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ELIMINATION OF VALUE ADDED TAX ON MINING (ANODA SLUDGE) IN INDONESIA

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ABSTRACT

The obstacles in the processing and refining of mining materials in Indonesia are making the need for support from various sectors, not least related to the purchase of anode sludge which contributes to taxes. Hence, this study purposed to analyse the elimination of value added tax on mining (anode sludge). This study used the legal research method which was conducted by two approaches namely the statutory and the conceptual approach. The results showed that in eliminating the Value Added Tax, the government could use the regular-end function. Moreover, the elimination of VAT can provide facilities for the development of the smelter industry. On the other hand, the government can also use the basis that the tax collection requirements must not interfere with the country's economic development. Thus, it can be concluded that the elimination of Value Added Tax related to mining goods (anode sludge) is an important study. Since it is able to provide the space for the development of the industry in managing their respective businesses.

INTRODUCTION

Taxes in the mining world have a size value that is not the same as the calculation of the goods and services tax due to the elements of transactions to production relating to processing to the purification of various materials (Freebairn and Quiggin, 2010). This is also related to the trading of mining goods in Indonesia. One of the mining goods trade which is an obstacle in establishing smelters is the anode slime trade. It should be noted that while the process of smelting and refining copper to copper metal concentrate is producing the residual or discharged processed product, namely the anode slime. Anode sludge which is the result of waste or residue turns out to still be contained such as gold, silver, lead, and selenium metals, as well as platinum and palladium.

Commonly, the goal of the downstream mining process is products produced from mining activities must go through the domestic and refining processes before exports are done in order to have added value. This is no exception in the residual products of the processing and refining process in which it still contains several contents such as gold, silver, etc. that can be added to the added value. In the regulation of the Minister of Energy and Mineral Resources through Article 4 paragraph (1), it has been stated that the anode sludge must go through the domestic purification process. In regard to this regulation, since January 12, 2014, it is prohibited to sell minerals in the form of ore (raw material) abroad. On the other hand, it is known that the only factory in Indonesia that processes copper concentrate into cathode copper (the result of processing / refining copper concentrate) is PT Smelting-Gresik. The minerals processed by PT Smelting are copper, gold, and silver concentrates, however, the maximum processed is copper. There are also other mineral ingredients such as platinum, lead, copper slag, and so on in the processing.

Referring to the previous description, it can be seen that the amount of associated mineral elements obtained from anode sludge can increase state revenue. In fact, it can reach a figure of US \$ 28.1 million every year. While, this figure is valid if the royalty calculation as currently applied, where gold and silver are calculated from the levels contained in the concentrate. The additional state revenue is US \$ 2.6 million per year or US \$ 8.7 million per year if 100% concentrate products are processed domestically.

However, PT Aneka Tambang still has problems related to the purchase of anode sludge from PT Smelting Gresik which is still subject to 10% VAT. Ten percent of VAT is considered burdensome. On the other hand, when PT Smelting Gresik bought copper concentrate to PT Freeport Indonesia and PT Newmont, PT Smelting Gresik is subject to VAT according to the gold content in the copper concentrate. Ten percent of VAT in copper concentrates is quite large and affects cash flow. What must be understood is the profit margin of the anode sludge refinery is only 2-3% so that if 10% VAT is incurred, it will certainly be a loss (with a loss of 7-8% of the value of gold in the anode sludge). There are still constraints related to the tax effects and their use on the mine, it is certain to have several successive effects. Especially, if the processing and refining plant develops in Indonesia. However, the downstream mining process, especially metal minerals, is considered to be able to have an impact related to labour absorption to support government programs in expanding employment. Ease of deregulation is also seen as very important. This is due to the increase in added value requiring considerable investment, so the ease in regulation will motivate mining practitioners to invest in the processing and refining of mining products (Hodzic and Celebi, 2017). As a new business in the mining and pioneering industries, the smelting and refining industry will be a special attraction for investors to invest their funds if facilities are found in regulations. Success in implementing mining business activities is highly dependent on legal certainty. This legal certainty is closely related to the certainty of rights and obligations. It is including the legal certainty in the field of taxation. Therefore, this study aims to analyse the elimination of value added tax on mining goods trade (anode sludge).

