



Legal Certainty for E-Commerce Transactions as an Effort to Increase Potential State Revenue in the Taxation Sector

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Abstract

The development of information technology has driven the growth of e-commerce transactions significantly in Indonesia. However, the rapid growth of e-commerce transactions has also created new challenges in terms of legal certainty and tax collection. Although the government has issued several regulations related to e-commerce, there are still legal loopholes that hinder the optimization of state revenues in the taxation sector. This study aims to analyze the legal certainty of e-commerce transactions as an effort to increase the potential for state tax revenues.

The research method used is normative juridical, with a statutory, conceptual, and comparative approach. Research data were collected through literature studies and document analysis involving laws and regulations related to tax and e-commerce, including the Taxation Law, Regulations of the Minister of Finance, and relevant international regulations. The analysis focused on the legal certainty of e-commerce transactions and their implications for state tax revenues. The results of the study indicate that despite regulatory efforts, there is still legal uncertainty caused by the lack of harmonization between tax regulations and e-commerce regulations. This results in difficulties in identifying tax objects, tax subjects, and collection mechanisms. In order to increase the potential for state revenues, steps are needed to strengthen legal certainty, including regulatory updates, increasing cooperation between related institutions, and e-commerce actors and the public. The conclusion of this study emphasizes the importance of legal certainty in e-commerce transactions to support the optimization of state revenues in the taxation sector. Suggestions given include the need for regulatory harmonization, the use of technology to facilitate tax collection, and stricter supervision of digital transactions. Thus, it is hoped that the potential for state revenues from the e-commerce sector can be maximized.

I. INTRODUCTION

The discovery of the internet is an invention that has a big impact on society. The benefits of the internet are now not only felt by people in the field of technology and information, but millions of people from all walks of life around the world also feel the benefits. One of the areas that directly benefits from the internet is the economy (Zidny, 2023).

Nowadays, more and more economic activities are carried out using the internet. If traditional trade transactions must be carried out directly face to face, but with the internet, all limitations of distance and time can be easily overcome. According to Rao, various conveniences, such as ease of ordering via desktop, ease of knowing product availability, speed of buying and selling processes, this is what ultimately makes the internet a popular medium for conducting

business or trading activities. (Herawati et al., 2022).

Electronic commerce with internet media, or better known as e-commerce, is defined as the transaction of buying and selling goods and services physically using electronic communication equipment, such as telephones, personal computers, online kiosks, Automatic Teller Machines (ATMs), smart cards or smart phones, through telecommunications channels such as traditional public telephone networks, computer networks, mobile computer networks, and the like. (Setyowati & Hwihanus, 2023).

In short, e-commerce is a way to conduct business transactions using computers and telecommunications networks. (Aprianto, 2021).

Initially, electronic commerce, or better known as e-commerce, was carried out in business transactions between large companies, between banks, and other institutions. However, in its

development, the focus of electronic commerce with internet media shifted closer to individual consumers. The pressure of the business community is now starting to involve individual consumers in electronic commerce. In the end, now it is not only large-scale companies that are facing the reality that they will benefit from the increasingly low cost of electronic commerce via the internet, but small-scale companies too.(Harahap et al., 2022).

The total turnover from electronic commerce worldwide is expected to increase by 19% to 680 billion dollars in 2011, and to 963 billion dollars in 2011, where e-commerce transactions in several countries in Asia, such as China, Indonesia, and India, are predicted to grow even further in 2013.(Safitri, 2021).

According to the Surabaya Post Daily, in Indonesia, e-commerce turnover reached 260 million US dollars or around 2.7 trillion rupiah in 2012 with the number of internet users around 55 million people. In 2013, it is predicted that e-commerce turnover in Indonesia will reach 479 million US dollars or around 4.4 trillion rupiah and in 2014 it is predicted that it will increase to 770 million US dollars or around 7.2 trillion rupiah.(Tewu, 2019).

It is estimated that the amount of e-commerce turnover will continue to increase, along with the increasing number of internet users in Indonesia, which will reach around 149 billion people in 2015.(Salsabila, n.d.).

The increasing number of internet users which has an impact on increasing e-commerce turnover has in fact given rise to several problems in the financial sector, one of which is internet sales tax.(Salsabila, n.d.).

