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Unraveling the Ratio Legis of the *HKPD* Law on Local Taxes and its Implications for the Community

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ABSTRACT

Law No. 1 of 2022 on Financial Relations between the Central Government and Local Governments (HKPD Law) comes as a response to the challenges of implementing fiscal decentralization in Indonesia, particularly in local taxes and levies. This article analyzes the ratio legis behind the birth of the HKPD Law and its implications for society. This research uses a normative approach by examining regulations and Constitutional Court decisions relating to local taxes. The results show that the HKPD Law aims to improve local taxation regulations by strengthening the tax structure, simplifying retribution, and increasing the effectiveness and efficiency of local tax collection. However, this policy also raises potential challenges, such as the impact on the business world, community welfare, and harmonization with other tax policies. Therefore, the implementation of the HKPD Law needs to be closely monitored to achieve the main objectives of fiscal decentralization, namely improving public services and community welfare equally.

KEYWORDS

Ratio Legis; *HKPD* Law;
Local Taxes



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INTRODUCTION

The fiscal decentralization policy, which began in 2001, aims to boost the regional economy and reduce income inequality between regions in Indonesia.¹ The first legislation underlying fiscal decentralization in regional autonomy was Law No. 5/1974 on the Principles of Government in the Regions. At that time, an evaluation of its implementation found that the degree of fiscal decentralization was high, and regional inequality was large. Thus, fiscal decentralization in Indonesia's reform era was first implemented based on renewed legislation, namely Law No. 22/1999 on Regional Government (Law No. 22/1999), and Law No. 25/1999 on Fiscal Balance between Central and Regional Governments (Law No. 25/1999).²

Law No. 22/1999 states that the implementation of regional autonomy must consider regional economic capacity, regional potential, socio-cultural, socio-political, population, and area. This law also stipulates that the discretion given to the regions must be proportional, which is realized by the utilization of resources in the regions equitably and responsibly.³ The implementation of regional autonomy must be in the spirit of the constitution and aims to increase regional independence within the framework of the Unitary State of the Republic of Indonesia. Law No. 25/1999 strengthens and supports Law No. 22/1999 by ensuring the availability of fiscal resources for regional governments and supporting the implementation of regional governance that is integral to the central government.⁴

Both regulations have undergone several revisions until the latest Law No. 23/2014 on Local Government (Local Government Law), Law No. 33/2004 on Fiscal Balance between the Central Government and Local Government (PKP-PP Law), and Law No. 28/2009 on Local Taxes and Levies (PDRD Law). However, during the two decades of implementing fiscal decentralization policies through the PKP-PP Law and the PDRD Law, there have been developments and implementation dynamics that require new changes and innovations to further optimize the objectives of decentralization implementation, namely improving public services and community welfare equally throughout the archipelago.⁵ The main problems and challenges in the practice of implementing Law 33 of 2004 and Law 28 of 2009, namely Transfers to Regions and Village Funds (TKDD), as well as Regional Taxes and Levies (PDRD) as one of the main components of fiscal decentralization have not provided a significant leap of improvement in the distribution of public services and public welfare on various economic and social indicators, such as the Human Development Index, Poverty Level, Life Expectancy, Gross Regional Domestic Product, and Inequality of financial capacity between community groups.⁶

Therefore, the PKP-PP Law and the PDRD Law were revoked and replaced with Law Number 1 Year 2022 on Financial Relations between the Central and Local Governments (HKPD Law). The birth of the HKPD Law is a form of improvement effort

¹ Adissya Mega Christia & Budi Ispriyarso, "Desentralisasi Fiskal dan Otonomi Daerah di Indonesia" (2019) 15:1 Law Reform 149–163.

² Wihana Kirana Jaya, *Ekonomi Kelembagaan dan Desentralisasi* (Yogyakarta: UGM Press, 2021), 23.

³ Bakti Setiawan & Sudharto P Hadi, "Regional autonomy and local resource management in Indonesia" (2007) 48:1 Asia Pac Viewp 72–84.

