

THE URGENCY OF THE IMPOSITION OF VALUE ADDED TAX (VAT) ON DIGITAL PRODUCTS WITH THE TYPE OF SMARTPHONE APPLICATIONS IN THE ERA OF THE INDUSTRIAL REVOLUTION 4.0

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Abstract

The current era of globalization makes Indonesia can easily develop to compete with other countries. Until now, Indonesia is occupying the Industrial Revolution Era 4.0 so that public awareness and appreciation is needed. The application growth, which is already high and widely used by the public, is considered to be a new source of income for the state. Due to the growth of applications and their increasing number of users, smartphone applications have become public consumption, so they can be included as objects of Value Added Tax (VAT). The imposition of VAT on smartphone applications can greatly increase state revenues due to the very high number of smartphone users in Indonesia. Through the results of this study, VAT on smartphone applications is considered to be effective if it can be used as a means to increase state income and create justice for all business actors, both conventional and digital.

Keywords : VAT; Product, Digital, Application, Smartphone

INTRODUCTION

The use of smartphones at this time has become a trend that spreads in society. Smartphones are innovations resulting from technological developments that continue to advance today. Smartphones feature a variety of applications that can be downloaded and accessed using the internet. The applications found on smartphones have many functions, including being able to make it easier for people to communicate remotely with the video call feature provided on the line, whatsapp, and instagram applications, being able to make online buying and selling transactions to take advantage of this feature provided by the shopee application, Lazada, JD ID, and so on, and can carry out promotions for personal and corporate interests. This feature is owned by the Facebook and Twitter applications.¹

¹ T. M. Intan. *et al.* "Pengguna Smartphone dalam Menunjang Aktivitas Perkuliahan oleh Mahasiswa Fisipol Unsrat Manado." *E-journal Acta Diurna* (2017). Hal. 1-15

In the current era of globalization, Indonesia can easily develop so that it can take part in global competition. Until now, Indonesia is occupying the Industrial Revolution Era 4.0 so that public awareness and appreciation is needed. People must be able to have intelligence in using technology, especially smartphones. Smartphones are considered to be able to print a quality generation because the current generation can use smartphones as a place to seek knowledge.²

With the smartphone application, the whole community feels it is easier to get knowledge and information. The activities carried out are also considered to be facilitated, for example making non-cash payments can be done using an application on a smartphone, even now with an application on a smartphone, people can easily access all reliable daily information. The development of digital applications can no longer be assessed how far it has progressed. There is no doubt that many companies are experiencing development due to technological advances.

The growth of applications that can no longer be controlled and widely imposed by the community creates problems with taxes that are mandatory. Transactions used with various applications provided on smartphones can facilitate access to purchases to payments. Therefore, no one can know the users whose applications have been provided, both where the user is located, and what their activities are with the various applications. The government will continue to supervise users of digital smartphone applications so that unwanted things do not happen.³

We often hear theories related to law that we have to relate to cases that we find in the community. This legal theory functions so that we can review aspects of actions and unlawful acts in accordance with the theories that have been submitted by previous experts. Any act that violates the law in essence must be sanctioned, but there are some opinions that contradict this. There are two theories that will be associated with this case, namely the theory of Lawrence M. Friedman and the theory of Roscoe Pound.⁴

According to Lawrence M. Friedman in his theory, law is a substance that must be associated with all actions.⁵ The existence of regulations governing the imposition of tax

² S. Arsyad. "Efektifitas UU ITE dalam Pengaturan Perdagangan Elektronik (*Ecommerce*)". *Jurnal Hukum Bisnis* (2010). Hal. 34.

³ S. Jonathan. *Perdagangan Online: Cara Bisnis di Internet*. Jakarta: PT. Elex Media, 2012. Hal. 56.

⁴L. Nazaruddin. "Teori Hukum sebagai Sarana/Alat untuk Memperbaharui atau Merekayasa Masyarakat." *Pakuan Law Review Jurnal* (2017). Hal. 73-94.

