

## PalArch's Journal of Archaeology of Egypt / Egyptology

### THE APPLICATION OF STANDARDIZATION AND SUPERVISION IN THE CERTIFICATION OF ESTABLISHMENT OF BUSINESS QUALIFICATION AND TAX RATES IN CONSTRUCTION SERVICES

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**Nevana Ayu Chumala Ningtyas, Indrawati. The Application Of Standardization And Supervision In The Certification Of Establishment Of Business Qualification And Tax Rates In Construction Services-- Palarch's Journal Of Archaeology Of Egypt/Egyptology 17(3), 1926-1935. ISSN 1567-214x**

**Keywords: Construction Services Development Board, Construction Services Business Certification, Construction Services Business Taxes, Legal Protection, Taxes**

#### **ABSTRACT**

The overlapping of business certification law regarding the determination of business qualifications and tax rates for Construction Services Providers by the Construction Services Development Board (referred as LPJK) as the authorized institution to issue Business Entity Certificates (known as SBU) based on the Regulation of the Minister of Public Works on Representatives of Foreign Construction Services raises disputes that inflict loss on the Construction Service Providers (Foreign) in Indonesia in terms of tax collection. The research aims to find out how the actual authority of the Construction Services Development Board regarding setting tax rates and analyze the legal protection for construction services towards differences in tax rates on construction service business certificates. The authors used a normative juridical method by collecting primary legal sources as the main basis through the statute approach, conceptual approach, and case approach. The absolute authority of issuing Business Entity Certification to determine the business classification and amount of tax in the field of construction belongs to the Construction Services Development Board as an official representative of the Directorate General of Taxes of the Republic of Indonesia. The Ministry of Public Works is only authorized to issue a power of attorney for the Construction Services to operate in all regions of Indonesia, and does not negate the absolute of the Construction Services Development Board. Discrepancies in calculating taxes cause loss to taxpayers, therefore taxpayers can file an appeal through litigation and non-litigation (mediation, conciliation, arbitration). The existence of construction services business certification is to set tax rates on construction services. The application of justice principle to the construction services certification is able to minimize disputes, both in the issuance of certificates of

construction service business entities and in setting tax rates, to reach legal certainty and justice.

## INTRODUCTION

The construction service sector and tax are related and influence each other, especially in improving the economy of a country (Bimonte & Stabile, 2020). In improving the economy, the Government of Indonesia effectively and efficiently conducts tax collection in order to increase the national revenue from the tax sector including construction service businesses taxes (Nursjanti, 2019). According to Peaks, there is a need in increasing legal certainty and administration to ensure that taxes can be used to overcome economic challenges both from outside and inside the country (Peaks, 2013). The application of tax collection is realized in the issuance of Business Entity Certificates (SBU) by the Construction Services Development Board (LPJK), which later contains the qualifications and classifications of the Construction Services field and the amount of tax imposed to the Construction Service Providers (LPJK, 2018). The standardization of business qualifications is stated in Article 3 of the Government Regulation No. 51 of 2008 concerning Income Taxes of Construction Services Businesses, obtained by assessment registration to classify the businesses in the field of construction services based on the level/depth of competency and business capability whether individuals or business entities (LPJK, 2018; Pellicer, Correa, Yepes, & Alarcón, 2012).

The problems later arise from the existence of certificates issued by the Construction Services Development Board (LPJK). Business Entity Certification (SBU) as a public policy instrument to ensure that construction service business entities have competence and professionalism, yet they are not fully realized. In society, business people without business entity certificate are still found to carry out construction service activities in Indonesia, for example, the case of the PUT-81237/PP/M.VIB/25/2017 concerning dispute over objection to the Final Underpaid Tax Assessment Letter of Article 4 Section (2) of Law No. 36/2008 concerning the Fourth Amendment to Law No. 7 of 1983 on Income Tax. In the previous case, the actor of the construction service business is a BUJKA (Foreign Construction Services Enterprise), which is known to have no business entity certificate. BUJKA argues that the authorized LPJK, which issues the certificates, cannot issue the certificate yet, as stated in the letter of the Implementing Agency for the Construction Services Development Board No. 10UM/LPJK - N/I/2012 on 12 January. This condition raises another problem, which is the difference in determining the tax rate for each construction service business of their business entity certifications. The difference does not follow the requirements of justice in tax law. Tax collection carried out by the government must be fair and equitable, which is imposed on individuals or entities based on their abilities and benefits they receive (Arnott, 2005; Huang, Chang, & Hung, 2020). In this case, justice should be upheld both in principles of laws and regulations and everyday practices. Based on the statement of problems above, it is necessary to conduct research regarding the business entity certificates

and legal protection differences towards determination of tax rates for construction service providers.

