



## REVIEW OF VALUE ADDED TAX ON PALM KERNEL EXPELLER AFTER THE SUPREME COURT DECISION (PUTUSAN MAHKAMAH AGUNG) NUMBER 70P/HUM/2013

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### ABSTRACT

*Palm Kernel Expeller (PKE) is a by-product of the secondary processing of fresh fruit bunches (FFB). The problem related to VAT arises when there are differences in interpretation of the regulations relating to the transaction of PKE, whether transaction of PKE is subject to VAT which is subject to tax invoice code or transaction which receives facilities of the exemption from VAT which are subject to tax invoice code 08. This research uses a normative-empirical approach by using main documents in the form of supreme court decision on judicial review of PKE case. The research results show that the judge concludes that the implementing regulations for the transaction of PKE used for animal feed must be in line with Supreme Court Decisions Number 70P/HUM/2013 and SE-24/PJ/2014. Second, both tax authorities and taxpayers must find out information about PKE's buyers because PKE has other benefits besides being used for animal feed. If it is used for other things, then the transaction is contrary to the aim and purpose of providing VAT facilities in the form of exemption.*

## 1. INTRODUCTION

### 1.1. Background

Indonesia is famous for its fertile soil, so most of plants can grow well in Indonesia. One form of plants that grows and has economic value planted in Indonesia is oil palm trees. According to Elisabeth and Ginting (2003), oil palm plantations in Indonesia began to develop rapidly since the early 80s and currently oil palm has become one of the plantation commodities which plays a very important role in the country's foreign exchange receipts, employment and development of the people's economy, and regions.

Indonesia is the largest country producing crude palm oil/CPO (Ditjenbun, 2017). Based on data from Badan Pusat Statistik, in 2016 the area of oil palm plantations in Indonesia reached 11.20 hectares (ha) with CPO production of 31,488 tons and in 2021 the plantation area increased to 14.62 ha with CPO

production of 46,223 tons. CPO and palm kernel production increase every year as shown in Table 1.

Along with the growth in palm kernel production, there has also been an increase in by-products from the crude palm kernel oil/CPKO production process, namely Palm Kernel Expeller (PKE). PKE has great potential as an animal feed ingredient because it contains protein levels between 14.19-21.66%, fat 9.5%-10.15%, and crude fiber 12-63% (Mathius et. al, 2005; Nuraini and Trisna, 2006; Chong et. al., 2008). According to Marizal and Filawati (2015), the proportion of PKE is approximately 45-46% of palm kernel or 2.0-2.5% of the weight of fresh fruit bunches. Based on this research, it can be concluded that 9,244.70 tons of palm kernel can get 4,160.12 tons of PKE. Due to this abundant PKE production, there has been a transaction of PKE both at home and abroad.

Table 1. Production of palm oil, palm kernel and palm kernel meal in Indonesia 2016-2021 (in tons)

Year	Crude Palm Oil/CPO (ton)	Palm Kernel (ton)	Palm Kernel Expeller (ton)*
2016	31,488.00	6,297.60	2,833.92
2017	34,940.30	6,988.00	3,144.60
2018	42,883.50	8,576.70	3,859.52
2019	47,120.20	9,424.10	4,240.85
2020	48,296.90	9,659.40	4,346.73
2021	46,223.30	9,244.70	4,160.12

\*) Calculation of PKE: 45% of Palm Kernel

Source: Badan Pusat Statistik

From a taxation perspective, in the early 2000s, transactions of PKE used as animal feed were classified as transaction provided with facilities that were exempt from VAT. Furthermore, the Supreme Court issued Supreme Court Decision Number 70P/HUM/2013 regarding the granting of a material review regarding agricultural goods submitted by the Indonesian Chamber of Commerce and Industry. As an implication of the Supreme Court's decision, the government issued Government Regulation Number 81 of 2015 or Peraturan Pemerintah Nomor 81 Tahun 2015. Based on PP 81/2015, the government classified animal food into animal feed and animal feed ingredients and further regulated the criteria for animal feed ingredients that were granted exempted VAT facilities.

Due to this, differences in views emerged between taxpayers and tax authorities regarding the transaction of PKE. There are views that think that this PKE transaction is a transaction that is subject to VAT with tax invoice number 01 and there are also those who think that this transaction has the facility of being

exempt from VAT with tax invoice number 08. Based on the author's search on the supreme court website regarding the review of the tax court's decision, it was found that Taxpayers won five times and once won by the Directorate General of Taxes in terms of PKE submission material. Therefore, the author would like to further review the differences of opinion between the tax authorities and taxpayers regarding this problem and provide a solution to this problem.

## 2. LITERATURE REVIEW

### 2.1. Palm Kernel Expeller

Palm Kernel Expeller (PKE) is a by-product of the secondary processing of fresh fruit bunches (FFB) or Fresh Fruit Bunch (FFB). Based on Modul Pemeriksaan Industri Perkebunan Sawit in 2013, there are several steps taken to process FFB into PKE. First, the FFB obtained either from one's own plantation or purchased from another party is transported by truck, weighed, and then transferred to the loading ramp to be sorted for quality. The FFB on the loading ramp is moved into the boiling truck for the boiling process. With the help

of a locomotive, the lorry containing the FFB will be transported to the boiling kettle to be heated with steam. FFB is sterilized using a tool called a steam boiler. Next, the oil palm fruit is separated from the empty bunches. The empty bunches can be used as additional fertilizer and the oil palm fruit is pressed through the pressing process. This pressing process is carried out to separate the fiber containing oil and the shell containing palm kernel. The results of this process are:

1. The palm fiber containing oil is processed again to obtain Crude Palm Oil/CPO and fiber can be processed into additional fertilizer; and
2. The shell containing the palm kernel will be pressed with a nutcracker machine to separate the shell from the core/kernel. Shell waste can be used as additional fuel for steam boilers. Further processing of the kernel produces palm kernel oil and palm kernel expeller.