RESEARCH METHODS

The research method used in this study was legal research which is examining a rule of law, legal principles and legal doctrine in order to address the legal issues encountered (Marzuki, 2014). On the other hand, the writers also used two problem approaches namely, the statutory and the conceptual approach.

In addition, this study used two legal materials namely primary legal material and secondary legal material. The sources of primary legal materials used in this study were the Constitution of the Republic of Indonesia 1945, Law Number 8 of 1983 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods as amended several times, the latest by Law Number 42 of 2009, Law No. 4 of 2009 concerning Mineral and Coal Mining, Government Regulation Number 144 of 2000 concerning Types of Goods and Services which are not subject to Value Added Tax, Government Regulation No. 45 of 2003 concerning Tariffs for Non-Tax State Revenues, Government Regulation No. 23 of 2010 as amended several times, the latest by Government Regulation No. 1 of 2014 concerning the Implementation of Mining and Coal Mining Business Activities, Government Regulation No. 55 of 2010 concerning Development and Supervision of the Management of Mineral and Coal Mining Business Management, and Minister of Energy and Mineral Resources Regulation No. 1 of 2014 jo. Minister of Energy and Mineral Resources Regulation No. 8 of 2015 concerning Improvement of Mineral Value Added through Domestic Mineral Processing and Refining Activities, Minister of Trade Regulation No. 04 / M-DAG / PER / 1/2014 concerning Provisions on the Export of Processing and Refining Mining Products. However, the secondary legal materials used are all publications on law that are not official documents including textbooks, legal dictionaries, legal journals, and comments on court decisions.

RESULTS AND DISCUSSION

The Importance of Eliminating Value Added Tax on Mining Goods Trading (Anode Sludge)

The existence of Value Added Tax in Indonesia seems to have replaced the role of Sales Tax (VAT). This is due to several advantages contained in the Value Added Tax. The character of the Value Added Tax is an indirect tax. This character provides a judicial consequence that the tax burden bearer (*tax destinataris*) with the person responsible for paying taxes to the State Treasury is on a different party. Then, Value-Added Tax is an Objective Tax which is intended as an objective tax that is a type of tax when the tax liability arises is determined by objective factors, namely the existence of *taatbestand*. What is meant by *taatbestand* is a condition, event or legal action that can be taxed which is also referred to the object of taxation. Thus, the subjective conditions of the subject of taxation do not determine (Pitti and Sass, 2010). On the other hand, the Value Added Tax does not distinguish between consumers in the form of persons and entities, between high-income and low-income consumers. As long as they consume goods or services of the same type, they are treated the same (Gale and Brown, 2013).

Referring to the description, it can be seen that the applicable tax provisions do not pay attention to the subjective conditions of the subject of the tax, so as an objective tax the Value-Added Tax pays little attention to the principle of fairness in tax collection (Tijerina-Guajardo and Pagán, 2000). Because, first, the mechanism for collecting VAT provides the same treatment to consumers under different conditions. Second, it can have a regressive impact, that is, the higher the ability of consumers the lighter the tax burden is borne, the lower the ability of consumers the heavier the tax burden is borne.

Moreover, if it is seen from the characteristics of Value Added Tax (legal character), it can be seen that VAT is a tax on general consumption, hence the Value Added Tax exists in Indonesia to replace the Sales Tax. Therefore, the existence of Value Added Tax should not be distinguished as long as it is determined to be an object of Value Added Tax as an expenditure. What a Value Added object can be used as is based on the characteristics of Value Added Tax, namely goods and services.