⁴ Naning Fatmawatie, *Otonomi Daerah dan Pendapatan Daerah* (Kediri: STAIN Kediri Press, 2016), 41.

⁵ Eko Agung Wibowo & Alfia Oktivalerina, "Analisis Dampak Kebijakan Desentralisasi Fiskal terhadap Penurunan Tingkat Kemiskinan pada Kabupaten/Kota: Studi Kasus Indonesia pada 2010-2018" (2022) 5:1 Bappenas Work Pap 97–119.

⁶ Alit Ayu Meinarsari & Harsanto Nursadi, "Arah Baru Hubungan Keuangan Pemerintah Pusat dan Pemerintahan Daerah: Sentralisasi Atau Desentralisasi" (2022) 7:8 Syntax Lit J Ilm Indones 10508–10525.



because there are several problems and challenges in practice so far, especially regarding PDRD. The local tax base in the PDRD Law is still limited. Although the PDRD Law regulates 16 types of local taxes, the many types of taxes are only imposed on 3 tax bases, namely: consumption, property, and natural resources.⁷ In addition, the PDRD Law also regulates 32 types of local retribution, some of which are levies on public services that are obliged to be provided by local governments to the community, so that if they continue to be levied, they can lead to a high-cost economy for the community, such as Retribution for the Cost of Printing ID Cards and Civil Registration Deeds, Retribution for Testing Fire Extinguishers, Retribution for Funeral and Burial of the Dead, Retribution for Tera and Tera Ulang, and other retributions imposed on mandatory services of local governments.⁸

METHOD

This research uses a normative juridical approach, which focuses on the analysis of legislation and legal decisions related to local taxes and fiscal decentralization in Indonesia. This method is used to understand the ratio legis of the birth of Law Number 1 Year 2022 on Financial Relations between the Central Government and Regional Governments (HKPD Law) and its implications for society. The main data sources in this research are primary legal materials in the form of the HKPD Law, previous laws related to local taxes (PDRD Law, PKP-PP Law, Local Government Law), and decisions of the Constitutional Court related to local taxation. In addition, this research also uses secondary legal materials, such as books, scientific journals, and academic articles relevant to taxation policy and fiscal decentralization.

Data collection techniques were conducted through literature studies by tracing various regulations, scientific literature, and policy documents that discuss legal, economic, and administrative aspects in the implementation of the HKPD Law. Data analysis was conducted qualitatively using the descriptive-analytical method, namely describing legal provisions, identifying problems in the implementation of local taxation policies, and examining the impact of new regulations on local financial governance and community welfare. In this research, a comparative law approach is also used to assess the effectiveness of the HKPD Law compared to previous policies. Thus, the results of the analysis can provide insight into the advantages and disadvantages of the HKPD Law as well as more optimal policy recommendations for the sustainability of fiscal decentralization in Indonesia.

RESULT & DISCUSSION

I. Ratio Legis of the enactment of the HKPD Law about the Improvement of Local Tax Regulations

In its implementation, the PDRD Law has been tested and decided by the Constitutional Court (MK), namely:

- a. Constitutional Court Decision No.52/PUU-IX/2011 related to golf tax object.
- b. Constitutional Court Decision No.46/PUU-XII/2014 related to retribution for telecommunication tower control based on tax object sales value (NJOP).

⁷ Badan Pembinaan Hukum Nasional, *Hasil Penyelarasan Naskah Akademik Rancangan Undang-Undang tentang Hubungan Keuangan Antara Pemerintah Pusat dan Pemerintahan Daerah* (Jakarta: Kementerian Hukum dan Hak Asasi Manusia, 2021), 13.

⁸ *Ibid.*, 14.



SOETOMO JUSTICE

- c. Constitutional Court Decision No.15/PUU-XV/2017 related to motor vehicle tax on heavy equipment.
- d. Constitutional Court Decision No. 80/PUU-XV/2017 related to street lighting tax on self-generated electricity.