⁵ Lawrence M. Friedman dan J. Ladinsky. "Social Change and the Law of Industrial Accidents." *Columbia Law Review Association* (2016). Hal. 50-82.

rates also regulates sanctions and penalties for anyone who violates these regulations.⁶ In addition, there is also a theory put forward by a legal expert, namely Roscoe Pound related to social changes that occur in the legal aspect. Pound argues that law can be a tool to create social change, where social change is indispensable in social life because the behavior of each person is different. Based on this, if you want a law that can work well, then all aspects must work well too. Not only legal aspects, but every field must work together.⁷

Digital products such as smartphone applications are considered important to be subject to VAT because basically smartphones and their applications have become public consumption which is the object of VAT so far. Users of applications found on smartphones are required to pay VAT to the authorities. VAT is intended to be a source of revenue in order to support financing that will be used for development costs.⁸ The tax issued greatly determines the capacity of the budget obtained. Therefore, the urgency of VAT imposed on smartphone applications must be followed up for the smooth use of future applications, Indonesia's economic growth, and justice for all business actors in Indonesia.⁹

Through the explanation above, the author is interested in making an article with the title "The Urgency of the Imposition of Value Added Tax (VAT) on Digital Products with the Type of Smartphone Applications in the Era of the Industrial Revolution 4.0" to find out the laws for the VAT imposition set for smartphone application type digital products and to find out the effectiveness of using VAT rates for smartphone application users if associated with the theory presented by Lawrence M. Friedman and Roscoe Pound, as well as associating with the progressive legal paradigm.

RESEARCH METHOD

In making a scientific work, the research method is very important because through the research method, how the preparation of the scientific work is carried out will be clear. The research method in making this article is a normative research method, which

⁶ M. Ridwansyah. "Mewujudkan Keadilan, Kepastian dan Kemanfaatan Hukum dalam Qanun Bendera dan Lambang Aceh" *Jurnal Konstitusi* (Juni 2016). Hal. 278.

⁷ F. Munir. *Teori-teori Besar (Grand Theory) dalam Hukum*. Jakarta: Kencana Prennamdela Group, 2013. Hal. 56.

⁸ R. S. Brotodihardjo. *Pengantar Ilmu Hukum Pajak*. Bandung: PT. Refika Aditama, 2013. Hal. 21.

⁹ R. Andi. *et al.* "Penerapan Surat Pemberitahuan Elektronik (E-SPT) Masa VAT terhadap Pemenuhan Pemeriksaan pada Wajib Pajak Badan (Studi Kasus KPP Madya Makassar)". *Jurnal Riset Perpajakan* (2020). Hal. 227-238.

emphasizes the way people interpret, and understand their experiences to understand individual social realities, along with legal theory, legislation, and so on (Abdul Kadir, 2015). Through this type of normative legal research, the author uses a conceptual approach. To compile this scientific paper, the author conducted a literature study to conceptualize the imposition of taxes on digital products of the type of smartphone application by reading, browsing, exploring, and collecting related data.

RESULT AND DISCUSSION

Regulation of VAT on Electronic Transactions Determined for Digital Products

The legal basis for VAT itself is Law Number 42 of 2009 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods as laws that amend several previous VAT and STLG laws. However, in order to optimize the use of fiscal potential in e-commerce transactions, Indonesia has established fiscal rules, such as Presidential Decree Number 74 (E-Trade Roadmap) of 2017 concerning the National Electronic Trading System Roadmap. (E-Trade Roadmap) 2017-2019, Government Regulation Number 46 of 2013 and Government Decree Number 23 of 2018 concerning Corporate Income Tax Received or Received by Taxpayers with Certain Sales Amounts, Circular Letter No. 62/PJ/2013 concerning Confirmation of E-commerce Transaction Tax Regulation Number 06/PJ/2015, Tax Return Number SE04/PJ/2017 concerning Withholding or Collection of Income Tax in E-commerce Transactions, Circular Letter of the Director of Taxes Number SE04/PJ/2017 concerning Determination of Permanent Establishment for Foreign Tax Subjects Providing Application Services and/or Content Services via the Internet, and so on.¹⁰

There is almost no difference between ordinary commercial transactions and e-commerce transactions, the difference only lies in the method or means of the transaction. Therefore, there is no difference between the tax treatment of e-commerce transactions and conventional transactions. Circular Letter 62/PJ/2013 regulates general taxation rules for e-commerce transactions including VAT, STLG, and Income Tax. Regarding the imposition of income tax, the definition of taxable goods has been explained, namely income or any economic opportunity that is obtained or obtained by a Taxpayer outside Indonesia and Indonesia, and can be in the form of a name and any economic opportunity used for consumption or to increase. Taxpayer welfare forms such as: employment and self-employment income, company or activity income, personal property or capital income in the form of real estate, such as interest, identity numbers,

¹⁰ S.M. Ali dan V. Syaron. "Apakah Pajak Pertambahan Nilai atas E-commerce dapat Diterapkan di Indonesia?" *Journal of Accounting Science and Technology* (2020). Hlm. 26-38.

license fees, rent and sales proceeds, assets or rights that are not used for purposes commercial, and other income (Lodang, 2019). Meanwhile, the procedure is regulated in the Minister of Finance Regulation No. 48/PMK.03/2020 concerning Procedures for Appointing Collectors, Collections, and Deposits, and Reporting Value Added Tax on the Utilization of Intangible Taxable Goods and/or Taxable Services from Outside the Customs Area within the Customs Area through Weighing Trade through the Electronic System.