The existence of electronic commerce that does not recognize geographical boundaries certainly also raises questions about how tax regulations anticipate income from e-commerce transactions. Without proper tax regulations on e-commerce transactions, the potential for tax revenue from e-commerce transactions can be lost. In fact, the potential for tax revenue from e-commerce transactions is very large considering the large number of e-commerce transactions that occur. In Indonesia, the large turnover of e-commerce transactions also creates the potential for lost tax revenue (potential loss) due to the lack of proper regulations for these transactions.(Butar Butar, 2021).

As reported by the Surabaya Post Daily, it is estimated that the amount of potential lost tax

revenue is around 440 billion rupiah in 2013, assuming the tax imposed is the same as conventional stores and assumed to be around 10% of e-commerce turnover. The United States, Hong Kong, Canada, England, India, Mexico, and several other countries have strict tax regulations related to e-commerce transactions. According to the Seputar Indonesia Daily, Indonesia itself is still studying this transaction further, because the human resources (HR) and information technology (IT) owned by the Indonesian Directorate General of Taxes (DJP) to implement this regulation are also still limited. In this regard, the author aims to determine the potential tax revenue from e-commerce transactions in Indonesia(Utomo & Maharani, 2013).

II. RESEARCH METHODS

This study uses a normative legal method to analyze the legal certainty of e-commerce transactions as an effort to increase the potential for state revenue in the field of taxation. The normative legal method is used because this study focuses on the study of laws and regulations, legal principles, and norms that apply in the context of e-commerce transactions and taxation.

III. RESULTS AND DISCUSSION

A. Taxation in Indonesia

Tax is a contribution from the people to the state that is required by law, the return for which cannot be received directly by the people.(Hertati, 2021). According to Soemitro, tax is a transfer of wealth from the people to the state treasury to finance routine expenditures and the surplus is used for public saving which is the main source for financing public investment.(Utomo & Maharani, 2013).

Suandy explained that there are two functions of tax, including the financial function (budgeter), which is to put as much money as possible into the state treasury, with the aim of financing state expenditures; and the regulatory function (regulerend), namely tax is used as a tool to regulate society in the economic, social, and political fields with certain goals.(Utomo & Maharani, 2013).

According to the collection mechanism, taxes are divided into two, namely direct taxes and indirect taxes. Direct taxes are taxes whose tax burden cannot be transferred to other parties, for example income tax, land and building tax, and so on, while indirect taxes are taxes whose tax burden can be transferred to other parties, for

example value added tax, motor vehicle transfer tax, and so on.(Utomo & Maharani, 2013).

Taxation in Indonesia adopts a self-assessment system, where taxpayers (WP) are given the trust and responsibility to calculate, pay and regularly report their tax obligations to the tax service office or KPP.(Agustini & Widhiyani, 2019).

In addition, based on Article 1 of Law Number 7 of 1983 concerning Income Tax as last amended by Law Number 36 of 2008, specifically regulating the subject and object of tax, Indonesia adopts the principle of source and domicile as its taxation system. Based on data from the Ministry of Finance of the Republic of Indonesia (2012), the largest revenue in Indonesia comes from taxes. Revenue from taxes exceeds revenue from agricultural products in Indonesia. Tax revenue in Indonesia is divided into several parts, namely Oil and Gas Income Tax, Non-Oil and Gas Income Tax, VAT and PPnBM, PBB, BPHTB, excise, and other taxes.(Widyati et al., 2020).

B. E-commerce

E-commerce or electronic commerce, in a broad sense, means business transactions conducted over a network, using computers, and telecommunications, or in other words, e-commerce refers to the exchange of goods or services for value on the internet. Some of the activities included in it include online shopping, electronic funds transfer, Electronic Data Interchange (EDI), and online trading of financial instruments.(Juniansyah et al., 2020). While the definition of e-commerce is a process of buying and selling products electronically by consumers and from company to company with computers as intermediaries for business transactions.(Risald, 2021). Five classifications of e-commerce according to India, namely (1) Business to Customers or B2C; (2) Business to Business or B2B; (3) Government to Customers or G2C; (4) Government to Business or G2B; and (5) Customers to Customers or C2C, where e-commerce is usually widely used by B2B and B2C.