The Constitutional Court's decision certainly has an impact on the validity of several articles in the PDRD Law. In addition to these problems, there are norms that in their implementation experience obstacles due to overlapping with other laws, causing multiple interpretations in the field, such as local tax objects related to the consumption of goods/services that are considered to intersect with the object of value added tax (VAT). The regulation of Restaurant Tax objects in the PDRD Law does not regulate the boundaries between restaurants that provide food/beverage services (Restaurant Tax objects) and shops that only sell food/beverage (VAT objects), resulting in misinterpretation and differences of opinion in the field between the central tax collector (DG Tax) and the local tax collector (*Pemda*). In addition, the PDRD Law regulates that the object of Hotel Tax includes room rentals (other than rooms/accommodation) in hotels, but the description of the regulation is contained in the general explanation of the Law, not in the body, resulting in the regulation has not been fully implemented in the regions. Therefore, in practice, Hotel Tax is currently only imposed on accommodation services (rooms), while other room rentals (ballroom, office, ATM room in the hotel) are subject to VAT.⁹

The harmonization of administrative rules related to the evaluation of draft local regulations (*raperda*), the cancellation of local regulations (*perda*), and the imposition of sanctions and procedures for collecting local taxes in Law No. 28/2009 is also part of what needs to be considered as a consequence of the enactment of the Local Government Law. The Local Government Law stipulates a change in the mechanism for submitting the draft local tax bill to the Minister of Home Affairs and the Minister of Finance in parallel as stipulated in the PDRD Law, which is changed in the Local Government Law to be submitted only to the Minister of Home Affairs, while the Minister of Finance evaluates the draft local tax bill if there is a request for coordination from the Minister of Home Affairs. This mechanism has an impact on the length of time to complete the evaluation by the Central Government. Therefore, in Law No. 11 of 2020 on Job Creation, the mechanism is refined so that the submission of draft PDRD bills is still submitted in parallel to the governor (for district/city bills), the Minister of Home Affairs, and the Minister of Finance. The arrangement in the HKPD Bill is intended to be harmonious with the mechanism stipulated in the Job Creation Law, with the same objective, namely so that the process of completing the evaluation of PDRD draft local regulations by the Central Government can be accelerated.¹⁰

Thus, based on the description above, in its development, the local tax and retribution policy needs to be synchronized with the dynamics of developing regulations, which in this case is the birth of the HKPD Law. Several types of taxes that receive attention include:¹¹

a. Groundwater Tax

Based on the provisions of Article 69 of the PDRD Law, Groundwater Tax is a type of regency/city tax, whose tax base is based on Groundwater Acquisition Value (NPAT), and the amount of NPAT is determined by Regent/Mayor Regulation.

⁹ *Ibid.*, 223.

¹⁰ *Ibid.*, 224.

¹¹ *Ibid.*, 225.



SOETOMO JUSTICE

However, based on Article 15 paragraph (1) of the Local Government Law which regulates the division of concurrent government affairs between the Central Government and provincial and regency/city regions listed in the Annex to the Local Government Law regarding the division of government affairs in the field of Energy and Mineral Resources, the Geological Sub Affairs authorizes NPAT to the Provincial Government.

Therefore, in this HKPD Law, it is stipulated that the Regulation of Groundwater Acquisition Value as referred to in Article 69 paragraph (1) is stipulated by Governor Regulation, even though PAT remains a district/city tax. This is intended so that there is supervision and control of the determination of Groundwater Acquisition Value by the province over the collection of PAT by the regency/city government in the province concerned.

b. Non-metallic Mineral and Rock Tax (MBLB Tax)

Similar to Groundwater Tax, based on the provisions of Article 59 of the PDRD Law, MBLB Tax is a type of regency/city tax, whose tax base is based on the selling value of the results of the extraction of non-metallic minerals and rocks by referring to the market value or average price prevailing at the local location in the relevant regional area. If the market value is difficult to obtain, the standard price set by the authorized agency in the field of non-metallic minerals and rocks may be used.