Regarding VAT and STLG, it has been clarified that the definition of a Taxable Entrepreneur is an entrepreneur who provides taxable goods or services needed for collection, deposit, and notification of VAT and STLG. Minister of Finance. Payment of VAT for a Taxable Entrepreneur must be no later than the end of the following month after the end of the Tax Period and before the issuance of the VAT Periodic Return. The main body of income tax in the business process of providing services – the provision of space and/or time in the online market media – is an individual or legal entity that generates income through the provision of services. Place and/or time of delivery of information in other ways. The subject of income tax in the business process of providing space and/or time in the media on the Internet market is income from the provision of space and/or time in other media. to transmit information, the Dealer pays the organizer to become an Internet marketplace. If online market participants are corporate taxpayers, sellers as service users are required to withhold PPh 23, and if online market participants are taxpayers, they are required to withhold PPh 21.¹¹

Income tax 4 (2) If the online market operator is an Micro, Small, and Medium Enterprises (MSME) with a turnover of less than EUR 4.8 billion, or if the online market operator is a foreign taxpayer, the withholding tax is 26 Income Tax Law. Online market managers must take this income into account when calculating taxable income in the annual tax return, according to 17 Income Tax Law. If the online market is an MSME, the online market manager only needs to deposit 0.5% of the monthly final income tax, and add this income as income to the annual report of the Annual Tax Return Records, subject to the final income tax.

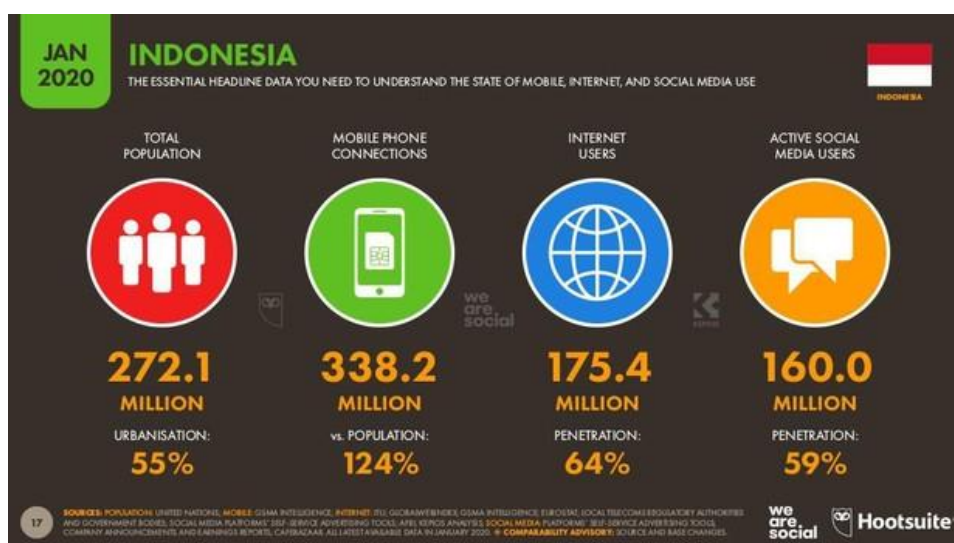
The subject of sales tax in this business process is to provide services, provide time and/or location in other ways. VAT must be paid at the time of delivery, payment or use, whichever comes first. The tax basis used is based on replacement costs, including costs associated with tax subjects documents required by the online market operator. For

¹¹ Hidayatullah. *Urgensi Transaksi Pembayaran Penerimaan Negara Bukan Pajak Melalui Aplikasi Your All Payment terhadap Pelayanan Jasa Akta Badan Hukum Notaris*. Makassar: Universitas Hasanuddin, 2020. Hal. 86.

example in the form of subscription fees, registration fees, or rent. Under 4.8 billion, time and/or location services provided by other means are not subject to VAT.

Because the imposition of VAT on smartphone applications is not yet known in Indonesia, there is no specific legislation that regulates this. So, if it is to be implemented, the government must first add a smartphone application as one of the VAT subjects, which is regulated in Law no. 42 of 2009 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods.

Analysis of VAT Imposition on Digital Products for Smartphone Applications



Picture 1: Smartphone user data in Indonesia in 2020.