## **METHOD**

The authors used normative juridical research by collecting primary legal materials. It is necessary to collect relevant legal materials to find out existing legal rules as the consideration in analyzing the statement of problems regarding legal issues, and to provide research related to legal protection for construction service entrepreneurs towards differences in tax rates of the construction service business certificates. The approaches used in this research were the statute approach, which was approach done by reviewing all laws and regulations related to existing legal issues, conceptual approach by studying the developed views and doctrines in the science of law, and case approach by examining cases related to legal issues and become court decisions, which had permanent legal force, in which it was related to the rules of the imposition of tax rates on foreign construction companies in Indonesia.

## **LITERATURE REVIEW**

### ***Legal Status of Construction Services Business Certification***

The certification of construction service businesses is regulated in the Article 8 Letter b of Law no. 8 of 1999 on Construction Services, which explains that: "Construction planners, executors, and supervisors in the form of business entities must: have certificates, classifications and qualifications of construction service businesses". The explanation is refined with Article 30 Section (3) of the Law No. 2 of 2017 concerning Construction Services, which is addressed to the Construction Business Entities that are required to have Business Entity Certification (SBU). The certificate, at least, contains the type, characteristic, classification, and qualification of the businesses. In determining the tax rates, the certification and registration processed by the minister are required under Article 30 Section (2) of the Act of Construction Services. For the government, the importance of certification is to detect and simplify the determination of tax rates on construction services for every business actor and entity that impacts on increasing the national revenues by referring to the regulation of tax rules, and as a preventive action for the government to maintain the implementation of taxation in the field of construction services.

## **RESULT AND DISCUSSION**

### ***The Case Analysis on the LPO-8123/PP/M.VIB/25/2017 on the Dispute over Objections to the Final Underpaid Tax Assessment Letter of Article 4 Section (2) of Law No. 36/2008 concerning the Fourth Amendment to Law No. 7 of 1983 on Income Tax***

The policies and regulations that have been created will always arise problems if they are not equivalent to the implementation. The dispute in the case is the calculation of the imposition of the Final Income Tax in Article 4 (2) of Law No. 36/2008 between BUJKA (Foreign Construction Services Enterprise) as the Appellant and the Directorate General of Taxes as the Appellee based on

the Decision of the Directorate General of Taxes Number: KEP-00273/KEB/WPJ.07/2016 on 18 March 2016 concerning objections to the Additional Underpayment Tax Assessment Letter of the Income Tax. The tax authorities calculate the Final Income Tax at a rate of 4% towards the BUJKA. They argue that the 1% tariff correction is based on Article 3 Section 1 along with the explanation of the Government Regulation Number 51 of 2008 regarding the regulation of the income tax rate for Construction Services businesses is based on the recognition of business qualifications. If the certificate is obtained from the LPJK and there is no Business Qualification certification, then the construction service business is subjected to a 4% rate. On the other hand, BUJKA argues that it does not have certification because the authorized Construction Services Development Board is not able to issue the certificate toward the BUJKA as stated in a letter of the Implementing Agency for Construction Services Development Board Number 10UM/LPJK - N/I/2012 on 12 January 2012.

In addition, BUJKA has obtained a Foreign Construction Services Enterprise Representative License issued by the Ministry of Public Works, on the basis of Article 4 Section (2) of the Ministerial Regulation of the Minister of Public Works Number 05/PRT/M12011, which states: "Representative license are only granted to the Foreign Construction Services Enterprise which has great qualifications." Based on the regulation, BUJKA considers itself as a Foreign Construction Services Business Enterprise that has great qualifications, because it already has the Representative License causing the tax rate is charged at 3% as referred to Article 3 Section (1) letter c, which states: "3% (three percent) for Construction Implementation of the Service Providers other than referred in letter a and b."