## 2.2 Value Added Tax

According to Sukardji (2015), Value Added Tax (VAT) is a form of indirect tax that has two points of view. From an economic point of view, the imposition of tax on the consumption of goods and/or services that are the object of tax to final consumers. From a juridical point of view, the responsibility for paying taxes to the state treasury does not lie in the hands of the party who bears the tax burden. Philosophically, the final consumer is considered to have paid the tax owed to the state when the seller collects tax on the transaction.

In the case of VAT, the Indonesian Government provides VAT facilities to taxpayers, one of which is exemption from the imposition of VAT. The legal basis for granting VAT exemption facilities is regulated in article 16B of the VAT Law. This article stipulates that the tax payable is not collected in whole or in part or is exempt from taxation, either temporarily or permanently, for:

1. activities in certain areas or certain places within the Customs Area;
2. delivery of certain Taxable Goods or delivery of certain Taxable Services;
3. import of certain Taxable Goods;
4. utilization of certain Intangible Taxable Goods from outside the Customs Area within the Customs Area; and
5. utilization of certain Taxable Services from outside the Customs Area within the Customs Area

In the explanation of article 16B of the VAT Law, it is stated that the aim and purpose of providing facilities is essentially to provide tax facilities that are really needed, especially for the success of high priority economic activity sectors on a national scale, encouraging the development of the business world, and increasing competitiveness, supporting defense national, as well as facilitating national development.

According to Wijaya and Arsini (2021) stated that in its application, the VAT facility was exempted

resulting in the crediting mechanism for input tax not being applicable. This occurs due to the absence of output tax on the delivery of Taxable Goods (BKP) and/or Taxable Services (JKP), so that the Input Tax (VAT-In) related to the delivery of BKP and/or JKP cannot be credited.

One form of implementing regulation for exempt VAT facilities is Government Regulation Number 12 of 2001 jo. Government Regulation Number 31 of 2007 concerning the Import and/or Delivery of Certain Taxable Goods of a Strategic Characteristic that are Exempt from the Imposition of Value Added Tax. Furthermore, the Supreme Court issued a decision number 70P/HUM/2013 which was decided on February 25, 2014 on a request for material review from the Indonesian Chamber of Commerce and Industry. Based on this decision, the government issued Government Regulation Number 81 of 2015 as an implementing regulation of the Supreme Court Decision Number 70P/HUM/2013.

## 2.3 Supreme Court (Mahkamah Agung)

The Supreme Court is the highest state court which oversees four judicial environments, namely general court, religious court, military court and state administrative court (Naibaho and Hasibuan, 2021). According to Article 28 of Law Number 14 of 1985 Jo. Law Number 3 of 2009 concerning the Supreme Court, the Supreme Court has the duty and authority to examine and decide:

### a. cassation request

According to hukum online website, cassation for legal purposes is an extraordinary legal effort against all decisions that have obtained permanent legal force from courts other than the Supreme Court which can only be submitted by the attorney general. In article 30 of Law Number 14 of 1985, the Supreme Court at the cassation level cancels decisions or determinations of courts from all judicial environments because:

1. has no authority or exceeds the limits of authority;
2. misapplies or violates applicable law; And
3. failure to fulfill the requirements required by statutory regulations which threatens such failure with the cancellation of the relevant decision.

### b. disputes regarding judicial authority;

In Article 56 of Law 14/1985 jo. Law 3/2009, disputes regarding the authority to judge occur:

1. if 2 (two) or more Courts declare that they have the authority to hear the same case;
2. if 2 (two) or more courts declare that they do not have the authority to hear the same case.

### c. request for review of a Court decision that has obtained permanent legal force

Judicial review is an extraordinary legal remedy that can be submitted by a convict or his heirs based on

a court decision that has permanent legal force, unless the decision is acquittal or freedom from all legal demands. According to article 67 of Law 14/1985 jo. Law 3/2009, requests for review of civil case decisions that have obtained permanent legal force can be submitted only based on the following reasons:

1. if the decision is based on a lie or deception by the opposing party which is discovered after the case has been decided or is based on evidence which the criminal judge later declares to be false;
2. if after the case has been decided, documents of decisive evidence are found that could not be found at the time the case was examined;
3. if something has been granted that was not demanded or more than what was demanded;
4. if a part of the claim has not been decided without consideration of the reasons;
5. If between the same parties regarding the same issue, on the same basis, a decision which is contradictory to one another has been given by the same Court or at the same level;
6. If in a decision there is an error by the Judge or a real mistake.

Apart from that, the Supreme Court also has the authority to materially review only statutory regulations under this law (Article 31 of the Supreme Court Law).

### 3. RESEARCH METHOD

In this research, the author used normative-empirical research. According to Muhammad (2004), normative-empirical legal research (applied law research) is research using case studies in normative-empirical law in the form of legal behavioral products. The main point of the study is the implementation of positive legal provisions and contracts in every specific legal event that occurs in society in order to achieve predetermined goals.

The method used is a judicial case study, which means there is court intervention to make a settlement decision. According to Naibaho and Hasibuan (2021), as the highest court, the Supreme Court's decision is a decision that has permanent legal implications, meaning that no other court can review and reconsider it. Therefore, the main source documents taken by the author are six Supreme Court decisions regarding the judicial review of the palm kernel expeller case, complemented by tax court decisions, related regulations and related documents.

