

Conference Paper

State University with Legal Entity and the Impact to the Rights and Obligations of the Tax Transaction: Case of the University of Indonesia

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Abstract

Consider the dynamics of legal status of the University of Indonesia, the Government issued Law No. 12/2012 on Higher Education that is also the legal status of six (6) other universities. Universities have the autonomy to manage the higher education through the three pillars of high education (Tridharma Perguruan Tinggi) in accordance with the background, the objectives, as well as the ability of the university. The autonomy of the university carried out based on the principles of accountability, transparency, non-profit, quality assurance and the effectiveness and efficiency of academic and non-academic activity. University of Indonesia was given full autonomy to manage the universities including the source of financing that consists of government budget and public funds. The Agency of taxation is the taxpayer who is determined to carry out tax obligations. As a non-profit organization with legal entity, UI must legally state back the status as a subject of corporate taxes which have the impact of tax aspect. As the applied research, data obtained from literature studies and field data collection in the form of an interview to the Central Administration of the University and the tax office where the University of Indonesia in Depok is registered.

Keywords: State University with the legal Entity, tax right and obligation, non-profit organization

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1. Introduction

1.1. Background

The Constitution of the Republic of Indonesia have mandated the government to carry on the national education system that aims to educating the nation and the development of science and technology which uphold religious values and national unity intend to the advancement of civilization and welfare of mankind. The government

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made education arrangement to excellent education which must be relevant to the interests of the community equally and equitably

The autonomically policy of higher education have been introduced since 1999, where the government gives support as well as the autonomically right to achieve the university’s visions and missions as the administrator of higher education. University of Indonesia have gone through several dynamic changes related to its legal status, which can be seen on the following table:

TABLE 1: Legal status of UI: Year 1999–present.

Year	Legal Status	Legal Basis
1999	State-owned Legal Entity (BHMN)	PP No. 61/1999
2009	Education Legal Entity (BHP)	UU No. 9/2009
2010	Public Service Agency (BLU)	PP No. 17/2010; PP No. 66/2010
2012	Public University with Legal Entity (PTN BH)	UU No. 12/2012

On 1999, the government determined the university which has fulfill certain requirements to be the non-profit BHMN. Those conditions are attain by organizing an efficient and high quality educations, met the minimum standards of financial and has manage the university in accordance to the economic principals. Through Government Regulation (PP) Number 152/2000, University of Indonesia has been assign as the BHMN with the autonomically right to manage legal entities as well as actualizing the three pillars of higher education. The autonomy covers the funding issue of unit development. On 2003, the government issued Law No.20/2003 toward the national education system and on 2005 the government also release Law No. 19/2005 toward the National Standards of Education, which either not considered the continuity of UI as the BHMN.

In the late of 2008 the government issued Law No. 9/2009 regarding BHP whom perform formal education as the legal entity that organizes formal education. BHP fund management based on the principle of non-profit, which is the principle of activities whose primary purpose is non-profit, and the remaining income from the activities of educational legal entities, should be plowed back into BHP to provide the capacity and/or quality of educational services. But in 2010, the Law was canceled by the Constitutional Court of Indonesia because there are the difference meaning between the non-profit and the low cost of education. The cost of education is the issue of national education. The principle of non-profit does not make the low cost of education for students because education is relatively determined by various factors.

After the cancellation of BHP Law, the government issued Government Regulation No. 17/2010 as amended by Regulation No. 66/2010, toward the Management and the Accomplishment of Education Body which confirms the education should be obtained by government. The addition of article on Regulation No. 66/2010 regulates the format of the autonomy in the areas of finance, human resources, facilities and infrastructure which can be performed through BLU whom appointed by the Minister. If it does not implement the BLU financial supervision, then the autonomy was governed by the general state financial supervision.

Finally in 2012, the government issued Law No. 12/2012 on Higher Education. The Universities have the autonomy to manage their own institution as the center of three pillars of higher education in accordance with the basis and purpose as well as the capability of the university. The autonomy of university supervision must be carried out based on the principles of accountability, transparency, non-profit, quality assurance and the effectiveness and efficiency covering academic and non-academic activities. The implementation of autonomy of higher education was granted selectively based on performance evaluation by the Minister to the State to the university with the BLU Financial Supervision or by forming PTN BH to produce qualified Higher Education.