Indonesia currently has 248 million residents, with a total of 55 million internet users in Indonesia in 2011. The Indonesian Internet Service Providers Association or APJII estimates that this number of internet users will continue to increase to reach 139 million users in 2015.(Asmirajanti & Tamly, 2023).

The results of a survey conducted by Utoyo and Ramda, 63% of internet users in Indonesia use the internet at home and as many as 71% of internet

users use computers or laptops to access the internet. Internet users surveyed mostly use the internet for searching and social networking, and most entrepreneurs and business people in Indonesia are connected through social networks and online advertising when marketing their products. For online buying and selling transactions, fashion items are the most popular items, followed by booking travel agency tickets and selling songs, videos, and games, where most entrepreneurs use Facebook and Twitter to market their products. The most popular payment method is by using ATM transfers at 70%, followed by using BCA clicks at 41%, credit cards at 30%, and cash payments at 24%, where consumers spend around 100 thousand to 500 thousand rupiah for one transaction.(Utomo & Maharani, 2013). The Surabaya Post daily stated that the projected number of internet users is expected to reach 139 million users in 2013, and it is expected that e-commerce turnover will also increase from year to year. In 2012, e-commerce turnover in Indonesia is estimated to reach 2.4 trillion rupiah, estimated to reach 4.4 trillion rupiah in 2013, and projected to reach 7.2 trillion rupiah in 2014.

C. E-commerce Transactions as a Potential Source of Tax Revenue in Indonesia

The increase in tax revenue each year seems to still not be in accordance with the APBN target proposed by the government. According to the Surabaya Post Daily, the realization of tax revenue in 2012 only reached 980.1 trillion rupiah or 3.6% below the target of 1,016.2 trillion rupiah. In the Asian region, Indonesia is also one of the countries with the lowest tax revenue when compared to its population, with a ratio of only 12.8%. In fact, as stated by Sulandoko in APJII, the middle class is growing rapidly to reach 60 million people, however, the number of personal NPWPs is only 23 million people, and the number of corporate NPWPs is only around 500 thousand(Asmirajanti & Tamly, 2023).

From the facts above, the Directorate General of Taxes began to observe the existence of online buying and selling transactions or e-commerce that are currently booming in Indonesia. The Directorate General of Taxes feels that there are still many e-commerce transactions that have not been taxed because there is no binding tax system. On the other hand, the Directorate General of Taxes still finds it difficult to collect taxes on e-commerce transactions because the type of

business and ownership are still unclear, and whether online traders are included in the category of taxable taxpayers or not. The Directorate General of Taxes has visited APJII to discuss e-commerce transactions. APJII suggested that the Directorate General of Taxes can facilitate the imposition of taxes on online transactions by holding a national payment gateway. Until now, there has been no official payment gateway either held by the private sector or the government. Indonesia still uses international payment gateways (Asmirajanti & Tamly, 2023).

Payment gateway is an online payment. Several payment gateways are available in Indonesia, such as Veritrans and DOKU, but these payment gateways are still not integrated and connected to taxation for e-commerce transactions (Utomo & Maharani, 2013). APJII also considers that the DGT also needs to consider Law Number 11 of 2008 concerning Electronic Transaction Information. In this Law, it discusses the regulation regarding electronic information and transactions as well as the regulation regarding prohibited acts in electronic information and transactions.

DJP also needs to consider international tax policies and cyber law. International tax policies regarding e-commerce transactions are regulated by the OECD. The OECD is an international organization that has a mission to improve policies that will improve the economy and social welfare of people around the world (Penyusun et al., 2021). In addition to recommending policies designed to improve people's lives, the organization, which was founded in 1961 and has 34 member countries, also works with governments around the world to set international standards.

One of the international policies that has been made by the OECD is the policy on taxes for e-commerce transactions. The OECD in Sakti stated that there are five tax principles proposed for the regulation of e-commerce transactions in the report made by the Committee on Fiscal Affairs (Riphat, 2022) includes (1) Neutrality, tax provisions must be neutral for all forms of trade, both electronic and traditional; (2) Efficiency, costs such as compliance costs for taxpayers and administrative costs for the Directorate General of Taxes must be truly minimized; (3) Certainty and simplicity, tax regulations must be clear and easy to understand so that taxpayers know the tax imposition when transactions are carried out; (4) Effectiveness and fairness, tax calculations must

be truly precise at the right time; (5) Flexible, the tax system must be flexible and dynamic to ensure that the system can follow technological and trade developments. These five things can be considered if the Directorate General of Taxes wants to levy taxes on e-commerce transactions. Other things that need to be considered by the Directorate General of Taxes are OECD regulations and their implications for Income Tax (PPh) and Value Added Tax (PPN).