### 4. RESEARCH RESULT

The issue of Palm Kernel Expeller or better known as Palm Kernel Expeller/PKE became interesting to discuss when differences in interpretation emerged regarding the implementing regulations issued by Supreme Court Decision Number 70P/HUM/2013. The

author has reviewed several supreme court decisions along with tax court decisions, and related regulations regarding disputes or differences of opinion in PKE cases. There are several main points that need to be of concern to both taxpayers or entrepreneurs and tax authorities which will be discussed in the sub-chapters below.

#### 4.1 Disputes Over Implementing Regulations

Palm Kernel Expeller or PKE has become a debate between tax authorities and taxpayers regarding Taxable Goods (BKP), namely the delivery of BKP which is subject to Value Added Tax (VAT) with the tax invoice number 01 or the delivery of BKP which is provided with facilities that are exempt from Value Added Tax with the tax invoice code 08.

Regarding the regulations regarding the delivery of BKP and/or JKP which are provided with exempt facilities, they are regulated in Article 16B of Law Number 42 of 2009 concerning the Third Amendment to Law Number 8 of 1983 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods jo. Law Number 7 of 2021 concerning Harmonization of Tax Regulations. Article 16B paragraph (1) letter b states that "the tax payable is not collected in whole or in part or is exempt from taxation, either temporarily or permanently, for the delivery of certain Taxable Goods or the delivery of certain Taxable Services, regulated by Government Regulation. Furthermore, the government issued Government Regulation Number 12 of 2001 jo. Government Regulation Number 31 of 2007 concerning the Import and/or Delivery of certain Taxable Goods of a strategic nature which are Exempt from the Imposition of VAT. In Article 1 paragraph (1) letter b PP 12/2001 jo. PP 31/2007 reads "Certain strategic taxable goods are: livestock, poultry and fish food and/or raw materials for making livestock, poultry and fish food. In this provision, Palm Kernel Expeller/PKE can be included in article 1 paragraph (1) letter b PP 12/2001 jo. PP 31/2007 is because Palm Kernel Expeller is usually used for animal feed, so BKP gets exempt facilities.

On February 25 2014, the Supreme Court issued decision number 70P/HUM/2013, the decision of which granted the petition for material review from the Petitioner (Indonesian Chamber of Commerce and Industry). Due to this, the Government issued Government Regulation Number 81 of 2015 which revoked PP 12/2001 jo. PP 31/2007 (in accordance with article 7 PP 81/2015) as the implementation of the supreme court decision. In PP 81/2015, there is an expansion regarding animal feed based on Article 1 paragraph (1) and paragraph (2) letters f, g and h. Paragraph (1) regulates certain taxable goods of a strategic nature which upon "import" are exempt from the imposition of Value Added Tax, while paragraph (2) regulates certain taxable goods of a strategic nature whose delivery is exempt from the imposition of value

added tax. Regarding the material in paragraphs (1) and (2), the letters f, g and h are the same, namely:

- f) Animal feed does not include pet food;
- g) Fish feed; and
- h) Feed ingredients for making animal feed and fish feed, excluding feed additives and feed complements, the criteria and/or details of feed ingredients are regulated by a Minister of Finance Regulation after receiving consideration from the Minister who administers government affairs in the maritime and fisheries sector and the Minister in charge carry out government affairs in the agricultural sector.

Based on this, the tax authorities must determine whether PKE includes animal feed or animal feed ingredients. Therefore, the tax authorities must first know the definitions of both feed and feed ingredients. Based on article 1 of Law Number 41 of 2014 concerning Amendments to Law Number 18 of 2019 concerning Animal Husbandry and Health, it regulates that:

1. feed ingredients are ingredients from agriculture, fisheries, animal husbandry or other ingredients that are suitable for use as feed, whether processed or unprocessed.
2. feed is food ingredients, either single or mixed, both processed and unprocessed, which are given to animals for survival, production and reproduction.

Based on the definition above, we can conclude that feed ingredients are ingredients that require a mixture of other ingredients, so that they can be used as animal feed. Meanwhile, feed is food that can be given "directly" to livestock without any mixture or mixture of food ingredients that must be processed to be given to livestock. Therefore, it is necessary to seek further information regarding the PKE classification, including feed or feed ingredients.

Based on the Phytosanitary Palm Kernel Expeller Certification Guidelines for New Zealand, it states that animal feed ingredients of plant origin is one of Indonesia's export commodities which plays a role in the country's foreign exchange earnings. During 2013-2014, there were 3 (three) main commodities recorded as animal feed ingredients which are exported from Indonesia, namely Palm Kernel Expeller/PKE or Palm Kernel Meal/PKM, Copra Expeller/COPEX, and Wheat Bran. Palm Kernel Expeller is a palm product derivative that is used as animal feed ingredient.

Elisabeth and Ginting (2003), stated that the by-products of the palm oil industry, namely palm fronds from oil palm plantations, as well as palm sludge and palm kernel expeller from palm oil mills can be used as feed ingredients or beef cattle.

Widjiastuti, et.al. (2007) stated "... this waste has the potential to be used as feed ingredients in preparing poultry rations (especially broiler chickens), but its use is still limited. This is because palm kernel

expeller has limitations, namely: the content of crude fiber is quite high (especially lignin), and the palatability is low..."

Based on research results from Amri (2007), the use of 18% fermented palm kernel expeller as a mixture in feed affects the performance of goldfish (*Cyprinus Carpio L.*). In other research, Yulianti et.al. (2019), evaluating the digestibility of crude protein and crude fiber of male Etawa crossbreed goats fed a feed mixture of fermented tofu dregs and palm kernel meal with different balances. Based on the Indonesian National Standard SNI 7856:2017, palm kernel expeller is an animal feed ingredient.