The changes on the legal status of the UI as PTN BH must have the impact to its tax rights and obligations. University of Indonesia registered as a taxpayer in the tax office Depok since December 26, 2005 and have a Taxpayer Identification Number (TIN) 02.486.770.7-412.000 by Business Sector Code (KLU) 80 311 – The Educational Service of Government Degree Program, with income tax obligations Article 21 article 22, article 23, article 25, article 26 and article 29 of the Income Tax Law.

1.2. Research

This research has the urgency for some parties, among others:

1. The Government, this study is expected to have some input to the tax policy maker
2. University of Indonesia and others PTN BH This study is expected to provide certain information of tax administration related to transactions carried out by PTN BH
3. Academics this research is expected to become the knowledge and providing some input for academics in conducting other research.

2. Explanation

2.1. The concept of tax subject and tax payers

The definition of tax subject is different to the terms of the taxpayer. Law No. 6/1983, as last amended by Law No. 16/2000 gives understanding of the taxpayer but there is no explanation of the definition of tax subject. The taxpayer is the person or entity under the provisions of the relevant legislation is determined to carry out tax obligations. Definition of tax subjects are described in detail in the Law No. 17/2000. According to Soemitro, the taxpayer is the person or entity who is qualified both the terms of the subjective and objective conditions. Persons or entities that meet the terms of the subjective is subject to tax, but not necessarily being the taxpayer. To be a taxpayer, the tax subject must be eligible to objective conditions which is earning the taxable income ([8]: 57-59).

Meanwhile, Gunadi stated that tax subjects who receive or earn income in the Income Tax Act is called the taxpayer. As part of the law in general, the Tax Law has legal subjects as supporters of rights and obligations. Unlike the other laws, In accordance with the definition of the taxpayer in the Act of Tax Provisions and Procedures Law., supporting of the rights and obligations in tax law is a taxpayer, not tax subject (because without the fulfillment of the objective conditions they have no obligation to pay taxes). As a result, the tax subject is not a legal subject in Tax Law. However, the taxpayer derived from tax subject which is taxable because it meets both certain subjective and objective requirements. Although different in law both are interrelated. Back to the rule of law, the taxpayer also includes withholding and tax collector which actually does not perform the obligation of their own taxes, but withholding tax from others. It should be a separation between the taxpayers and the withholding agent ([10]: 4).

According to Arief Adhi, with the legal status as the BHMN, University of Indonesia is the subject of civil law and therefore University of Indonesia must be the tax subject.

2.2. Non-profit organization and tax aspect

Explanation of Law No. 12 of 2012, referred to "*non-profit principle*" that is the principle of the non-profit activity. Therefore the retained income must be plowed back to the university to provide capability and/or quality of education service.

Nainggolan said the Act of Taxation General Provisions Article 1 stated clearly that foundations and other non-profit institutions are tax subject and thus they are taxpayer in Indonesia. A body established for social or commercial mission for profit is not a criterion for determining whether an institution is tax subject or not. Almost all forms of organization throughout an entity becomes tax subject. Foundations and other similar non-profit institutions is obviously tax subject, due to rights and obligations of taxation in Indonesia ([9]: 20).

According to Gunadi, foundations and non-profit organizations can be determine as a tax subject, from two aspects. From the view of Act of Income Tax or Law No. 7/1983, Article 2 (1) (b) a foundation or institution which is subject to tax if it really earn income so it is liable to pay a tax called the taxpayer. Article 4 paragraph 1 letter I Law No. 7/1983 exclude income from the business that is solely devoted to the public interest, so that there is a foundation as a tax subject but not the taxpayer (eligible to subjective requirement but do not qualify objective requirement). The term public interest is referring to social interest such educational institute and health services.

From the aspects of Law No. 10 of 1994 and subsequently eliminate the provisions of article 4 paragraph 3, these exceptions abused by foundations or institutions whose are not solely in the public interest but as the tax shelter to obtain a tax advantage (tax benefit). As a result of the tax shelter, the foundation used to transformed taxable income into tax. As the consequences there are an inequality of distribution of tax expense and inequity of income in the country. So that since 1995, the principle of equality and horizontal equity of income tax have been restored through Act of Income Tax without any exception. So that any foundations and similar organizations established or domiciled in Indonesia are generally qualified to the subjective and objective requirements is become a resident taxpayer and must have a Taxpayer Identification Number.