Tax subjects will be taxed if they receive or obtain income. The legal basis for Income Tax is Law No. 7 of 1984 concerning Income Tax (PPh) as amended by Law No. 36 of 2008. This law regulates the imposition of tax on tax subjects regarding income received or obtained in a tax year (Hidayat & Damayanti, 2024).

Mardiasmo, furthermore, said that there are three principles of tax collection, namely (1) the principle of domicile or the principle of residence, where the state has the right to impose tax on all income of taxpayers who reside in its territory, both income originating from within and outside the country, and this principle applies to domestic taxpayers; (2) the principle of source, where the state has the right to impose tax on income originating in its territory without considering the taxpayer's place of residence; (3) the principle of nationality, where the imposition of tax is linked to the nationality of a country (Hidayat & Damayanti, 2024).

OECD countries have agreed that the collection of income tax on e-commerce transactions that have a permanent establishment will use the source principle, if they do not have a permanent establishment then the domicile principle will be used (Sihombing, 2021). Definition of BUT according to Article 2 paragraph 5 of the Income Tax Law, namely Permanent establishment is a form of business used by individuals who do not reside in Indonesia, individuals who are in Indonesia for no more than 183 (one hundred and eighty three) days in a period of 12 (twelve) months, and bodies that are not established and domiciled in Indonesia to run a business or carry out activities in Indonesia, which can be in the form of: (a) management seat; (b) company branch; (c) representative office; (d) office building; (e) factory; (f) workshop; (g) warehouse; (h) space for promotion and sales; (i) mining and excavation of natural resources; (j) oil and gas mining work areas; (k) fisheries, livestock, agriculture, plantations, or forestry; (l) construction projects, installations, or assembly

projects; (m) provision of services in any form by employees or other persons, as long as it is carried out for more than 60 (sixty) days in a period of 12 (twelve) months; (n) a person or body acting as an agent whose position is not independent; (o) an agent or employee of an insurance company that is not established and not domiciled in Indonesia that receives insurance premiums or bears risks in Indonesia; and (p) a computer, electronic agent, or automatic equipment owned, rented, or used by an electronic transaction organizer to carry out business activities via the internet. Tax implications for e-commerce will arise if the tenant of space at an Internet Service Provider or internet service provider is a company domiciled abroad.(Sihombing, 2021).

The presence of a foreign company through a website raises the question of whether the company is a BUT. In accordance with Article 2 paragraph 5 of the Income Tax Law, this activity does not create a BUT. If the activity provides services through its website, the company may be subject to Article 26 Income Tax, assuming that the company does not have a Double Taxation Agreement with Indonesia (P3B). If the company has a server, furthermore, the server will create a BUT on the condition that the server has a fixed and definite location, so that it can be subject to Income Tax(Sudrajat, 2020).

Budilaksono added that all transactions related to the preparation for operating a website, where the server is owned by a foreign taxpayer, will be treated the same as explained above. For example, one of the website tenants, who is a foreign taxpayer, uses the website to store certain information, which is then offered to a third party, so that the third party becomes its customer, and the customer pays a fee to access the information in question, will be included in the royalty category according to the explanation of Article 4 paragraph (1) letter h of the Income Tax Law. So if the customer is an Indonesian taxpayer, the website tenant must be deducted with Article 26 Income Tax(Sihombing, 2021).

Value Added Tax (VAT) is a tax imposed on the delivery of imported Taxable Goods or Taxable Services carried out by Taxable Entrepreneurs, and can be imposed multiple times each time there is an increase in value and can be credited. The legal basis for VAT is Law No. 8 of 1983 concerning Value Added Tax and/or Sales of Luxury Goods as amended by Law No. 42 of 2009. As stated in Article 11 Paragraph 1 of Law No. 8 of 1983 as amended by Law No. 42 of 2009, tax is