Based on the documents above, it can be concluded that PKE is a feed ingredient for livestock. Therefore, the tax authorities will refer to Article 1 paragraph (1) or paragraph (2) letter h, namely feed ingredients for making livestock and fish feed for which the criteria and/or details of feed ingredients are further regulated in the Minister of Finance's regulations. Based on the mandate of this government regulation, the tax authority issued Minister of Finance Regulation Number 142/PMK.010/2017 concerning the second amendment to Minister of Finance Regulation Number 267/PMK.010/2015 concerning criteria and/on details of livestock, feed ingredients for making animal feed and fish feed whose import and/or delivery is exempt from the imposition of Value Added Tax. In article 1 PMK 267/2015 jo. PMK 142/2017 states that livestock, feed ingredients for making animal feed and fish feed, excluding feed additives and feed supplements, are certain taxable goods of a strategic nature whose import and/or delivery are exempt from the imposition of Value Added Tax. Article 5 paragraph (1) of this Minister of Finance Regulation states that details of feed ingredients for making animal feed as referred to in article 1 are listed in attachment I which is an inseparable part of this Regulation.

Meal cake or bungkil in bahasa which is a feed ingredient for making animal feed, the import and/or delivery of which is exempt from VAT as regulated in attachment I PMK 267/2015 jo. PMK 142/2017, includes meal cake and other solid residues, crushed or not or in pellet form, resulting from:

1. extraction of soybean oil, other than defatted soybean flour which is not suitable for human consumption, with number HS 2304.00.90;
2. extraction of fat or vegetable oil from sunflower seeds, with number HS 2306.30.00; yes
3. extraction of vegetable fats or oils from rapeseed seeds which contain low erucic acid, with number HS 2306.41.00.

Based on the provisions above, the tax authorities conclude that palm kernel expeller or PKE is not included as a feed ingredient for making animal feed whose import and/or delivery is exempt from VAT as regulated in Attachment I to PMK 267/2015 jo. PMK 142/2017. Therefore, PKE deliveries do not include

deliveries that are exempt from VAT, so they must be subject to VAT at a rate of 10% with tax invoice code 01.

In Article 5 paragraph (2) PMK 267/2015 jo. PMK 142/2017 states that in the event that there are feed ingredients for making animal feed that are not included in Attachment I to this Ministerial Regulation, the feed ingredients for making animal feed in question can be provided with the facility of being exempt from the imposition of Value Added Tax as long as they are for "imported feed ingredients" for making animal feed, excluding feed additives and feed supplements, it must meet the criteria as intended in Article 3, namely

1. comes from a country that is free from infectious animal diseases and free from plant pest organisms or quarantine plant pest organisms;
2. equipped with a phytosanitary certificate and/or health certificate; And
3. equipped with a certificate of origin, certificate of analysis and description of fumigation treatment for grain feed ingredients.

Based on the supreme court decision compiled by the author, deliveries for PKE are made domestically, therefore the tax authorities are still of the opinion that PKE deliveries are still subject to VAT.

With the opinion of the tax authorities, the Taxpayer disagreed and succeeded in convincing the Supreme Court judges with several arguments. Basically, Palm Kernel Expeller/PKE or animal feed waste is used either directly or indirectly to feed livestock such as chickens, sheep, cows and others because it contains high protein which can accelerate livestock growth with a crude protein content of 15.14%, fat crude 6.08%, crude fiber 17.18%, calcium 0.47%, phosphorus 0.72% and BETN 57.80%. The proportion of PKE used for food needs to be mixed with other nutrients according to the age of the livestock. In the event that PKE is used directly for livestock food, then PKE is treated as "ANIMAL FEED" and if it is used indirectly for livestock food then PKE is treated as "FEED INGREDIENTS".

Article 1 paragraph (1) letter b Government Regulation Number 31 of 2007 concerning the fourth amendment to Government Regulation Number 12 of 2001 concerning the import and/or delivery of certain strategic taxable goods which are exempt from the imposition of value added tax regulates that livestock food, poultry, and fish and/or raw materials for making livestock, poultry and fish food. Waste in the form of PKE for animal feed is Taxable Goods (BKP) which is included in certain BKP groups that are strategic in nature in accordance with the provisions of article 1 number 1 letter b PP 12/2001 jo. PP 31/2007. Furthermore, PKE is BKP that has undergone two manufacturing processes, so it is not included in the group of agricultural products regulated in Article 1 paragraph (1) letter c PP 12/2001 jo. PP 31/2007.

Based on the Supreme Court Decision Number 70P/HUM/2013 which was decided on February 25 2014, which in its decision stated that it granted the judicial review of the applicant from the Indonesian Chamber of Commerce and Industry or Indonesian Chamber of Commerce and Industry for the judicial review of agricultural products including:

1. Certain Taxable Goods which are strategic in nature are agricultural goods (article 1 paragraph (1) letter c PP 31/2007);
2. Agricultural goods are goods produced from business activities in the fields of agriculture, plantations and forestry which are directly picked, taken directly or tapped directly from the source, including those which are pre-processed with the aim of extending shelf life or facilitating further processing, as stipulated in attachment to this government regulation (article 1 paragraph (2) letter a PP 31/2007);
3. Imports of certain strategic taxable goods in the form of agricultural products as intended in Article 1 paragraph (1) letter c are exempt from the imposition of VAT (article 2 paragraph (1) letter f PP 31/2007); and
4. Delivery of certain taxable goods of a strategic nature in the form of agricultural goods as intended in Article 1 paragraph (1) letter c is exempt from the imposition of VAT (article 2 paragraph (2) letter c PP 31/2007).

The Supreme Court is of the opinion that the above articles are contrary to the Value Added Tax Law, and therefore are invalid and do not apply generally.