As Nainggolan said, the uniqueness of the establishment of the foundation, ownership structure and how to obtain funds to finance its activities make the Indonesian Institute of Accountants issued Statement of Accounting Standards (SFAS) No. 45. The foundations and other non-profit organizations in Indonesia have a manual recording and reporting standards.

Gunadi stated that, according its activities, non-profit organizations covering several areas including education and research. With the characteristics of non-profit organizations in accordance with IAS 45 are:

1. Resources are fund from the contributors without refund or obtain proportional economic benefits

2. Produce goods/services for non-profit objectives and if any, the profit never been shared
3. There is no assets ownership, if there is any, cannot be sold, transferred or redeemed and does not reflect the proportion of resources

The research of Ibrahim and Nurchamid, concluded that the Corporate Income Tax of the higher education with the legal form of BHMN should follow the tax laws in general as an agency or a non-profit institution engaged in education.

3. Methods

The research method using descriptive qualitative approach. The data obtained are primary and secondary data that can be used as a review and foundation for researcher to analyze the problems that may exist. Data collection techniques in the form of a literature study and field interviewing technique.

According Sosrodihardjo, applied research purposes as a tool for decision-making that relies on the internal state of the decision-maker, the external circumstances affecting the decision and facilities to carry out the decision. Field data collection in the form of an interview to the Pusat Administrasi Universitas - UI as an internal party who will carry on the tax administration and the Depok Tax Office on behalf of Director General of taxation; where the entity was registered as a taxpayer (Publisher TIN). (*sponsors*).

4. Result and Argumentation

4.1. Difference between BLU and PTNBH in financial supervision

Under Law No.12/2012 Article 65 and Regulation No. 4/2014 Article 27, the supervision of State University (PTN) divided by 3, namely:

1. State University (PTN) with Non-tax Revenue (Penerimaan Negara Bukan Pajak = PNBP)
2. State University (PTN) with Public Service (BLU)
3. State University (PTN) with Legal Entity (PTN-BH)

Up to September 2016, based on statute issues by the State University and regulated by the Government, there are 11 State University with Legal Entity (PTN BH).

The statute of University of Indonesia regulated by government under Regulation No 68/2013. The difference between BLU and PTN BH in Financial Supervisions are:

TABLE 2: Public service agency compared to public university with legal entity financial reporting.

KETERANGAN	BLU	PTN BH
Management Legal Basis	UU No. 12/2012 PP No. 74/2012 jo PP No. 23/2005 PP No. 17/2010; PP No. 66/2010	UU No. 12/2012 PP No. 4 Year 2014 PP No. 68/2013 PP No. 26/2015
Revenue Reporting	Reported as PNBP	Not Classified as PNBP
Asset Reporting	Asset should be consolidated with BMN	1. The asset required from the business of PTN BH become the asset of PTN BH which is separate state assets. 2. Asset in the form of land tenure under PTN BH from Indonesian Budget (APBN) is property of the state.
Source of Fund	According to Article 14 PP 23/2005, are: 1. APBN/APBD 2. Revenue from Public Service 3. Grants Unappropriate 4. Grants Appropriate 5. Cooperation between BLU and third party and other income (such as income from service from financial institution, sale of fixed asset tetap, and rent income)	- Source from APBN: Allocated to the budget of educational function at the rate of 20% of APBN - Other than APBN a. Community Fund; b. Educational Tuition; c. Management of endowment fund d. Business of PTNBH e. Cooperation of three pillars of higher education; f. Management of the wealth of the asset of PTNBH; g. APBD h. Loan

The Using of BLU funds corresponding to the cost elements in the cost structure ratified in definitive Business Plan and Budget. Due to the objective in term of provide service and goods without priority for profit and in conducting its activities based on the principles of efficiency and productivity, the characteristic of BLU describe as: acting as the government agency (not separated state wealth); produce goods/services wholly/partly sold to the public; non-profit objective; managed by autonomy with efficiency principle and productivity with corporate style; work plans/budgets and the accountability is consolidated with the holding institution; revenue and donations can be used directly; and Employees may consist of civil servants and non-civil servants.