However, based on the Local Government Law in the Annex to the Division of Concurrent Government Affairs Between the Central Government and Provincial and Regency / City Regions, for the division of government affairs in the field of Energy and Mineral Resources, the authority to set standard prices/benchmarks for non-metallic minerals and rocks is the authority of the provincial government.

In addition, the regulation of the exclusion of MBLB Tax object in Article 57 paragraph (2) letter a and letter b of the PDRD Law, namely non-metal mineral and rock extraction activities that are not commercially utilized, as well as by-products of other mining activities that are not commercially utilized, has caused problems in the form of differences in interpretation between local governments and taxpayers. In practice, there are different interpretations of the imposition of MBLB Tax on the utilization of land (both excavated and by-products) used in the taxpayer's production area. Therefore, the HKPD Law needs to emphasize the exclusion of both retrieval/utilization activities from the MBLB Tax object because, in principle, the MBLB Tax object is the MBLB retrieval activity as a business activity, the results of which are intended to be traded.

In addition, this provision needs to be harmonized with Article 130 paragraph (2) of Law Number 4 of 2009 as last amended by Law Number 3 of 2020 concerning Mineral and Coal Mining that the utilization of land/rock that is excavated during mining is subject to production fees so that the utilization of by-products in the PDRD Law is not an MBLB Tax object.

c. Hotel Tax

Based on Article 32 paragraph (1) of the PDRD Law, the Hotel Tax Object is a service provided by the Hotel with payment, including supporting services as a complement to the Hotel which provides convenience and comfort, including sports and entertainment facilities. The regulation has an intersection of tax objects with VAT objects as stipulated in Article 4 and Article 4A of the VAT and STLG Law (Law Number 42 of 2009) and its implementing regulations, which stipulate that the rental of rooms in hotels other than lodging and meeting/banquet rooms is a VAT object,



for example, room rental for the location of an Automated Teller Machine (ATM) in the hotel or room rental for a souvenir shop in the hotel. This has the potential to cause differences in views between central and local tax officials in the field of collecting VAT or Hotel Tax against taxpayers. Therefore, in this HKPD Law, the regulation is reaffirmed to be harmonious with the VAT and STLG Laws, by excluding room rentals for re-business in hotels (Business to Business), while room rentals that are for end consumers (Business to Consumer) such as lodging rooms, meeting rooms and meeting rooms (ballrooms) are local tax objects.

d. Restaurant Tax

Similar to the Hotel Tax, the regulation of Restaurant Tax in the HKPD Law is also harmonized with Article 4 and Article 4A of the VAT and STLG Law (Law No. 42 of 2009), particularly for bakery businesses that in practice often provide services such as restaurants. Therefore, the HKPD Law needs to emphasize the limitations of the activities of providing/selling food/drinks subject to VAT and those subject to local taxes, where to be categorized as a restaurant and subject to Restaurant Tax (which in this Law is integrated under the name of Specific Goods and Services Tax), must at least provide food and/or beverage serving services in the form of tables, chairs, and/or eating and drinking utensils.

Looking at the four types of taxes that receive attention in the HKPD Law above shows that there is still disharmony regarding their regulation. This can have an impact on the non-optimality of fiscal decentralization. Therefore, the birth of the HKPD Law should be able to optimize the objectives of fiscal decentralization as also mandated by the Local Government Law. As stated by Rudy Badrudin, fiscal decentralization is intended as a tool to achieve one of the state's goals, which is primarily to provide better public services and community empowerment through fiscal empowerment of local governments, one of which is related to tax affairs or public revenue.¹²

In line with that, in the perspective of the theory of the Welfare State as coined by R. Kranenburg, the welfare state requires the state to actively seek welfare, and act fairly that can be felt by the whole community evenly and balanced.¹³ Therefore, the ratio legis of the birth of the HKPD Law, one of which concerns the improvement of local tax arrangements, is to provide strengthening of the local tax and local retribution (PDRD) system through restructuring and consolidation of types of PDRD, new local tax sources, and simplification of types of local retribution, which are expected to create the welfare of the entire community in an even and balanced manner as mandated by the welfare state.