Based on the decision of the supreme court above, it shows that agricultural products are certain BKP of a strategic nature which is included in the judicial review, while Palm Kernel Expeller or waste for animal feed is a certain BKP of a strategic nature which is not included in the material test as stated in article 1 paragraph (1) letter b PP 12/2001 jo. PP 31/2007, namely livestock, poultry and fish food and/or raw materials for making livestock, poultry and fish food. Therefore, other articles in PP 12/2001 jo. PP 31/2007 which is not included in the material review remains valid and is declared not to conflict with the VAT Law.

In addition, on July 25 2014, the Directorate General of Taxes issued a circular letter number SE-24/PJ/2014 concerning the Implementation of the Decision of the Supreme Court of the Republic of Indonesia Number 70P/HUM/2013 concerning Value Added Tax on Agricultural Goods Produced from Business Activities in the Agriculture, Plantation and Forestry Sectors as regulated in Government Regulation Number 31 of 2017. The purpose of the circular letter is to convey the decision of the Supreme Court of the Republic of Indonesia and the tax implications that arise to tax officers in all Regional Offices of the Directorate General of Taxes and Tax Service Offices. Furthermore, in attachment SE-

24/PJ/2014 in the oil palm plantation commodities section in accordance with Table 2, in the type of goods column it is written "waste for animal feed" and in the implication column of Supreme Court Decision Number

70P/HUM/2013 it is written "however for animal feed, it is exempt from the imposition of VAT", which means that the goods referred to animal feed.

Table 2. Attachment to SE-24/PJ/2018 regarding the Implication of Supreme Court Decision Number 70P/HUM/2013

No.	Komoditi	Proses	Jenis Barang	Implikasi Putusan MA No. 70P/HUM/2013
3	Kelapa Sawit			
	- Buah	- Dipetik, dibrondol	- Tandan Buah Segar (TBS)	- BKP yang dikenai PPN
	- Cangkang	- Dipetik, direbus, dirontokkan, dicacah, dipress, dikeringkan, dipecah, dipisahkan (cangkang dan inti sawit)	- Cangkang, ampas, daun dan komposnya serta limbah untuk pakan ternak	- BKP yang dikenai PPN (namun untuk makanan ternak dibebaskan dari pengenaan PPN)
			- Tempurung basah/kering	- BKP yang dikenai PPN

Source: Circular Letter Number SE-24/PJ/2014

Apart from that, in the consideration or consideration section of PP 81/2015, it is stated that in order to further encourage national development by providing tax facilities in the form of exemption from the imposition of Value Added Tax on the import and/or acquisition of certain strategic Taxable Goods in certain sectors as well as to implement Supreme Court Decision Number 70P/HUM/2013. Therefore, PP 81/2015 is an implementing regulation of the Supreme Court Decision Number 70P/HUM/2013.

In article 1 paragraph (2) letter f of PP 81/2015 it is regulated that animal feed is included in certain strategic BKP, which is in accordance with the Supreme Court Decision Number 70P/HUM/2013 and SE-24/PJ/2014. Furthermore, in article 1 paragraph (2) letter h PP 81/2015 and article 1 PMK 267/2015 jo. PMK 142/2017, which is an implementing regulation of PP 81/2015, basically also regulates that feed ingredients for making animal feed is included in certain strategic BKP, which is also in accordance with the Supreme Court Decision Number 70P/HUM/2013 and SE-24/PJ/2014. However, in article 1 paragraph (2) letter h PP 81/2015 and article 5 paragraph (1) PMK 267/2015 jo PMK 142/2017, there are restrictions added in the form of criteria and/or details of feed ingredients for making animal feed which are included in certain strategic BKPs which conflict with Supreme Court Decision Number 70P/HUM/2013 and SE-24/PJ/2014.

In accordance with the universal legal principle, namely *Lex Superiori Derogat Legi Inferiori*, which can be interpreted as that legislation which has a lower level in the hierarchy of legislation may not conflict with those which are higher. This means that what can overturn the supreme court's decision is a new provision in the form of a law that regulates the VAT treatment of PKE waste because the supreme court's

decision is a judicial review decision on government regulations. Apart from that, considering that PP 81/2015 was issued to implement the Supreme Court Decision Number 70P/HUM/2013, the provisions in PP 81/2015 and its implementing regulations should not conflict and/or should not add new restrictions, other than those already decided in the Supreme Court Decision Number 70P/HUM/2013 and SE-24/PJ/2014.

In the Big Indonesian Dictionary or Kamus Besar Bahasa Indonesia (KBBI) taken from the site <https://kbbi.co.id> it is known that feed is livestock food (animals, domestic fish, birds, shrimp). Therefore, whether waste in the form of PKE is included in the group of feed ingredients or animal feed, in the end it will still become animal feed, and will still receive the facility of being exempt from the imposition of VAT in accordance with the Supreme Court Decision Number 70P/HUM/2013, SE -24/PJ/2014, and Article 1 paragraph (2) letter f PP 81/2015 regarding animal feed. Based on these arguments, the judge was of the opinion that the delivery of PKE still received the facility of being exempt from the imposition of VAT.

#### 4.2 Palm Kernel Expeller Beneficiaries

At the previous discussion point, the judge was of the opinion that PKE could be classified as animal feed, so that upon its delivery the facility would be exempt from the imposition of VAT. At this point, the author will explain the opinions of the different judges and the tax authorities can convince judge and win the case.

The tax authority uses a different approach than before, namely an approach from the side of the buyer or beneficiary of the Taxable Goods/BKP. In the explanation of Article 16B of the VAT Law regarding the delivery of BKP and/or JKP where the tax payable is not collected or is exempt from VAT, it is explained that:

"One of the principles that must be adhered to firmly in the Taxation Law is the implementation and application of equal treatment to all Taxpayers or to cases in the field of taxation which is essentially the same as adhering strictly to the provisions of statutory regulations. Therefore, **every convenience** in the field of taxation, if truly necessary, must refer to the rules above and must be taken care of so that in its application it **does not deviate from the aims and objectives of providing such convenience**.

