

Kontraktor kontrak karya pertambangan umum sebagai pemotong PPh pasal 23 dan PPh pasal 26: studi kasus di kantor pelayanan pajak penanaman modal asing III = The contractor of general mining contract of works as the withholder of income tax article 23 and article 26: case study in kantor pelayanan pajak penanaman modal asing III

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Abstrak

Guna memanfaatkan kekayaan bahan galian selain migas, Pemerintah menandatangani Kontrak Karya Pertambangan Umum yang berisikan antara lain ketentuan-ketentuan yang berkaitan dengan perpajakan, yang terbagi dalam beberapa generasi. Ketentuan-ketentuan perpajakan dalam kontrak diberlakukan sebagai *lex specialis* (ketentuan yang berlaku khusus), termasuk ketentuan yang mengatur kewajiban kontraktor selaku pemotong withholding taxes PPh Pasal 23 dan PPh Pasal 26. Pokok permasalahan yang muncul adalah bagaimana penyelenggaraan pemotongan pajak atas pembayaran kontraktor pertambangan umum, yang dilakukan bukan kepada karyawan, dapat terlaksana seoptimal mungkin. Pembahasan didasarkan pada kerangka teori bahwa pemungutan pajak, terutama di negara berkembang, ditujukan untuk pengumpulan penerimaan negara yang memadai (*Revenue Adequacy Principle*) yang dalam pengaturan dan pelaksanaannya harus memperhatikan *Equality Principle* (keadilan), dan *Certainty Principle* (Kepastian hukum). Withholding taxes (pemotongan pajak) adalah cara pembayaran pajak dalam tahun berjalan yang didasarkan pada pemikiran "Pay As You Earn", yaitu suatu pemikiran yang menghendaki agar pembayaran pajak penghasilan dapat dilakukan melalui pemotongan pada saat Wajib Pajak menikmati penghasilannya. Cara pembayaran melalui withholding taxes tetap harus memperhatikan ketiga prinsip utama di atas, yang harus diatur dan dilaksanakan secara seimbang agar dapat diperoleh hasil yang optimal.

Tipe penelitian yang digunakan adalah deskriptif analitis. Data dideskripsikan dan selanjutnya dilakukan analisis guna memperoleh kesimpulan dan pengajuan saran-saran menuju pencapaian hasil yang optimal. Data primer diperoleh melalui wawancara dengan pejabat pajak terkait, konsultan pajak dan pimpinan perusahaan kontraktor pertambangan, data sekunder diperoleh melalui library research, penelitian perundang-undangan perpajakan, dan penelitian di KPP PMA III.

Dari penelitian ternyata terdapat banyak perbedaan objek dan tarif withholding taxes antara yang dilakukan oleh kontraktor pertambangan umum dengan yang berlaku saat ini. Dari analisis yang dilakukan, perlakuan *lex specialis* menyebabkan tidak terpenuhinya ketiga prinsip utama pemungutan pajak tersebut di atas, dan dapat diambil kesimpulan bahwa perbedaan objek dan tarif pemotongan withholding taxes sebagai akibat perlakuan *lex specialis* menyebabkan tidak tercapainya *Revenue Adequacy Principle* dan menimbulkan ketidakadilan serta ketidakpastian bagi Wajib Pajak yang dipotong.

Guna optimalisasi pemotongan withholding taxes disarankan agar perlakuan *lex specialis* untuk withholding taxes dalam kontrak karya ditiadakan serta menggiatkan bank data dan pemanfaatannya untuk dapat mengungkap adanya underreporting income (penghasilan yang tidak sepenuhnya dilaporkan).

In order to get the benefit of non-oil mining, the government signed a Contract of Work in general mining, which contains among other things taxation clauses. The Contract of Works have extended to a number of generations depending on the underlying policy. The taxation clauses under Contract of Work, is treated as lex specialist (i.e. the provisions contained therein overrule the general applicable rules). The lex specialis treatment includes the clause of the obligations of contractor as the withholder of income taxes article 23 and article 26. The main problem is how to optimally the application of withholding tax on the contractors payment other than for employees. The analysis is based on the theory that taxes collection, especially in developing countries, is mainly to achieve the government adequate revenue (Revenue Adequacy Principle), the application of which should take into account the equality (Equality Principle) and certainty (Certainty Principle) that should be reflected in the regulations and in its implementation as well. Withholding taxes is a method of paying tax in the current year on the base of "Pay As You Earn" approach. The approach requires taxpayers to pay the income tax through the withholding method at the moment when the income is received. This method applied as a supplement to income tax collection system. Despite of its supplementary nature, the withholding scheme should consider the above-mentioned three principles that must be equally regulated and implemented in order to achieve the optimum result.

The type of research used for the purpose of this thesis is descriptive analysis. First of all, the data is presented and followed by analysis to arrive at the conclusion and used it as a base to offer suggestions to achieve the optimum result. Primary data is obtained from interview with tax officers in charge, tax consultants and the directors of the mining companies. Secondary data is obtained from library research, research on taxation regulations, and research in Kantor Pelayanan Pajak Penanaman Modal Asing III.

By the research found out that there are many of differences on the objects and the rate of the withholding that is applied by the mining company compared with current positive regulations. The research reveals that the lex specialist treatment apparently deviates from three above-mentioned principles. It can be concluded that the differences of the objects and the rates of withholding taxes that caused by the lex specialist treatment lacks of Revenue Adequacy Principle achievement and makes inequality and uncertainty for the taxpayers who are subject to withholding.

It is there for, recommended that lex specialist treatment on withholding taxes should not be granted to Contract of Works. In addition, it is relevant to improve the data base of taxpayers to enable tax administration to disclose underreporting income.