According to the Judicial Panel who examine and decide based on the existing laws and regulations, one of them is the Ministerial Regulation of the Minister of Public Works Number: 05/PRT/M/2011 concerning Guidelines on Requirements for Granting Representative License for Foreign Construction Business Enterprise, which states that:

- Article 1 Number 4: "Representative Permits for Foreign Construction Services Business Enterprise, hereinafter referred to the Representative License is a permit to conduct business granted by the Government to BUJKA to carry out construction service activities in Indonesia."
- Article 4 Section (3): "Representative License as referred to Section (1) may be granted after BUJKA receives the classification and qualification equivalents, which are stated in the form of certificates from the Institution."
- Article 4 Section (4): "BUJKA which already has a Representative License as referred to Section (1), is able to carry out construction service business activities in all regions of Indonesia." Article 17: "When the National level Institution is not able to issue the certificate of the BUJKA as referred to in Article 4 Section (3), then Minister may issue a Representative License"; Those articles are used by the Judicial Panel as the guideline for examining cases. Information and documentary evidence is submitted by the parties during the trial, including the Letter from the Implementing Agency for the

Construction Services Development Board regarding certifications that could not be issued, which was dated on 12 January 2012 and the Foreign Business Representative License issued by the Ministry of Public Works signed by the secretary of the Construction Development Agency and Human Resource (Ir. Dadan Krisnandar, MT on July 30, 2007), so that the Judicial Panel conclude to cancel the correction of tax authorities on the Final Income Tax of Article 4 Section 2 towards BUJKA, and grant all BUJKA appeals and set the tax rate imposed on BUJKA at 3%. However, the Ministerial Regulation Number 05/PRT/M/2011 regarding Guidelines on Requirements for Granting Representative License for Foreign Construction Business Enterprise has been revoked and replaced with the Ministerial Regulation of the Minister of Public Works Number 10/PRT/M/2014.

**Table 1.** Amendment of the Ministerial Regulation of the Minister of Public Works

<b>The Ministerial Regulation of the Minister of Public Works Number 05/PRT/M/2011</b>	<b>The Ministerial Regulation of the Minister of Public Works Number 10/PRT/M/ 2014</b>
<p>Regulated in Chapter II on Representative License of Article 4:</p> <p>(1) Representative License is granted by the Minister or the official appointed on behalf of the Minister towards BUJKA.</p> <p>(2) Representative License is only given to BUJKA with large qualifications.</p> <p>(3) Representative License as referred to Section (1) may be granted after BUJKA receives the classification and qualification equivalents, which is stated in the form of certificates from the Institution.</p> <p>(4) BUJKA which already has a Representative License as referred to Section (1), can carry out construction service business activities in all regions of Indonesia</p>	<p>Regulated in Chapter 1 General Provisions, Article 4:</p> <p>(1) Representative License is issued by the Ministry of Public Works, in this case, it is signed on behalf of the Minister by the Head of the Work Unit..</p> <p>(2) Representative License is given to BUJKA with large qualifications.</p> <p>(3) Representative Licenses can be used to carry out construction service business activities in all regions of Indonesia.</p> <p>(4) Representative License is valid for 3 (three) years and can be extended.</p> <p>(5) Extension of the Representative License as referred to Section (4) can only be done if the applicant:</p> <p>a. submit the application with no later than 60 (sixty) days after the validity period of the Representative License has expired;</p> <p>b. complete all documents required in the application for extension;</p> <p>c. carry out at least 1 (one) construction service work within a period of 3 (three) years;</p> <p>d. submit annual activity reports no later than January after the current year; and</p>

	<p>e. receive an extension recommendation from the Technical Team.</p> <p>(6) The format of the annual activity report as referred to Section (5) letter d is listed in Part A of Attachment IV, which is an integral part of this Ministerial Regulation.</p>
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Based on two differences above, it can be seen that the Ministerial Regulation of the Minister of Public Works Number 05/PRT/M/2011 on the validity of Representative License is regulated separately in Chapter IV regarding the period of Article 13. It is appeared as less structured. If they are combined into one material content, the article can shorten and clarify the meaning of the regulation. The existence of the Ministerial Regulation of the Minister of Public Works Number 10/PRT/M/2014 regarding the validity of Representative License is combined into one material and affirmed in Article 4 Section (5) concerning the requirements for the extension of Representative License which is limited.

