INTRODUCTION

According to Onno W Purbo and Aang Wahyudi, "E-commerce is a dynamic set of business process and application technologies, that link enterprises, consumers, and communities through electronic transactions, goods and information."

Based on this opinion, it can be interpreted that e-commerce is a set of dynamic technology, business processes and applications that connect companies with consumers and other communities through electronic transactions, both in trading goods, services and information conducted electronically.

The four types of business model’s e-commerce transactions are adopted from e-commerce transactions based on the OECD, among others:

1. **Online marketplace**: this type of business model is to provide a place of business activities in the form of an internet shop as an Online Marketplace Merchant for sell goods and / or services provide a place of business activities like online-mall as a place to sell goods and services means providers online marketplace only provides a place to sell and is not the owner of goods and services traded online, Examples of online marketplaces include: Bukalapak, Tokopedia, Elevenia.

2. **Classified Ads**: what we know as classified ads are activities that provide a place and / or time to display content (text, graphics, explanatory videos, information, etc.)

3. **Business model**: this type of business model is also known as an Online Shopping Merchant provides a place to sell goods and services means providers online marketplace only provides a place to sell and is not the owner of goods and services traded online, Examples of online marketplaces include: Bukalapak, Tokopedia, Elevenia.

4. **E-commerce transactions**: this type of business model is also known as an Online Shopping Merchant provides a place to sell goods and services means providers online marketplace only provides a place to sell and is not the owner of goods and services traded online, Examples of online marketplaces include: Bukalapak, Tokopedia, Elevenia.
goods and / or services carried out by advertisers through sites that are provided by the Classified Ads Organizer. Examples of Classified Ads are kaskus, to kobagus, berniaga.com, olx.com.

Daily Deals, daily deals are business activities in the form of daily deals sites as a place for daily deals merchants to sell goods and / or services to buyers using vouchers as a means of payment. Examples of daily deals are traveloka, Tiket.com, pegipegi, items sold such as hotel, airplane and food ticket vouchers.

Online Retail, Online Retail is the activity of selling goods and or services conducted by online retail organizers to buyers on online retail sites. The number of sellers is only one, which has a web with the characteristics of permanent store sales because the store is a self-owned shop. Examples of online retailing are Mataharimall.com, Bhinneka.com.

E-commerce transactions have special characteristics. Special characteristics occur because e-commerce transactions sellers (business actors) and buyers (consumers) do not meet directly, the goods offered are only through pictures. Some of these characteristics cause various problems, especially legal issues including:

Anonymous transactions where business people and consumers do not have to meet face to face in a transaction. Business operators do not need the name of the consumer as long as the payment has been authorized by a predetermined payment system provider, which usually uses a credit card. This becomes vulnerable to fraud.

Transactions that are universal across borders of borderless countries raise questions about the legal jurisdiction of which countries should be enforced.

Tax problems where the seller or business actor has not been fully identified whether or not the tax obligation has been carried out. Then if there are transactions between countries, which countries are entitled to collect taxes.

Based on this background, the issues that will be examined in this paper are

How does the government regulate the implementation of e-commerce in Indonesia in order to realize legal certainty?

Is Government Regulation Number 80 of 2019 concerning Trading through Electronic Systems (PMSE) able to fulfill the principle of legal justice between conventional traders and traders in terms online of taxation?

METHODOLOGY

This research is analytical prescriptive, with statutory approach. Normative legal approach methods are used with a starting point of research and analysis of legislation in the field of e-commerce transactions and taxation. A normative juridical approach is legal research conducted by examining library materials or secondary data as a basis for research by conducting a search of regulations and literature relating to the problem under study. The normative juridical approach is intended to understand the role of government in regulating the implementation of e-commerce and then review and analyze the imposition of taxes e-commerce transactions. The types of data in this study are primary, secondary and tertiary legal materials. Data obtained through the study of literature, electronic media, the internet, legislation and other literature.

DISCUSSION

The Role of the Government in Managing the Implementation of E-Commerce in Indonesia in the Context of Realizing Legal Certainty

In the Trade Law stipulates that every business actor that trades goods and or services using an electronic system is required to provide complete and correct data and or information. Trade Data and or information through the Electronic System must at least contain the identity and legality of the business actor as a producer or Distribution Business Actor, the technical requirements of the goods offered, the technical requirements or qualifications of the services offered, the price and method of payment of goods and or services, and the method of delivery goods.