payable at the time of (a) delivery of Taxable Goods; (b) import of Taxable Goods; (c) delivery of Taxable Services; (d) utilization of Intangible Taxable Goods from Outside the Customs Area; (e) utilization of Taxable Services from Outside the Customs Area; (f) export of Tangible Taxable Goods; (g) export of Intangible Taxable Goods; and (h) export of Taxable Services. The place where Value Added Tax is owed according to Article 12 of Law No. 42 of 2009 is "(1) Taxable Entrepreneurs are owed tax at their place of residence or domicile and where business activities are carried out or other places determined by the Director General of Taxes. (2) Upon written notification from the Taxable Entrepreneur, the Director General of Taxes may determine one or more places as the place where tax is owed. (3) In the case of imports, tax is owed at the place where Taxable Goods are entered. Collection is carried out by the Directorate General of Customs and Excise(Sihombing, 2021).

"An individual or entity that utilizes Intangible Taxable Goods and/or Taxable Services originating from outside the Customs area within the Customs area, is liable for tax at the place of residence or domicile and/or place of business activity." This is in line with the OECD which recommends the place of VAT liability, namely where consumption of goods/services occurs, in article 1 of the four taxation models for e-commerce transactions, namely (1) Taxation of cross-border trade must be under the jurisdiction where consumption takes place.(Ridho, 2021).

Budilaksono further added that there are two types of e-commerce transactions, namely transactions related to the creation of website designs and transactions that can be done through websites. The creation of website designs and homepage creation are included in advertising services, which in accordance with Article 4A paragraph 3 of the VAT Law and Article 5 of PP-144/2000 are not included in the types of services that are exempt from VAT. Therefore, the delivery of website design services and homepage creation are subject to VAT(Sihombing, 2021).

Winardi said, according to the OECD Characterization, there are 28 types of e-commerce transactions that can be done through a website and are subject to Value Added Tax, including (1) Electronic order process for intangible goods; (2) Electronic ordering and downloading of digital products; (3) Electronic ordering and downloading of digital products for the purpose of commercial exploitation of

copyright; (4) Update activities and additions to software; (5) Granting free permission to use software for a certain period of time; (6) Transactions where the buyer gets the right only once to use software or other digital products; (7) Rights to place software and technical assistance; (8) Agreements with copyright providers to access software; (9) ASP transactions; (10) License fees for ASP; (11) Provision of space on a server to accommodate a website; (12) Software maintenance; (13) Space utilization services to store databases; (14) Technical assistance carried out online; (15) Submission of information to customers; (16) Submission of products in the form of information along with additional customer data analysis; (17) Payment transactions for advertising fees that appear; (18) Professional service consultations; (19) Confidential technical information; (20) Information sent to customers; (21) Access to certain websites; (22) Catalog placement by merchants online; (23) Online auctions; (24) Sales referral programs; (25) Content purchase transactions; (26) Broadcast-based streaming; (27) Payments made by Content Providers to website operators so that their content is displayed on the website; and (28) Subscriptions to websites that allow downloading of digital products.(Utomo & Maharani, 2013).

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

The realization of state revenue from the tax sector in 2012 was still below what had been budgeted. The number of taxpayers has indeed always increased every year, but this has not been able to cover the deficit from the realization of the budget. Indonesia is also still included in the countries with the lowest tax revenues when compared to other countries in Asia. Reflecting on other countries, one way that can be done by the Directorate General of Taxes is to start reviewing e-commerce transactions or electronic commerce that are currently booming in Indonesia. Indonesia is one of the countries whose e-commerce transactions are developing. Most internet users in Indonesia usually offer their products through social media. The value of these e-commerce transactions is quite large and always increasing, and it would be a shame if they were not taxed, especially considering the number of internet users which also always increases every year. In fact, if Indonesia looks back at other countries, other countries already

have appropriate regulations to collect taxes on these transactions, where other countries also harmonize existing international regulations. Therefore, the Directorate General of Taxes needs to start considering this transaction as one of the tax revenues in Indonesia, because its value is very large and always increases every year.

B. Suggestion

Several things can be done by the Directorate General of Taxes to consider tax regulations on e-commerce transactions, namely (1) collaborating with related parties, such as APJII and the Ministry of Communication and Information; (2) paying attention to an effective tax collection system and considering the modernization of the tax administration system for e-commerce transactions; (3) carrying out harmonization and convergence of international standards and OECD regulations, and carrying out bilateral agreements to avoid double taxation.

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