**The aim and purpose** of providing convenience is essentially to provide tax facilities that are really needed, especially for the success of high priority economic activity sectors on a national scale, encourage the development of the business world and increase competitiveness, support national defense, and facilitate national development."

Furthermore, in the explanation section of PP 81/2015 as an implementing regulation of the mandate of Article 16B of the VAT Law regarding BKP and/or JKP which are exempt from VAT, it is explained that:

"The aim of providing Value Added Tax exemption facilities is to ensure the success of high priority economic activity sectors on a national scale while still paying attention to national competitiveness.

This provision of convenience in the field of taxation is **temporary**, if the business world in certain sectors is already independent, then **the convenience** in the field of taxation **no longer needs to be provided**.

So that the implementation **does not deviate, supervision needs to be carried out** and in the event that the facilities provided are not used in accordance with the aims and objectives of providing facilities in the taxation sector, then sanctions will be imposed in accordance with the provisions of statutory regulations.

Based on the explanation in article 16B of the VAT Law and PP 81/2015, the government provides convenience in the field of taxation in the form of facilities exempt from VAT for certain sectors. The provision of these facilities in the form of delivery of animal feed and/or feed ingredients for making animal feed is in the framework of the success of high priority economic activity sectors on a national scale while still paying attention to national competitiveness, especially in the livestock sector in Indonesia.

Basically, the provision of facilities in the VAT sector in the form of exempt VAT is intended for buyers in the context of successful development in the livestock sector. The existence of this facility means that VAT enterprise-buyers do not need to pay VAT owed on the purchase of animal feed and/or feed ingredients for making animal feed. However, if the use of VAT facilities is exempted by VAT entrepreneur-sellers for the delivery of PKE which is not intended for livestock activities and/or the manufacture of animal feed, it is not in accordance with the aims and objectives of providing VAT exempt facilities.

Based on the explanation on the S.C. Johnson & Son. Inc website, Palm Kernel Expeller/PKE is palm biomass obtained as a by-product from palm kernels after oil extraction, and is used by the company in the company's coil products as a binder. S.C Johnson & Son. Inc is a manufacturer that produces products in the form of Autan, Kiwi, Bayclin, and Baygon. Based on this, the fact is that PKE is not only used for animal feed and/or animal feed ingredients, but is also used for coil products as a binder.

Based on these facts, both the VAT entrepreneur-sellers and the tax authorities must ensure that the VAT enterprise-buyers actually use PKE for animal feed and/or animal feed ingredients for the advancement of the livestock sector in Indonesia. There are several steps that can be taken to determine whether the PKE buyer is entitled to an exempt VAT facility.

First, both sellers and tax authorities can search for information related to buyers from electronic media, such as the internet. Tax authorities can also seek information from the Directorate General of Taxes' internal data regarding the buyer's identity, the buyer's Taxpayer business processes, annual and periodic tax return (SPT), Financial Reports, and others. From internal data, the tax authorities can also search based on the business field classification/klasifikasi lapangan usaha (KLU) regulated in the Circular Letter of the Director General of Taxes Number SE-03/PJ/2013, to find out the economic activities carried out by Taxpayers.

Second, after obtaining a description of the business of the buyer and classifying which buyer falls into the category of Taxpayer which is and is not included in the livestock sector. Sellers and tax authorities can make field visits to the business of buyers who are not included in the business field classification of livestock sector. Based on this visit, a field inspection report can be prepared in the context of research related to the Taxpayer's business activities and business processes. Based on several supreme court decisions regarding PKE disputes, the judge ruled in favor of the Directorate General of Taxes in the case of handing over PKE to buyers who were not entrepreneurs engaged in the animal feed and/or animal feed ingredients industry because the transaction did not receive VAT exemption facilities.

## 5. CONCLUSIONS AND SUGGESTIONS

Based on the results of the discussion, we can conclude that the Supreme Court Decision Number 70P/HUM/2013 states that the articles are invalid because they conflict with the VAT Law, namely Article 1 paragraph (1) letter c, Article 1 paragraph (2) letter a, Article 2 paragraph (1) letter f, and Article 2 paragraph (2) letter c PP 12/2001 jo. PP 31/2007. Therefore, other articles in PP 12/2001 jo. PP 31/2007 which was not subject to material review remains valid and is declared not to be in conflict with the VAT Law. Apart from that,



in Appendix SE-24/PJ/2014 Roman I Number 3 in the implication column of PUT MA Number 70 P/HUM/2013 it is stated that waste for animal feed/animal food is exempt from VAT. Therefore, the implementing regulations in the form of PP 81/2015 and the regulations below must be in line with the Supreme Court Decision Number 70P/HUM/2013 and SE-24/PJ/2014.

Apart from that, we also have to review the benefits and objectives of providing facilities exempt from VAT. The aim of providing this facility is for buyers in the context of successful development in the livestock sector, so that VAT enterprise- buyers do not need to pay VAT owed on the purchase of animal feed and/or feed ingredients for making animal feed. Therefore, both taxpayers and tax authorities must ensure that the buyer actually uses the PKE to be processed into animal feed.

According to the author, on this issue there needs to be a joint discussion between the Directorate General of Taxes, the Fiscal Policy Agency and the Ministry of Agriculture to reformulate the details of animal feed that must receive VAT exemption facilities. Apart from that, the Directorate General of Taxes can issue an official note or circular letter to vertical units in each region regarding the need for further supervision over the handover of PKE to VAT enterprise-buyers.