Source: We Are Social

Through the data from the image above, smartphone users are very high when viewed from the population in Indonesia. Therefore, the imposition of VAT on smartphone applications is considered appropriate. Especially if it is related to the principle of justice. In this case, in addition to increasing sources of state revenue, the imposition of VAT on smartphone applications will also provide justice for other forms of goods and services that have been previously subject to VAT. Society changes with the times. The form of community needs also changed. With this change, in particular to the need for smartphones and their applications, the state is expected to be able to follow these changes through the addition of digital products such as smartphone applications as objects of VAT.

Pengguna Smartphone diperkirakan Mencapai 89% Populasi pada 2025



Graphic 1: Estimated smartphone users in Indonesia in 2025.

Source: Statista

Furthermore, from the data shown by the graph above, it is estimated that smartphone users in Indonesia in 2025 will reach 89%. This means that almost all Indonesian people will use smartphones, which will further strengthen the position of smartphones and their applications as intangible goods that are public consumption. Through this explanation, it is clear that smartphone applications must be subject to VAT as well. In this case, it can be categorized into intangible goods subject to VAT.

If this is implemented, it can be said that the government is trying to create fairness and business equality (level playing field) for all business actors, both conventional and digital. So that the developer or application maker itself will be domiciled as a business actor through buying and selling applications in virtual markets, such as Google Playstore, Appstore, and so on.¹²

Basically, the provisions for taxation of digital products are generally based on PMK No. 48/PMK.03/2020, where this regulation regulates the procedures for appointing collectors, collecting, and depositing, as well as reporting VAT on the utilization of intangible taxable goods and/or taxable services from outside the customs area within the customs area through trade through electronic system. Therefore, if later on digital

¹² D. Pratami dan I. A. Puspita. "Desain Model E-Business Aplikasi Mobile (Studi Kasus: E-Makanan Padat Pendamping Asi)" *Jurnal Rekamaya Sistem dan Industri* (2015). Hal. 70-77.

products of the type of smartphone application are subject to VAT, then the provisions will follow the Minister of Finance Regulation. The things that are less can be changed and added through new regulations to ensure legal certainty for all parties involved.

Theory Presented by Lawrence M. Friedman and Roscoe Pound

Lawrence M. Friedman stated that there are three elements that can affect the legal system in a country, namely legal substance, legal structure, and legal culture.¹³

According to Friedman, legal culture is a reflection of the legal system. Legal culture is the attitude or shared values that apply in people's lives that are related or can affect the legal structure (formation process) and the rules in law. Elements of legal culture are people's attitudes toward the law and the legal system, their beliefs, values, ideas, and expectations. Legal culture focuses on efforts to establish public awareness law; form an understanding of society.¹⁴ Through the imposition of VAT on smartphone applications, we realize that the culture in society is changing, where smartphones and the applications contained in them have become the general consumption of the Indonesian people. With changes like this, the law must also be able to become an umbrella so that any changes in attitudes or values that exist in society are guaranteed by a law.

Legal structures are legal institutions, such as law-making institutions, implementing agencies or legal bureaucracies, the judiciary, and an integrated justice system. So, what is seen is the institutional arrangement, the appearance of the institution, and how the institution should behave (Siti, 2019). Associated with the imposition of VAT on smartphone applications, elements in law enforcement must be able to enforce the law which will later be made as the legal umbrella for the imposition of VAT. This is so that the law is not only made, but also enforced properly.

The legal substance is related to the process of making legal products carried out by legislators. It is undeniable that sometimes the manufacture of legislative products is influenced by the political atmosphere. Often the legal substance contained in legislative products is influenced by the interests of certain groups. Legal products must be in accordance with the aspirations and needs of the community; and does not conflict with the state constitution. In making laws there must be justice; usefulness and legal certainty.¹⁵ The imposition of VAT on smartphone applications must be made with the

¹³ M. Ridwansyah. "Mewujudkan Keadilan, Kepastian dan Kemanfaatan Hukum dalam Qanun Bendera dan Lambang Aceh" *Jurnal Konstitusi* (Juni 2016). Hal. 278.

¹⁴ H. Siti. "Kepatuhan Hukum Kawasan Dilarang Merokok Menurut Teori Lawrence M. Friedman" *Supremasi Hukum* (2019). Hal. 34

¹⁵ *Ibid.*

aim of benefiting the Indonesian people and not due to the intervention of certain political interests. In addition, if there is an implementing regulation regarding the imposition of VAT on this smartphone application, then the regulation must aim to improve the Indonesian economy and create justice for all business actors. Legislation should be accepted as a formal instrument developed in an oriented way to deal with contemporary social problems.