**Table 2.** Transitional Provisions

<b>The Ministerial Regulation of the Minister of Public Works Number 05/PRT/M/2011</b>	<b>The Ministerial Regulation of the Minister of Public Works Number 10/PRT/M/ 2014</b>
<p>Article 17</p> <p>When the National level Institution is not able to issue the Certificates of BUJKA Certificates as referred to Article 4 Section (3), then the Minister may issue a Representative License.</p>	<p>Article 18</p> <p>(1) The National Level Institution issues an Equivalent Certificate with no later than 6 (six) months after the enactment of the Ministerial Regulation.</p> <p>(2) Representative license which is issued before the enactment of the Ministerial Regulation remains valid until the expiration date.</p>

The Transitional Provisions concludes that the existence of the Ministerial Regulation of the Minister of Public Works Number 10/PRT/M/2014 is able to improve the protection and legal certainty for the foreign construction service community by changing and adding the substance of the articles to clarify the provisions of the previous Ministerial Regulation, which is less effective in providing meaning of the articles. Article 18 of the Ministerial Regulation of the Minister of Public Works No. 10/PRT/M/2014 regarding the period of certificate issuance of 6 (six) months, which is not previously explained in Article 17. BUJKA provides the argument that it has obtained a Representative License, therefore the tax rate should be 3% (Tambunan, 2012). However, Article 4 Section (3) of the Ministerial Regulation of 2014 states that Representative License is used to carry out construction service business activities in all regions of Indonesia, not as a Certificate used to set the tax rates. The provision of the Ministerial Regulation No. 51 of 2008 describes the stipulation of income tax rates is based on business qualifications

owned by each construction service business. Article 6 of the Ministerial Regulation of the Minister of Public Works Number 10/PRT/M/2014 states that the Representative License, at least, contains the name of the business entity, head of representative, the address and telephone number of BUJKA, the validity period, and the type of business, in which the article does not contain business classification. Therefore, the existence of Article 6 means that the Representative License is not a Certificate because it does not contain business qualifications.

***Legal Protection for Construction Service Entrepreneurs towards Differences in Tax Rates Regarding Certification of Construction Services Business through Non-Litigation and Litigation.***

Non-litigation dispute resolution is basically a way of resolving disputes reached through conciliation. Alternative Dispute Resolution (ADR) is a responsive expression of dissatisfaction in resolving disputes through the litigation process. Although the results of the settlement taken in the ADR process are not *res judicata* (court decisions), people tend to choose it due to a reason as “*much quicker, no delay, and less expensive*” than the litigation process. In general, negotiation can be interpreted as an effort to resolve disputes between parties without going through a judicial process with the aim of reaching mutual agreement on the basis of more harmonious and creative cooperation. The disputing parties carefully face each other in discussing the problems they have in a cooperative and transparent way (Lande, 2014).

The first way that can be taken is mediation. It involves the existence of a third party (whether individuals or in the form of an independent institution), which is neutral and impartial, that functions as a mediator. The mediators are obliged to carry out their duties and functions based on the wishes of the parties. In addition, the mediator must be able to create a conducive situation between the two parties to obtain mutually beneficial results. The mediator is also expected to be able to assist the implementation of the written agreement signed by both parties (Alberstein, 2006).

The next approach is conciliation. It is the process of resolving a dispute by submitting it to a commission that has the authority to explain facts and make proposals for a settlement, yet the decision is without any obligation. In contrast to mediation, which is basically the existence of negotiations, conciliation involves the intervention of third parties in the footing of formal law and manifests it in a comparable approach, yet it is not identical with investigation or arbitration (Binder & Sekolec, 2005).

The last alternative is arbitration. Unlike the form of dispute resolution as previously explained, in this approach, all forms of functions, tasks, mechanism of dispute settlement procedures are based on the Arbitration Law and the decision is final and binding, in which if the parties do not voluntarily implement the arbitration award, then the decision will be implemented based on the command of the Chair of the District Court, as the request of one of the parties (Gaillard, 2010).

### *Legal Efforts through Litigation*

Litigation is the process of resolving disputes in court, the disputing parties face each other to defend their rights. According to Muhammad Djafar Saidi, the tax dispute is only aimed at appeals and lawsuits as the authority of the Tax Court. Tax disputes in the form of appeals and lawsuits are only in the narrow sense because there are still other tax disputes that are not included in it. Tax disputes in the broad sense include tax disputes that are filed with objections, appeals and lawsuits at the tax court (BPK, 2016; Saidi, 2007). Appeals are determined by the existence of objections to a decision.