## 6. LIMITATIONS AND IMPLICATIONS

This research only reviews the Supreme Court decision, tax court decision, related regulations and confirmation letters from the Directorate General of Taxes. In the future, there needs to be interviews with several related parties to sharpen the review of this problem. Apart from that, the author also has difficulty accessing several Supreme Court decisions because there are several decisions that have not been uploaded on the Supreme Court website. For further research, you can examine the tax treatment of other palm oil products.

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## REFERENCES

- Amri, M. (2007). Pengaruh Bungkil Inti Sawit Fermentasi Dalam Pakan Terhadap Pertumbuhan Ikan Mas. *Jurnal Ilmu-Ilmu Pertanian Indonesia*, 9(1), 71-76.
- Badan Pusat Statistik. *Produksi Perkebunan Besar Menurut Jenis Tanaman (Ton) Tahun 2016-2018*. Retrieved September 27, 2023, from

<https://www.bps.go.id/indicator/54/94/2/produksi-perkebunan-besar-menurut-jenis-tanaman.html>

- Badan Pusat Statistik. *Produksi Perkebunan Besar Menurut Jenis Tanaman (Ton) Tahun 2019-2021*. Retrieved September 27, 2023, from <https://www.bps.go.id/indicator/54/94/1/produksi-perkebunan-besar-menurut-jenis-tanaman.html>

- Badan Pusat Statistik. *Produksi Perkebunan Rakyat Menurut Jenis Tanaman (Ton) Tahun 2016-2018*. Retrieved September 27, 2023, from <https://www.bps.go.id/indicator/54/768/2/prodksi-perkebunan-rakyat-menurut-jenis-tanaman.html>

- Badan Pusat Statistik. *Produksi Perkebunan Rakyat Menurut Jenis Tanaman (Ton) Tahun 2019-2021*. Retrieved September 27, 2023, from <https://www.bps.go.id/indicator/54/768/1/prodksi-perkebunan-rakyat-menurut-jenis-tanaman.html>

- Badan Standardisasi Nasional. (2017). *Standar Nasional Indonesia-Bungkil Inti Sawit-Bahan Pakan Ternak*. Jakarta: Badan Standardisasi Nasional.

- Chong, C.H., Zulkifli, I., Blair, R. (2008). Effects of Dietary Inclusion of Palm Kernel Cake and Palm Oil, and Enzyme Supplementation on Performance of Laying Hens. *Asian-Australian Journal of Animal Sciences*, 21, 1053-1058.

- Direktorat Jenderal Pajak. (2013). *Modul Pemeriksaan Industri Perkebunan Sawit*. Jakarta: Direktorat Pemeriksaan dan Penagihan.

- Direktorat Jenderal Perkebunan. (2017). *Statistik Perkebunan Indonesia-Kelapa Sawit 2015-2017*. Jakarta: Kementerian Pertanian.

- Elisabeth, G., & Ginting, S. P. (2003). Pemanfaatan Hasil Samping Industri Kelapa Sawit Sebagai Bahan Pakan Ternak Sapi Potong. *Lokakarya Sistem Integrasi Kelapa Sawit-Sapi*, 110-118.

- HukumOnline.com. *Perbedaan Kasasi Demi Kepentingan Hukum Dengan Peninjauan Kembali*. Retrieved September 27, 2023, from <https://www.hukumonline.com/klinik/a/perbedaan-kasasi-demi-kepentingan-hukum-dengan-peninjauan-kembali-lt5970264663d2d/>

- Kamus Besar Bahasa Indonesia. *Arti Kata "Pakan" Menurut KBBI*. Retrieved September 27, 2023, from <https://www.kbbi.co.id/arti-kata/pakan>

- Marizal & Filawati (2015). Pengaruh Pemberian Bungkil Inti Sawit Hasil Fermentasi dengan Kultur Campuran *Trichoderma Harzianum* dan *Aspergillus Niger* Terhadap Pertambahan Bobot Badan Ayam Pedaging. *Seminar Nasional LPPM Universitas Jambi*, 144-150.

- Mathius, i. W. et. al. (2005). Pemanfaatan Produk Fermentasi Lumpur Bungkil Sebagai Bahan Pakan