Trading activities and transactions through the electronic system must meet aspects of trade obligations in general, especially information clarity, both subjective and objective. This mandates the clarity of legality in electronic transactions, both before the transaction, the transaction implementation, and post-transaction.

Laws that contain general rules are guidelines for individuals behaving in society, both in relationships with individuals and in relations with the community. The rules become a limit for society in burdening or taking action against individuals. The existence of these rules and the implementation of these rules give rise to legal certainty.4

Trade Regulations in general have been regulated in Law Number 7 of 2014. In realizing legal certainty towards Trade activities through the Electronic System, the government has implemented further regulations in Government Regulations issued on 20 November 2019 namely Government Regulation Number 80 of 2019 concerning Trade Through Electronic Systems (PMSE) which regulates legal aspects of Trade in the operation and utilization of Electronic Systems specifically intended for Trade.

The scope of regulation in this Government Regulation covers all Trade activities carried out using various modes and types of electronic communication systems, both online and offline. This will include legal relations in the context of business to business and business to customer.

The main material for regulating PMSE in PP No. 80 of 2019 includes

a. parties conducting PMSE;

b. requirements in PMSE;

c. PMSE implementation;

d. PMSE Business Actor obligations;

e. proof of PMSE transaction;

f. Electronic Advertisement;

g. electronic bidding, electronic acceptance, and electronic confirmation;

h. electronic contract;

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i. protection of personal data;
ii. payment in PMSE;
iii. delivery of goods and services in PMSE;
iv. exchange goods or services and cancel purchases in PMSE;
v. dispute resolution in PMSE;
vi. guidance and supervision.

In addition, the government has prepared policies and regulations that support the implementation of electronic transactions in e-commerce, including the following:

1. Law Number 11 Year 2008 Regarding Information and Electronic Transactions (ITE) std. Law Number 19 of 2016.

In this PSTE PP set general provisions regarding:

a. Electronic Systems Provider category;
b. Electronic System Provider obligations;
c. deletion and / or closure of access to irrelevant electronic information and / or electronic documents;
d. placement of Electronic Systems and Electronic Data;
e. supervision of the implementation of the Electronic System;
f. the implementation of Electronic Agents;
g. Organizing Electronic Transactions;
h. the implementation of Electronic Certification;
i. Domain Name management;
j. the role of the Government in PSTE;
k. administrative sanctions

Bank Indonesia Regulation No.20 / 6 / PBI / 2018 on Electronic Money.

The role of government is to protect the public interest from any kind of disturbances as a result of misuse of Electronic Information and Electronic Transaction disturbing public order, and prevent dissemination and use of information Electronic and / or Electronic Documents that have prohibited contents in accordance with statutory provisions. While the government’s responsibility in developing e-commerce or PMSE is to provide guidance through the registration mechanism, encourage e-SME improvement and conduct supervision. The government is also responsible for encouraging the resolution of disputes outside the court, including online alias Online Dispute Resolution or ODR in accordance with statutory provisions.3

Government Regulation Number 80 Year 2019 and Tax Justice in Transactions The E-Commerce

Government has formulated several rules relating to the imposition of online business or e-commerce taxes, along with the growing development of goods and / or services trading transactions through electronic systems, there needs to be special confirmation regarding collection tax both Income Tax (PPh) and Value Added Tax (VAT) on the e-commerce transaction. The Government emphasizes that in principle, transactions in the trade in goods and / or services through an electronic system, hereinafter referred to as e-commerce are the same as transactions in the trade in goods and / or services, but differ in terms of the means or tools used. Therefore, there is no difference in taxation treatment between e-commerce transactions and other goods and / or services trading transactions. This has been confirmed in Circular of the Director General of Tax Number SE-62 / PJJ / 2013 concerning Affirmation of Taxation Provisions for E-Commerce Transactions. And Circular of the Director General of Tax Number SE-06 / PJJ / 2015 concerning Withholding and / or Collection of Income Taxes on E-Commerce Transactions.

