is said to be fair on a private person if the tax imposed is proportional to his ability to pay taxes and in accordance with the benefits received from the state. A tax collection is said to meet horizontal fairness if taxpayers who are in the same condition are treated the same. The same understanding in this case is the magnitude of the entire additional net economic capability. Vertical fairness in tax collection is achieved when taxpayers with additional economic capabilities that are not the same are treated unequally. The imposition of taxes that pay attention to vertical fairness is reflected in:

- 1) The tax burden that is progressive, that is, the higher the ability to pay, the greater the tax burden that must be borne;

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<sup>27</sup> *Ibid.* Hal 21.

<sup>28</sup> Amaresh Bagachi, Kavita Rao dan Bulbul Sen, *Tax Breaks for the Small Scale Sector: An Appraisal*, National Institute of Public Finance and Policy New Delhi India

<sup>29</sup> Rosdiana, Haula, dan Edi Slamet Iriyanto. *Pengantar Ilmu Perpajakan: Kebijakan dan Implementasi di Indonesia*. Jakarta: Rajawali Press, 2012. Hal 159.

2) The difference in the large tax burden borne is based solely on differences in the level of ability to pay, not based on the type or source of income.

The final PPh imposed from gross income without taking into account the costs incurred to obtain the income clearly does not meet the principle of fairness that adheres to the ability to pay principle where tax insurance is based on the ability of each taxpayer. The more you earn, the more you pay tax, so should be fair. The ability to pay taxes is reflected by net income instead of gross income.

In terms of fairness in taxation (equity principle), the imposition of the Final PPh is not in accordance with the principle of fairness because it does not reflect the ability to pay. A fair increase is that the greater the income, the greater the tax that must be paid. This is called vertical equity.<sup>30</sup> The income referred to here is net income, which is after deducting the costs of reducing gross income allowed under the applicable tax provisions.<sup>31</sup> Because the Final PPh is calculated directly from gross circulation, the indulging is not in accordance with the concept of justice in the cultivation. How not, the size of the net income of a person or business entity will not affect the amount of taxes that will be paid because taxes are calculated by multiplying the direct rate against gross circulation. Even in a state of loss, with the imposition of final PPh a person or business entity still has to pay taxes.

This injustice is increasingly felt when taxpayers have to pay PPh even though they suffer losses and those losses should not be compensated into subsequent tax years. The application of the final PPh with special rates outside the general rate has directly discriminated (discriminated) the type or source of income for the benefit of cultivation. Injustice felt by MSME entrepreneurs because taxes are calculated from gross circulation not from net income. Financial difficulties, so there are often delays in paying taxes. Final PPh harms companies that have orderly organized bookkeeping.

From the writing above, according to the Author in this case PP No. 23 of 2018 is indeed both in terms of convenience and to increase tax revenue for DJP. However, according to the Author, it turns out that there are some difficulties that taxpayers can face in carrying out tax obligations in accordance with this PP and also difficulties for the DJP itself. As against small entrepreneurs whose gross income is Rp 4.8 billion in making gross income bookkeeping. This is due to the fact that most small business sector entrepreneurs do not record in accordance with applicable bookkeeping standards.<sup>32</sup>

## F. CONCLUSIONS AND SUGGESTIONS

Viewed from the perspective of legal justice against MSMEs in taxation (equity principle), the imposition on the Final PPh is not following the principle of justice, because it does not reflect the ability to pay. A fair increase is that the greater the income, the greater the tax that must be paid. This is called vertical equity. The income referred to here is net income, that is, after deducting the costs of reducing gross income allowed under the applicable tax provisions. Because the Final PPh is calculated directly from gross circulation, the indulging is not by with the concept of justice in the cultivation. How not, the size of the net income of a person or business entity will not affect the amount of taxes that will be paid because taxes are calculated by multiplying the direct rate against gross circulation. Even in a state of loss, with the imposition of final PPh a person or business entity still has to pay taxes.

So in this case it can be suggested that to create justice, the definition of small entrepreneurs in PP Number 23 of 2018 should refer to the provisions of the category of Micro, Small, and Medium Enterprises as stipulated in Law No. 20 of 2008 on Micro, Small, and Medium Enterprises. So that the benefits of this tax facility in the form of large income limits on the imposition of Final PPh can be felt by all small companies.

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<sup>30</sup> Musgrave & Musgrave, *op.cit.*, hal. 48

<sup>31</sup> Mansury R, *op.cit.*, hal. 91

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