- Sapi Potong. *Seminar Nasional Teknologi Peternakan dan Veteriner Bogor*, 153-161.
- Muhammad, A. (2004). *Hukum dan Penelitian Hukum Cet-1*. Bandung: PT. Citra Aditya Bakti.
- Naibaho, R. & Hasibuan, I. J. M. (2021). Peranan Mahkamah Agung Dalam Penegakan Hukum dan Keadilan Melalui Kekuasaan Kehakiman. *Nommensen Journal of Legal Opinion*, 2(2), 203-214.
- Nuraini & Trisna, A. (2006). Respon Broiler Terhadap Ransum Yang Mengandung Bungkil Inti Sawit Fermentasi dengan *Penicillium Sp.* *Jurnal Agribisnis Peternakan*, 2, 45-48.
- Peraturan Menteri Keuangan Republik Indonesia Nomor 267/PMK.010/2015 sebagaimana telah diubah dengan Peraturan Menteri Keuangan Republik Indonesia Nomor 142/PMK.010/2017 tentang Kriteria dan/atau Rincian Ternak, Bahan Pakan Untuk Pembuatan Pakan Ternak dan Pakan Ikan yang Atas Impor dan/atau Penyerahannya Dibebaskan dari Pengenaan Pajak Pertambahan Nilai.
- Peraturan Pemerintah Republik Indonesia Nomor 12 Tahun 2001 sebagaimana telah diubah dengan Peraturan Pemerintah Republik Indonesia Nomor 31 Tahun 2007 tentang Impor dan atau Penyerahan Barang Kena Pajak Tertentu yang Bersifat Strategis yang Dibebaskan dari Pengenaan Pajak Pertambahan Nilai.
- Peraturan Pemerintah Republik Indonesia Nomor 81 Tahun 2015 tentang Impor dan atau Penyerahan Barang Kena Pajak Tertentu yang Bersifat Strategis yang Dibebaskan dari Pengenaan Pajak Pertambahan Nilai.
- Pusat Karantina Tumbuhan dan Keamanan Hayati Nabati. *Pedoman Sertifikasi Fitosanitari Palm Kernel Expeller Tujuan New Zealand*. Jakarta; Kementerian Pertanian.
- Putusan Mahkamah Agung Republik Indonesia Nomor 70P/HUM/2023 Mengenai Pajak Pertambahan Nilai Atas Barang Hasil Pertanian Yang Dihasilkan Dari Kegiatan Usaha Di Bidang Pertanian, Perkebunan, dan Kehutanan Sebagaimana Diatur Dalam Peraturan Pemerintah Nomor 31 Tahun 2007.
- Putusan Mahkamah Agung Republik Indonesia Nomor 4744/B/PK/Pjk/2020 Mengenai Perkara Peninjauan Kembali Atas Putusan Pengadilan Pajak Nomor: 001780.16/2019/PP/M.VB Tahun 2019.
- Putusan Mahkamah Agung Republik Indonesia Nomor 4484/B/PK/Pjk/2022 Mengenai Perkara Peninjauan Kembali Atas Putusan Pengadilan Pajak Nomor: 003552.16/2020/PP/M.VIIB Tahun 2022.
- Putusan Mahkamah Agung Republik Indonesia Nomor 86/B/PK/Pjk/2023 Mengenai Perkara Peninjauan Kembali Atas Putusan Pengadilan Pajak Nomor: 004246.16/2020/PP/M.XXA Tahun 2021.
- Putusan Pengadilan Pajak Nomor PUT-001779.16/2019/PP/M.VB Tahun 2019.
- Putusan Pengadilan Pajak Nomor PUT-001779.16/2019/PP/M.VB Tahun 2019.
- Putusan Pengadilan Pajak Nomor PUT-001834.16/2020/PP/M.VB Tahun 2021.
- Putusan Pengadilan Pajak Nomor PUT-004246.16/2020/PP/M.XXA Tahun 2021.
- Putusan Pengadilan Pajak Nomor PUT-004281.16/2020/PP/M.VB Tahun 2021.
- Putusan Pengadilan Pajak Nomor PUT-004537.16/2020/PP/M.XIB Tahun 2021.
- Putusan Pengadilan Pajak Nomor PUT-000178.16/2021/PP/M.VIIB Tahun 2022.
- Putusan Pengadilan Pajak Nomor PUT-004552.16/2020/PP/M.VIIB Tahun 2022.
- S. C. Johnson. *Palm Kernel Expeller*. Retrieved September 27, 2023, from [https://www.whatsinsidescjohnson.com/id/id/ingredients/palm\\_kernel\\_expeller](https://www.whatsinsidescjohnson.com/id/id/ingredients/palm_kernel_expeller)
- Sukardji, U. (2015). *Pokok-Pokok PPN Pajak Pertambahan Nilai Indonesia (Revisi 2015)*. Depok: Rajawali Press.
- Surat Edaran Direktorat Jenderal Pajak Nomor SE-03/PJ/2013 tentang Klasifikasi Lapangan Usaha Wajib Pajak.
- Surat Edaran Direktorat Jenderal Pajak Nomor SE-24/PJ/2014 tentang Pelaksanaan Putusan Mahkamah Agung Republik Indonesia Nomor 70P/HUM/2023 Mengenai Pajak Pertambahan Nilai Atas Barang Hasil Pertanian Yang Dihasilkan Dari Kegiatan Usaha Di Bidang Pertanian, Perkebunan, dan Kehutanan Sebagaimana Diatur Dalam Peraturan Pemerintah Nomor 31 Tahun 2007.
- Undang-undang Nomor 18 Tahun 2009 sebagaimana telah diubah dengan Undang-undang Nomor 41 Tahun 2014 tentang Peternakan dan Kesehatan Hewan.
- Undang-undang Nomor 8 Tahun 1983 sebagaimana telah diubah dengan Undang-undang Nomor 42 Tahun 2009 tentang Pajak Pertambahan Nilai dan Pajak Penjualan atas Barang Mewah.
- Undang-undang Nomor 14 Tahun 1985 sebagaimana telah diubah dengan Undang-undang Nomor 03 Tahun 2009 tentang Mahkamah Agung.
- Undang-undang Nomor 7 Tahun 2021 tentang Harmonisasi Peraturan Perpajakan.
- Widjiastuti, T. et. al. (2007). *Pengolahan Bungkil Inti Sawit Melalui Fermentasi Oleh Jamur *Marasimus Sp.* Guna Menunjang Bahan Pakan Alternatif Untuk Ransum Ayam Broiler*. Makalah Ilmiah Program Hibah Kompetensi A3 Jurusan Produksi Ternak Fakultas Peternakan Universitas Padjajaran.

Wijaya, S., & Arsini, K. R. (2021). Fasilitas PPN Tidak Dipungut Atau Dibebaskan: Perbedaan Dan Permasalahan. *Publik: Jurnal Manajemen Sumber Daya Manusia, Administrasi Dan Pelayanan Publik*, 8(1), 91–104.

Yulianti, G. *et. al.* (2019). Kecernaan Protein Kasar dan Serat Kasar Kambing Peranakan Etawa Jantan Yang Diberi Pakan Fermentasi Ampas Tahu dan Bungkil Inti Sawit Dengan Imbangan Yang Berbeda. *Jurnal Sain Peternakan Indonesia*, 14(3), 272-281.