The regulation is still ineffective in addition to not reaching all online business players, the form is Circular Letter. According to Bayu Dwi Anggono, “The circular letter itself is not legislation (Regeling), nor the decision of the state administration (beschikking), but rather a policy regulations. Enter policy regulations (beleidsregel) or pseudo wetgeving regulations, "4. At the end of 2018 the government issued Regulation of the Minister of Finance Number 210 / PMK.010/ 2018 concerning Tax Treatment of Trade Transactions through Electronic Systems (E-Commerce) which took effect from 1 April 2019. Actually there is nothing really new with this rule. There are no new tariffs, there are no new restrictions and new reporting procedures in them. Everything is still in accordance with tax regulations that have been run well by conventional entrepreneurs. Starting from the obligation to pay NPWP, the obligation to pay income tax and report the tax return, the obligation to be confirmed as a Taxable Entrepreneur (PKP) (if it meets the turnover limits) to the obligation to collect VAT. In essence, through this regulation the government has only created a mechanism for how online seller especially those using e-commerce platforms can get the same treatment as conventional seller. However, what happened was that the government unexpectedly issued Minister of Finance Regulation Number 31/PMK.010/2019 concerning Revocation of PMK Number 210/PMK.010/2018 published March 29, 2019 just days before the ministerial regulation came into force.

Taxes are mandatory levies, but because the form is a transfer of wealth from the community to the state, then in the collection so as not to cause resistance from the parties collected, then one of the requirements for tax collection must meet the conditions of justice. Justice here includes justice in legislation and justice in implementation. Fair in legislation includes taxing in general and evenly, and adjusted to the ability of each taxpayer. Fair in its implementation, namely by regulating taxpayer's rights and obligations.7

In this case after the revocation of PMK Number 210/PMK.010/2018 again there is no legal certainty in the application of taxation on e-commerce. The taxation rules in

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general are already set but with different characteristics from conventional business actors the government must immediately issue special rules related to the imposition of e-commerce tax. In addition to ensuring legal certainty, it will also fulfill the principle of fairness where taxes are generally and equally charged to both conventional and e-commerce businesses, they must contribute to the state through taxes.

Executive Director of the Center for Indonesia Taxation Analysis (CITFA) Yustinus Prastowo assesses the revocation actually harms the government. Because, one of the goals to be achieved through the implementation of the regulation is the ease for e-commerce actors in fulfilling tax obligations. Moreover, the Minister of Finance Regulation can maintain the equality of tax treatment between electronic traders and conventional traders.8

If we see PP No. 80 of 2019, the problem of taxation regulation on the PMSE is only explained in one article, namely in Article 8 which explains that the PMSE business activities apply taxation provisions and mechanisms in accordance with statutory provisions. The PP already requires that the parties in the PMSE must have, include, or convey the identity of a clear legal subject.

While what is meant by "legal subject identity" is all information that explains the existence and legality of the legal subject concerned, both individuals and legal entities, which are listed in, among others, the National Identity Card, Business License, Number of Decree of Legalization of Legal Entity, Identity Number PMSE Business Actors granted by the Minister, bank account number, or cellular telephone number. The clarity of legal subjects as domestic PPMSE and / or overseas PPMSE can be fulfilled by the inclusion of PMSE Business Actor Identification Number given by the ministry that organizes trade affairs.

Not mentioning the Taxpayer Identification Number (NPWP) in the legal identity as explained in PP 80 of 2019 coupled with the revocation of PMK Number 210 / PMK.010 / 2018, the Indonesian tax authorities still do not have instruments to find out who the seller have income and must contribute in the form of tax. If the presence of conventional seller is able to be detected with the physical store and storefront address, then the same thing does not apply to the e-commerce seller. They can freely market, sell and send merchandise from closed houses though.