In Article 4 of Law No. 42 Year 2009 activities that have been described as objects in the imposition of VAT (Resmi, 2012). VAT is imposed on value added in this case that occurs due to certain activities which can be grouped into three namely, first, the delivery / import / utilization / export of intangible BKP / JKP / BKP. Second, self-building activities that are conducted not in business activities or work by individuals or entities whose results are used alone or used by other parties. Third, the handover of assets by PKP according to the original purpose of those assets is not traded, as long as the Input Tax paid at the time of acquisition according to the provisions can be credited.

It is known that all VAT goods and services in the territory of Indonesia will be subject to VAT. However, there are some that are excluded according to the VAT and PPnBM Laws as well as other government regulations. Goods and services are not subject to VAT and PPnBM Laws mentioned in article 4 A. It is stated that first, mining or drilling products taken directly from the source. It includes crude oil, natural gas (not including natural gas such as LPG that is ready to be consumed directly by the public), geothermal, asbestos, kaolin, leucite, magnesite, mica, marble, nitrate, obsidian, ochre, sand and gravel, quartz sand, pearlite, phosphate (phosphate), talc, absorptive soil (fullers earth), diatomaceous earth, clay, alum (alum), coal before being processed into coal briquettes, and iron ore, lead ore, gold ore, ore copper, nickel ore, silver ore, and bauxite ore. Second, basic necessities which are really needed by the people. Third, food and beverages served in hotels, restaurants, restaurants, food stalls, and the like, including food and beverages whether consumed on site or not, including food and beverages delivered by catering or catering services. Fourth, money, gold bars, and securities.

Furthermore, it is known that purifying anode sludge is not as easy as turning the palm of the hand in the process of developing and constructing a processing plant. Okoye and Gbegi (2013) suggested that the relationship of tax with industry which in this case is mining, often encountered difficulties in the field. This is reinforced where the intention of the Indonesian government which requires mining entrepreneurs not to directly export abroad in raw form is

certainly a very good intention. Besides that, to optimizing the upstream industry, a breakthrough is also needed that can improve the economy and state development in mineral mining through the downstream industrial sector. The presence of Law No.4 of 2009 is giving fresh air to the country's main income for taxes.

Whereas, over time the Act does not necessarily apply. This is reinforced by studies that are continuously conducted by the Ministry of Energy and Mineral Resources to issue Minister of Energy and Mineral Resources Regulation No. 1 of 2014 jo. Minister of Energy and Mineral Resources Regulation No. 8 of 2015 concerning Increasing Mineral Value Added through Domestic Mineral Processing and Refining Activities (Abdurrahman, 2014). The regulation applies the rules forbidding anode sludge to be directly exported which certainly shows how important it is to build an anode sludge smelter in the country. A government that is not careful about banning exports of raw mining materials without providing facilities will certainly have a negative impact going forward. This negative impact is a multiplier effect that occurs due to the prohibition of exports of raw materials in the Minerba Act and the lack of coordination between government agencies to support the prohibition by quickly building a smelter.

The negative impacts that are possible occur based on data processed by the Ministry of Trade (2015), namely, first, the obligation to process mining raw materials in advance without being matched by an adequate number of smelters thus, existing mining raw materials cannot be exported abroad making entrepreneurs mines reduce production capacity even the worst they will close down. Second, the reduction in state and regional income both from the tax sector and from the non-tax sector. Third, the reduction in mining production will have implications for reducing the workforce. Fourth, the weakening of the rupiah exchange rate has pushed up import costs. The high cost of imports will affect a number of products that still rely on imported components.

In addition, the Ministry of Industry also supports the down-streaming of mining considering that there are many natural resource-based industries that have high competitiveness and are able to provide enormous added value to the national economy. In fact, up to 2015 there were 27 large companies which were divided into 4 major groups, namely the iron refining industry, the bauxite refining industry, the copper concentrate refining industry, and the nickel ore processing industry which had committed to establishing smelter industry.