II. Potential Implications of the HKPD Law for the Community

Based on the description in the first sub-discussion above, it can be seen that the birth of the HKPD Law leads to progressivity, especially in efforts to harmonize several laws and regulations regarding local taxes that intersect. Apart from the positive things that have an impact on each region, several notes need to be considered by the government. It should be noted that the potential increase in revenue for each region through the HKPD Law departs from several contents, one of which is the content of several tariff

¹² Rudy Badrudin, *Ekonomika Otonomi Daerah* (Yogyakarta: UPP STIM, 2017).

¹³ R. Kranenburg I Dewa Gede Palguna, *Welfare State Vs Globalisasi: Gagasan Negara Kesejahteraan di Indonesia* (Depok: PT. RajaGrafindo Persada, 2019).



SOETOMO JUSTICE

provisions. The tariff provisions in the HKPD Law use a range price mechanism, for example, Article 15 paragraphs (1) and (2) which set the maximum BBNKB tariff at 12% and specifically for provincial-level regions that are not divided into autonomous regencies/cities at a maximum of 20%.¹⁴

With this mechanism, there is also the potential to hamper regional income due to the maximum tariff limit imposed by the local government. This is considered to make the regulative function unable to run effectively. The revenue function itself is an instrument to achieve goals in the economic, social, and cultural fields. Through tax instruments, the economy, society, and culture tend to develop faster. Then, the Official also states that the regulated function is an indirect tax function that can regulate the national economy to be productive and create a balance in economic growth so that tax objects and tax subjects can grow more and the tax base also increases.¹⁵ With the existence of a range price in the HKPD Law, which is expected to be an instrument of competitiveness, it is counterproductive to the regular tax function which has the potential to hamper regional and national economic growth.¹⁶

In addition to the above provisions, some provisions also have the potential to cause new problems in practice. Some provisions that should be highlighted are:

- a. Reduction of motor vehicle tax rates (Article 8 of the HKPD Law). This provision was originally enacted to increase revenue in the district/city. However, it is feared that this policy will have a negative impact on the environment and increase congestion.
- b. Surface Water Tax (PAP) specifically for businesses in the forestry sector or non-water abstraction activities (Article 28 - Article 32 of the HKPD Law). This tax levy has the potential to have a negative economic impact because it is calculated as a production cost by entrepreneurs. In addition, the tax levy can have an impact on the price of goods produced by industries in the forestry sector or activities that do not take water.
- c. The increase in the percentage of land and building tax for rural and urban areas or PBB-P2 (Article 41 paragraph (1) of the HKPD Law). The increase in the percentage of PBB-P2 from 0.3% to 0.5% in this case can burden the business world and the public in buying property. Therefore, it is expected that the government can classify land and buildings for business and non-business locations.
- d. The Policy on Acquisition Duty on Land and Building Rights (BPHTB) with a maximum rate of 5% (Article 47 of the HKPD Law). This policy has the potential to burden the business world, especially in buying and selling property.
- e. Withdrawal of tax on the use of self-generated electricity (Article 58 paragraph (3) of the HKPD Law). Another thing that has been highlighted is the Specific Goods and Services Tax (PBJT) for Electric Power. This PBJT arrangement has been by several points of the Constitutional Court's decision but still has notes. This is because tax collection on the use of self-generated electricity indicates the government's limitations in providing infrastructure and providing independent electricity. Therefore, it needs to be considered to continue to pay attention to balance and see the contribution of business actors who have self-generated electricity to the regional economy.

¹⁴ Hukum Online, "Sejumlah Catatan KPPD Terhadap UU HKPD dan Tata Kelola Ekonomi Daerah", (2021), online: *Huk Online* <<https://www.hukumonline.com/berita/a/sejumlah-catatan-kppd-terhadap-uu-hkpd-dan-tata-kelola-ekonomi-daerah-lt61b9b43956d1b?page=3>>.

¹⁵ Siti Resmi, *Perpajakan Teori dan Kasus* (Yogyakarta: Selemba Empat, 2009), 3.

