

Pajak atas penghasilan berupa hibah di KPK = How the Corruption Eradication Commission views the taxation of grants

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Abstrak

The phenomena about grants came up when Corruption Eradication Commission published the wealth of the state executives. Some asked the origin of the grants while others considered it as a tax object. The question about the origin of the grants has to do with the program for the eradication of corruption, collusion and nepotism being undertaken by the government. The matter of the grant as a tax object is connected with Indonesia's present grave financial conditions. This topic represents the author's desire to find out the possibility of grant being considered as a tax object in the publication of the wealth of our government executives in the report of the Corruption Eradication Commission. This commission can confirm that the grant came from a source outside the family's first generation blood relatives in a straight line. Accordingly the grant becomes a tax object and significant revenue for the government.

The main problem is how to overcome the difficulties in applying a tax on the personal income derived from a grant as a tax object. The survey was undertaken using a qualitative method and a descriptive analysis approach for the data obtained by the author in interviewing the Corruption Eradication Commission, Indonesian Corruption Watch, Directorate of Income Tax and Directorate for Tax investigation and Collection, and making an analysis of the obtained data.

As regards the earnings from grants, in the interest of taxation, it should not be necessary to indicate any differences in the source of the earnings and how the grants are used. In civil Law grants means a commitment whereby the grantor, while alive, freely and irrevocably assigns a property to be used by the grantee accepting the grant. In Islamic law, hibah or grant means a kind of agreement to transfer someone's property to another while still alive without expecting to receive anything whatsoever in change for the grant. Legally, the grant must be made between living people and carried out under a notarial deed to be valid. A grant is only exempted from income tax when it is real pure grant as usually required, if not, the government may apply an income tax under the prevailing rules.

For taxation, grants are subject to Act number 17 of 2000, which states that, both, the grantee and the grantor or anyone can be taxed, where a grant improves a person's financial condition (article 4 paragraph 1) of income tax act, but there is an exception for grants. Grants are classified as non-taxable and taxable grants. Grants are exempted from tax when assigned to family members under a straight blood relationship (article 4 paragraph 3 sub a, 2^o, income tax act). However, when the grants is received from another party, the grant is subject to tax for the receiving party and the presenting party. The presenting party must pay an income tax for the transfer of the grant (article 4 paragraph 1, sub-d, 4 of the income tax act), because it is considered as a capital gain where the values of the grant being assigned is higher than its value when formerly obtained. When the grant is a piece of land or a building, the giver of the grant under the article 4

paragraph 2 of the income tax act must pay a 5% income tax, whereas the tax is applied in conformity with Government Ordinance number 48 of 1994 dated December 27, 1994 on tax payment for income from landed property, as lastly amended by Government Ordinance number 79 of 1999 and Directorate General of Tax circular letter No.SE-04/PJ-33/1996 dated August 26, 1996. When the taxpayer providing the grant has not yet fulfilled his liabilities, the Directorate General of Tax may apply article 4 paragraphs 1 sub-p of the income tax act. When it is afterwards known that there is a capital gain from the last 10 not charged with a tax the capital gain must be charged with tax when such is detected.

The conclusion is that tax payment must be demanded in the case of grant assigned to a person not being blood relative in the straight line, and if the tax is not paid such can be considered as a fiscal crime, the grant can be listed in the annual tax bull sent to the person and this can be checked by the tax office. The notarial deed for a grant can show whether the grantor initially owned the granted object. The Corruption Eradication Commission should sue the government executive before the Court for the receiving a grant without reporting it as an additional income for which tax must be paid, and showing the related documents as evidence. It is also desired that the Directorate General of Tax also attend corruption cases before the court connected with grants that are legally exempted from tax.