In the absence of detailed regulations regarding taxation in PP Number 80 of 2019, the government needs to issue special rules on taxes on e-commerce in order to meet the principle of fairness in tax collection. Things that must be considered in the tax arrangement e-commerce as stipulated earlier in PMK 210 include the important points that must be applied:

a. Have a TIN, and be confirmed as a Taxable Entrepreneur (PKP)

b. Collect, deposit, and report VAT and PPh related to providing service marketplace platform to traders and service providers.

c. Collect, deposit, and report VAT and Income Tax related to sales of merchandise belonging to the marketplace platform providers themselves.

d. Report recapitulation of transactions conducted by user platform

e. Traders/service providers who sell through the marketplace platform:

f. Notify NPWP to the marketplace platform provider.

g. If you do not have a NPWP, you can choose to 1) register to obtain a TIN, or (2) provide Population Identification Number to the marketplace platform provider.

h. Carry out Income Tax-related obligations in accordance with applicable regulations.

i. Confirmed as PKP in terms of turnover exceeding IDR 4.8 billion in a year, and carry out VAT-related obligations in accordance with applicable regulations.

For e-commerce outside the marketplace platform, namely business actors carrying out trading activities in goods and services through online retail, classified ads, daily deals, and social media must comply with the provisions related to VAT, sales tax on luxury goods and income tax in accordance with applicable regulations.

These points should be maintained and improved when issuing tax regulations regarding e-commerce transactions. Because in the PMK it still does not fulfill a sense of justice because the taxation mechanism stipulated in the PMK is only for marketplace platform providers and traders/service providers that use temporary marketplace platforms for e-commerce actors outside the marketplace platform that have not been regulated in detail only explained in accordance with regulations applicable tax laws. While e-commerce business can be done through marketplace and platforms other than marketplace. This becomes incompatible with the principle of tax collection by WJ Langen, the principle of equality.

That in principle the similarity of tax collection must be applied equally to every country that meets the taxpayer criteria. There is no such thing as kinship, friends or whatever. The important thing is that all citizens who meet the taxpayer criteria must fulfill their obligations.9

There are two things that need to be the basis for a taxation framework in e-commerce. First, there needs to be a study of the legal aspects of taxation in e-commerce. After that, it is necessary to make a "rule of the game" in terms of taxation of e-commerce. This is very necessary in order to have tax legal certainty for every e-commerce business person, both seller and buyer.10

The second is to prepare a mechanism for monitoring tax compliance related to business activities conducted online.

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Low levels of compliance occur because of ignorance of the taxation aspects and deliberately not to comply because of lack or lack of supervision. In addition, it is also necessary to conduct regular training to update the tax authorities on the latest developments in the internet and e-commerce.\(^{11}\)

With supervision from the government in this case the tax authority will at least create a sense of justice for conventional business actors. They will not feel 'neglected' because they have to fulfill all obligations related to taxation. While e-commerce businesses are 'alarmed' because there are no tax rules that comprehensively regulate them, they are reluctant to pay or register as taxpayers.

**CONCLUSION**

The government in realizing legal certainty has begun to make regulations regarding laws and regulations that covers e-commerce transactions. The government has begun to position it as a regulator, guide and controller of various sectors, ranging from legal protection to consumers, legal protection of personal data and privacy, legal protection against cybercrime, and legal protection against Intellectual Copyright or Digital Copyright. This was marked by the issuance of Government Regulation No. 80 of 2019 concerning Trade Through Electronic Systems (PMSE) along with the rules that support it. However, related to the taxation rules on e-commerce transactions, the government has not yet issued regulations that can realize legal certainty and justice.

Identity, legality, and location of businesses are important e-commerce transactions. Considering this e-commerce transaction is a modern transaction that is not meeting the seller and buyer. This results in many problems that arise including taxation issues. Therefore, we need clear data/information about the seller in this case the business actor to be able to verify clear and correct data.

It certainly will also be very beneficial for the government to implement tax collection or collection. The need for accurate data and information about all parties involved e-commerce transactions which can then be easier in formulating tax data/information about all parties involved e-commerce transactions.

To realize the legal objectives, namely legal certainty, justice and expediency, especially in the taxation sector, taxes on e-commerce transactions need to be regulated more specifically in taxation regulations, including the provisions regarding the classification of e-commerce companiesas domestic or foreign tax subjects. After revoking PMK Number 210 / PMK.010 / 2018, the government should immediately issue regulations to replace the PMK in the field of taxation that comprehensively reaches all parties involved e-commerce transactions.

\(^{11}\)Ibid, p. 164

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**References**

8. Other Sources:
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