¹⁶ Dewan Redaksi, "Pengaruh UU HKPD bagi Kemakmuran dan Kesejahteraan Masyarakat pada Sektor Pajak", (2022), online: *HnG Consult* <<https://hng.co.id/pengaruh-uu-hkpd-bagi-kemakmuran-dan-kesejahteraan-masyarakat-pada-sektor-pajak/>>.



SOETOMO JUSTICE

- f. A reduction in the Non-Metallic Mineral and Rock (MBLB) Tax rate (Article 74 of the HKPD Law). This reduction in tax rates could potentially increase the exploration of non-metallic minerals and rocks. Therefore, the policy will have negative environmental and social consequences in the regions.

From the description above, if it is associated with the ratio legis of the birth of the HKPD Law in the academic paper of the HKPD Bill, as also described in the first sub-discussion, the study of the negative impact or potential implications generated by the HKPD Law does not receive attention. In other words, the legislators tend to only pay attention to the aspect of increasing regional income.

The HKPD Law is a law that can boost national income, as well as regional income. In line with the objectives behind the formation of the HKPD Law, the existing content is a solution to economic developments and the dynamics of fiscal decentralization in each region.

In addition, the HKPD Law can also make the effectiveness and efficiency of tax collection increase, as well as harmonization in terms of financial relations between the central government and local governments. One of the important things about the HKPD Law is the form of implementation and implementation of the principle of regional autonomy, namely decentralization, which will become more optimal so that it can make the spirit of autonomy of each region increase, which leads to increased revenue in each region. However, the HKPD Law as a form of improvement of related laws needs to be further refined, especially in terms of tariff setting.

The determination of tariffs in the HKPD Law must consider previous related regulations to ensure the welfare and prosperity of the community from various circles, not only for ordinary people, but also from business people so that the expected increase in revenue from various sectors, lines, and instruments can be realized. Then there is a need for readjustment, especially in setting the maximum tariff limit so as not to harm business actors in each region. Business actors have a crucial role in terms of increasing regional and state revenues. In addition, the adjustment of the tariff setting must also consider the tax's regulated function to ensure that the tax remains optimal as an instrument that can accelerate so that the balance between the economy, regions, and security can be ideally realized.

CONCLUSION

The ratio legis of the birth of the HKPD Law concerning the taxation sector is in the context of synchronizing and harmonizing several other laws and regulations that have experienced obstacles in their implementation. Moreover, several Constitutional Court decisions, certainly have an impact on the validity of several articles in the PDRD Law so changes need to be made. As for several types of taxes that get attention in the HKPD Law, among others: 1) Groundwater Tax; 2) Non-metallic Mineral and Rock Tax (MBLB Tax); 3) Hotel Tax; and Restaurant Tax. Adjustments and changes to the provisions of several types of taxes are also an effort to improve fiscal decentralization, especially to increase the revenue of each region.

The potential increase in revenue for each region through the HKPD Law departs from several contents, one of which is the content of several tariff provisions. However, the changes regarding several tariff provisions have implications for several things, including: 1) An increase in the percentage of Land and Building Tax for Rural and Urban Areas or PBB-P2 can burden the business world and the public in buying property; 2) The reduction in motor vehicle tax rates is feared to have a negative impact on the



SOETOMO JUSTICE

environment and increase congestion; 3) The collection of taxes on the use of self-generated electricity indicates the government's limitations in providing infrastructure and independent power supply; 4) The collection of Surface Water Tax (PAP) specifically for businesses in the forestry sector or non-water activities has the potential to have a negative economic impact, because it is calculated as a production cost by entrepreneurs; 5) The reduction in the Non-Metallic Minerals and Rocks Tax rate has the potential to increase exploration of non-metallic minerals and rocks; and 6) The Policy on Acquisition Fees for Land and Building Rights (BPHTB) with a maximum rate of 5% has the potential to burden the business world, especially in buying and selling property.

DECLARATION OF CONFLICTING INTERESTS

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SOETOMO JUSTICE

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