The using of PTNBH Funding, stated clearly at Law PP 26/2015 Article 5, are:

- a. Operational Cost; the cost of three pillars of higher education activity and management arrangements

- b. costs of lecturers; in the form of financial assistance to the non-civil servant lecturer.
- c. the cost of personnel education; in the form of financial assistance for education for non-civil servant personnel
- d. Initial Investment; (Other than land), that Supporting Fund used for the procurement for implementation of three pillars of higher education
- e. Development Cost.

4.2. Legal status of PTNBH and the determination of tax subject

BLU is not tax subject tax, it was stated in the explanation of Article 2 of Law No. 36/2008 paragraph 3. BLU fulfil the cumulative requirement of subject tax exemption. Also the revenue of BLU are classified as Non-tax Revenue (PNBP)

Arief Adhi, in his research said that under legal status as BHMN, University of Indonesia is the subject of civil law so that the University of Indonesia is tax subject. Arief explained that the University of Indonesia as a BHMN is the subject of civil law. Under the tax law, exemption of tax subject must fulfil cumulative conditions. Article 2 point 3 of Law No. 36 in 2008 explained that the revenue of these institutions must include in the budget of the central state and the regions.

In association with the Decree of MWA UI No. 01/SK/MWAUI/2003 about University of Indonesia Bylaws Article 71 and also article 12 paragraph 5 stated that income from community fund is not classified as non-tax revenues (PNBP) and concluded that income is not included in APBN/APBD. The revenue to finance UI's implementation of management and development activity, from community fund is not classified as PNBP. That means it is not necessary to deposit it to State Treasury (Kas Negara) and can be use directly to finance UI disbursement.

Ibrahim and Nurchamid (2015) describing the same argument to explain why University of Indonesia must be treated as the Tax Subject.

Referring to the aforementioned explanation, article 4 of PP No 26/2015 regarding the form and funding mechanism of PTNBH clearly defined that the contribution fund of PTNBH is revenue that manage with the autonomy and not classified as PNBP.

Either if we refer it back to the Regulation PP No. 68 tahun 2013 regarding Statute of University of Indonesia article 74 regarding Revenue. Point 2 dan 3 stated that University income from community funding is not classified as PNBP which was managed

autonomically, transparent and accountable. The conclusion is University of Indonesia legal status as the PTNBH remains as the tax subject.

However, several state universities (PTNBH) including UI had submitted the academic draft to the Directorate General of Tax and Fiscal Policy Board concerning the status of PTNBH to meet the legal certainty as their status which expected to be the non-tax subject to ta, considering:

1. The Government gives assignments to the PTNBH to provide high quality education by limiting the cost of tuition, therefore PTN BH need public funds to support the independence of PTNBH, given the limited funding from the APBN
2. PTN BH is an entity with legal autonomy legal entity whose establishment by government regulation, so that the Agency cannot be equated as definition as contained in Article 1 paragraph 3 of the Act Provisions and Procedures Law.
3. The provision of education facilities as stipulated in Article 4 (3) Income Tax Law stated that in order to support the improvement efforts of human resources quality through education and research development required the adequate facilities and infrastructure

The association of PTNBH University propose tax privileges concerning that PTNBH non-profit legal entity and should be categorized as a special entity that is not subject to corporate income tax.

However, if the policy has not been issued, the researcher argument that University of Indonesia legal entity is qualifying as a tax subject.

4.3. Tax aspect of PTNBH

By the time the UI is still have the BLU legal status, University of Indonesia is treated as Treasurer Expenditure (Bendaharawan Pengeluaran), withheld and reported the Income Tax (VAT) article 21 for the employee income, overtime and others; article 23 income tax on rental payments; article.22 income tax on the payment of cash purchases of goods/services; Value Added Tax (VAT) on payment of the purchase of goods/services;

Revenue of PTN BH derived from APBN Contribution and non-APBN contribution. The treatment of tax for the fund derived from APBN refers to provisions such as the BLU, the income received by civil servant is subject to the final tax. Other income for civil servants which is not funding from APBN is subject to article 21 and taxed with a

progressive tariff, therefore if the civil servant has two sources of income, if there is tax payable for the tax article 21 must be paid, then the tax payable must be paid by the individuals.

University of Indonesia as the PTN BH does not include the criteria of collectors of PPN. The educational service performed are included in Article 4A paragraph 3 letter g VAT Law.

The remaining income of PTN BH activities for non-profit objectives must be plowed back to the university to improve the capability and quality of education services.

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