According to Lawrence M. Friedman, these three elements that can affect the legal system in a country must also be related to justice, certainty, and legal expediency, which are basically the goals of the law itself,¹⁶ where the imposition of VAT on smartphone applications will later be expected to really bring justice, certainty, and legal benefits in the community. Justice can be achieved if no party is harmed through the law, certainty can be achieved through the making of laws and regulations as the legal umbrella for implementation, and benefits can be achieved through the results obtained from the implementation of the relevant laws and regulations, in this case the laws and regulations. which later regulates the imposition of VAT on digital products of the smartphone application type. This can be achieved through the formulation of relevant laws and regulations, implementation of laws and regulations, and good law enforcement. If these things can be done, then the law will run effectively, in the sense that the legal reality is in accordance with the legal ideal.

Furthermore, Roscoe Pound with legal theory as a social engineering tool states that law is not only a collection of norms or orders but also a process of balancing conflicting interests and values. The process will bring society to a new order that Roscoe Pound calls it social change.¹⁷ Law is the process of community development itself. In fact, it can be a means of renewing society to create change in society. Law can create social change in society or at least can spur changes that occur in society. Law is a tool to regulate society and work within the community itself. Associated with the imposition of VAT on smartphone applications, the government will be able to make a new legislation regarding this matter. With these laws and regulations, the values or patterns in society will change and will bring society to a new order, where people who initially did not pay VAT for smartphone applications, now pay VAT for smartphone applications. These laws and regulations must also contain sanctions that can be applied to taxpayers who do not carry out their obligations, so that people's behavior patterns can also change through the imposition of sanctions, from initially not paying taxes to paying taxes. With this

¹⁶ C.S.T. Kansil. *Pengantar Ilmu Hukum dan Tata Hukum Indonesia*. Jakarta: Balai Pustaka, 1986. Hal. 97.

¹⁷ H. Matnuh. "Law as a Tool of Social Engineering." *ICSSE* (2018). Hal. 118-120.

theory, the laws made can regulate and even change people's behavior patterns in the desired direction.

If laws and regulations have been formed, then law enforcers are expected not to be based on laws and regulations, such as positivists. However, because the imposition of VAT on this smartphone application is one of the aims of achieving justice, law enforcers are expected to be more progressive in exploring the values of justice in the application of existing legislation. This is in line with the progressive legal paradigm which directs its paradigm to law enforcers to further explore the values of justice in the series of law enforcement itself.¹⁸ Thus, although Indonesia recognizes the principle of legality, Indonesia also recognizes living values that can be used to achieve justice. Thus, the overall legal objectives and legal effectiveness as described previously can be achieved.

CONCLUSION

The imposition of VAT on smartphone digital application users is the right step to take if it is implemented keeping in mind the legal objectives themselves. This is related to the community's freedom to use the application and the level of smartphone users and their applications in the community, so it can be said that it has become public consumption. Not only that, the imposition of VAT can also be a suggestion for additional sources of state revenue, mostly from taxes and suggestions for creating justice in the midst of conventional and digital markets for business actors in them. Supposedly, paying VAT is the user's obligation as a user of the facilities provided by the application maker and distributor. The relation to the existing legal theory, namely the theory of Lawrence M. Freidman and the theory of Roscoe Pound, is that according to the theory presented by Lawrence M. Freidman, law must be linked in everyday life in human life. We often find smartphone digital application users in everyday life, so it is appropriate to associate it with Friedman and Pound's theory. In this case, VAT related to users is a rule that must be obeyed by all people who use smartphones as a medium of communication today. While Roscoe Pound's theory of law is not only a collection of norms or orders but also a process of balancing conflicting interests and values. So everyone will have to pay VAT on their smartphone application and anyone who doesn't pay VAT must get sanctions that apply according to what has been made. The author would like to give a little advice related to law enforcement in Indonesia, where it can be seen that at this time there are many violations that occur, therefore the government should write down the rules and penalties that will be obtained if people violate the law

¹⁸ L. Ansori. "Reformasi Penegakan Hukum Perspektif Hukum Progresif". *Jurnal Yuridis* (2018). Hal. 148.

so that people are reluctant to make mistakes. For example, the imposition of VAT provided must be paid by all users, but if there are users who violate it, the public must be given the applicable sanctions. The author also suggests that law enforcers can be more progressive in carrying out the laws and regulations in order to achieve justice as one of the goals of the law itself.

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