Principles for the Elimination of Value Added Tax of Mining Goods Trading (Anode Sludge)

Through the elaboration, it can be seen that the role of the government in the development of smelters is certainly needed. Although the owners of capital are not from weak groups or groups, it is important to underline that in the construction of smelters, funds are not needed. The workers who must be borne by a company will depend on their lives to earn a living from working in the factory. The government is also required to play an active role to help the establishment of the smelter through decisions or legislation and policies that

favour the crucial sectors for the benefit of people's lives and economic development of the country. On the other hand, the government has made a policy in mining management since the advent of Law No. 4 of 2009 which is arguably quite controversial. The government step is deemed brave enough to change the image of Indonesia as a producer of raw materials into a productive country that is capable of processing quality goods from its natural resources. However, this step must continue to be consistently followed between government agencies must work together in order to realize the dream of the country. One of them is through the formulation of appropriate policies and regulations. Not only that, but also the laws and policies made by the government must also be more focused on aspects or spaces in which the government can make a positive contribution to the development and development of smelters.

The next homework is focused and paying attention to Human Resources (HR). Regarding, the mining world certainly reliable skills are needed, both in the field and non-field. HR takes the role of whether mining down-streaming can grow well or will only spend money. Moreover, the end of 2015, ASEAN Economic Community (AEC) gate was opened where all people in Southeast Asia can find work not only in their respective countries but have been able to find employment opportunities in all countries in the ASEAN community. Reliable experts are needed, especially in technical and environmental matters as well as reliable personnel in diplomacy to convince businessmen both foreign and domestic to invest capital, especially in the development of smelters.

After that, a healthy banking system is almost the average entrepreneur in Indonesia gets investment funds from the banking credit system. A sound financial system and banking system such as the stability of interest rates and the ease of obtaining funding will certainly greatly affect the desire of entrepreneurs to build smelters. It is undeniable that the financial and banking system can also influence smelter construction. Thus, it is not impossible if the processing and refining activities in mining become one of the determinants of the stability of the national economic system going forward (Islamiyah, Ridho and Muslih, 2015).

The next issue is related to licensing. Licensing is a substance that is directly related to the government, both the central and regional governments. The provisions in Law No. 4 of 2009 concerning Mining and related regulations related to who is authorized in the issuance phase of permits. The most basic thing is the government must avoid trade-offs in the process of issuing permits, especially for the Ministry of Energy and Mineral Resources, the Ministry of Trade and Industry, and the Coordinating and Investment Board, given that these agencies are directly related. The biggest expectation of entrepreneurs in the process of issuing licenses is certainly strategic, such as the anode slime which needs to be provided with tax facilities in the form of Value Added Tax that is not collected on the submission of the anode slime. This article is in accordance with the principles and principles of tax collection which is expected that tax will not become an obstacle in the country's economic growth.

Besides that the Government Regulation through Article 1 paragraph (2) clearly stated that the initial form of the basic material, namely anode sludge and the final product to be produced, namely gold bars. It is known that if the basic material of the gold bar is not anodized sludge or treated anode sludge, VAT facility is not collected. In addition, the government also provides restrictions on Taxable Entrepreneurs who receive VAT facilities, thus, if transferred to another party, the party cannot enjoy the existing facilities (Ikhsan, Trialdi and Syahrial, 2005). In this case, as a form of legal certainty, especially the certainty of legal subjects to avoid misuse of VAT facilities in the future. Moreover, the thing that needs to be appreciated from this Government Regulation is the formation of a separate special team to conduct an evaluation within 5 (five) years. This step is a form of preventive action whether this elimination is the right step to help develop the pattern of the country's industry.

CONCLUSION

According to the previous explanation, it can be concluded that the government in abolishing Value Added Tax can use the regular-end function which emphasizes the regulation of APBN revenue and expenditure from the tax sector. Thus, through the elimination of VAT, it can facilitate the development of the smelter industry.

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