Decisions that may be appealed are those issued by tax officials in the form of tax dispute resolution at the objection stage. It is because the taxpayer has the right to appeal when the objection agency's decision is considered disadvantageously on him. Therefore, overall tax disputes include disputes that can be objected, appealed, and filed at the Tax Court (Saidi, 2007). Decisions submitted as objection are regulated in Article 25 Section (1) of the KUP Law, which states that (1) Taxpayers can submit objections only to the Directorate General of Taxes on: a. Underpayment Tax Assessment Letter; b. Additional Underpayment Tax Assessment Letter; c. Nil Tax Assessment Letter; d. Overpayment Tax Assessment Letter; or e. Deduction or tax collection by third parties based on the tax laws (Aditya T. Handoko Bwoga, 2007). The objection efforts are regulated further in Article 3 of the Ministerial Regulation of the Minister of Finance of the Republic of Indonesia Number 9/PMK.03/2013 concerning Procedures for Filing and Resolution of Objection, which states that "taxpayers can only submit objections as referred to Section (1) of the material or contents of the letter tax assessment, including the amount of loss based on the tax legislation, the amount of tax, or the material content of tax deductions or collections."

### *Analysis of the Difference in Determining Tax Rates for Taxpayers*

Regarding policies issued by the government, especially related to taxes, they are not a few that cause losses for taxpayers, as previously explained in the case study of this research. The legal efforts chosen by the taxpayers are through appeals, which is done at the tax court. The appeal is done based on the objections of a decision. The object of the dispute is the Objection Letter of the SKPKBP (Underpayment Tax Assessment Letter) of the Final Income Tax for Construction Services Business issued by the Directorate General of Taxes. The difference in tax rates on taxpayers lies in the calculations made by the tax authorities who set as Rp. 283,349,115 with an income tax rate of 4%. Meanwhile, taxpayers calculate the tax that should be paid is Rp. 850,047,340 with an income tax rate of 3%. The difference is caused by the decree of qualifications, which is stated in the Government Regulation No. 51 of 2008 concerning Income Taxes on Income of the Construction Services Business.

Regarding Article 35 Section (2), Article 38 of Law No. 14 of 2002 explains that the Appellant can complete the Appeal Letter to fill the applicable



provisions within a period of time. In addition, Article 36 of Law No. 14 of 2002, which regulates the requirements of appeals, determines that: 1) of 1 (one) decision, 1 (one) Appeal Letter shall be submitted, 2) an appeal is filed with clear reasons, followed by the date of the appealed letter is received, 3) a copy of the decision in comparison is attached to the Letter of Appeal, 4) apart from the requirements referred to Section (1), Section (2), Section (3), and Article 35 regarding an appeal is filed against the amount of tax contained, the appeal can only be filed if the referred amount is more than 50 % (fifty percent).

Based on the stages described above, it is necessary to understand the parties who are entitled to appeal. Based on Article 37 of Law No. 14 of 2002, those who are entitled to submit the appeal are taxpayers, the heirs, an administrator, legal representative, or the agent if the appellant files for bankruptcy. In case that during the appeal process, the appellant conducts a merger, consolidation, division (expansion), business, or liquidation, those requests are continued by the party that accepts the responsibility due to the merger, consolidation, dissolution, or liquidation. Regarding non-litigation legal remedies, the Regulation of the Supreme Court No. 1 of 2016 concerning Mediation Procedures in Courts (referred to PERMA No. 1 of 2016) is the legal basis for Mediation procedures. Article 5 of the PERMA No. 1 of 2016 explains that the mediation process is basically closed to the public unless the Parties otherwise agree with the Mediator as a neutral party. The mediator is a Judge or other party who has a Mediator Certificat that helps the Parties in the negotiation process to resolve the disputes without discontinuing or forcing a settlement (Alberstein, 2006), as stated in Article 1 Section (2) of the PERMA No. 1 of 2016.

The mediation process occurs for 30 (thirty) days since the decision of the order and can be extended for a maximum of 30 (thirty) days based on the agreement of the Parties. The mediator, as requested by the Parties, submits an application for the extension of the mediation period to the Judges of Verifier as regulated in Article 24 of the PERMA No. 1 of 2016. If the mediation succeeds in reaching an agreement, the Parties with the assistance of the Mediator shall formulate a written agreement of the Peace Agreement signed by the Parties, the Mediator, and vice versa when the mediation fails to reach an agreement based on Article 27 of PERMA No. 1 of 2016. The judges (verifiers), who do not ask the Parties to have the Mediation, are said to break the laws and regulations on Mediation in the Court, which is stated in Article 3 of the PERMA No. 1 of 2016. Based on the explanation above, the relevance of mediation and the court is that all disputes entered the court that must be handled first.

## **CONCLUSION**

The existence of the certification of the construction services business is to set tax rates on construction services. The application of the principle of clarity, fairness, and certainty to the certification of construction services aims to minimize disputes, both in the issuance of certificates of construction service business entities and in setting tax rates, to realize legal certainty and justice.

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