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Earmarking Result Of Lease Smoke For The Service Of Health Of Society And Strengthen The Law (Study Pursuant To Law Number 28 Year 2009 About Lease Area And Retribution Area)

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ABSTRACT

Target of this writing is to study and analysetaxs earmarking in exploiting of Iease result smoke for the service of health society and straightening of law pursuant to Law Number 28 Year 2009 about Lease Area and Retribution Area by using approach of conceptual approach and legislation. Result of study were then analysed by using analysis of deskripsi qualitative with deductive reasoning and obtained conclusion that rule concerning earmarking result of Iease smoke more flange to earmarking symbolic, delivering usage of earmarking result of Iease smoke for the service of health society and straightening of law to taker of policy so that benefit of earmarking result of Iease smoke in service of health society and straightening of law still is unclear. Suggestion need dissociation of source defrayal of service of health society and straightening of law coming from Deconcentration fund and Duty aid, Special Fund Allocation of health area and Fund Sharing Holder Result of Duty Tobacco, with coming from cigarette Iease.

INTRODUCTION

One of source state / regional revenue funds is derived from taxes. RochmatSoemitro, states: "Taxes are a social phenomenon and exist only in a society. Without society, there could be no tax"'"1"The tax describes the state's decision with respect to what benefits will be collectively accepted and what to pay individually"[2]

According to Oyok Abuyamin:[3]

> "Based on the institution / authority of tax collection is classified into two, namely: a. Taxes Central / State Tax, as the main source of revenue APBN collected / managed by the Central Government and used to finance routine expenditure and development costs. Example: VAT / VpBm, Income Tax. b. Local Taxes are taxes levied and administered by local governments (Provincial / District / City) and the revenue as a

[1] Rochmat Soemitro, (1986), *Asas dan Dasar Perpajakan* 1, Bandung: Eresco, p. 1.
[2] Widi Widodo dan Dedy Djefris, (2008), *Tax Payer's Right's Apa Yang Perlu Kita Ketahui Tentang Hak-Hak Wajib Pajak*, Bandung : Alfabeta, p. 40.
[3] Oyok Bunyamin, (2010), *Perpajakan Pusat & Daerah Dilengkapi dengan Uraian Undang-undang Terbaru: UU No. 28 Tahun 2009 tentang Pajak Daerah dan Retribusi Daerah dan UU No. 42 Tahun 2009 tentang PPN dan PPn BM*, Bandung: Humaniora, p. 17.

> major source of APBD funds are used to finance local households, both routine and development costs. Examples: Motor Vehicle Tax, Hotel Tax, Restaurant Tax, Entertainment Tax, etc."

In the sense of taxes above contained the meaning that the purpose of tax collection is to finance the needs of the state and region for the greatest prosperity of the people.

Tax money is money that comes from the people, and is used to finance the public interest / interests of the people.4 And by Ning Rahayu, stated:[5]

> "Generaly there are 14 identification benefits,those are facilities and infrastructure, food subsidies, fuel subsidies, health services, defense and security, disaster management, cultural sustainability, mass transportation and affordable electricity costs."

There are so many benefits of tax revenue that can be relished by the community but because there is still "assumption" lack of accountability, transparency and inefficiency in the use / utilization of tax money raises "community doubt" lest tax money corrupted.

The use of tax returns is still questionable because "Unproven utilization of tax returns correlates with the payer (taxpayer)." So that tax collection is still considered to have considerable resistance to the taxpayers.

To approach the sense of fairness in the utilization of tax results in Act Number 28 Year 2009 onRegional Tax and Regional Retribution Law, regulated: Cigarette tax acceptance in both provincial and district / city sectors shall be allocated at least 50% tens of percent) to fund public health services and law enforcement. "[6]

The allocation is divided into:

a. At least 90% (ninety percent) for public health service improvement activities, provided that :

   1) 10% (ten percent) of the 90% (ninety percent) allocation is given as an incentive for the achievement of the District Own Source Revenue (PAD) targets in the Hospital for health services.
   2) The incentives are used in accordance with the use of cigarette taxes for health services.

b. At most 10% (ten percent) for law enforcement activities.

[5]Ning Rahayu, *Alokasi Pajak Harus Transparan*, http://www.antaranews.com/ berita/ 400853, p. 1. (accessed October 25, 2014).
[6]Article 31 PDRD Act.

In the tax literature one method of returning tax to the public is through earmarking tax. While in the provision of cigarette tax is not mentioned implicitly about earmarking tax. This paper examines how the application of cigarette tax earmarking for public health services and law enforcement in the future.

To answer the proposed problem, the statutory approach (*statute Approach*) is used to review the regulation on cigarette tax and conceptual approach, which is to search the books, such as literature, scientific papers and other references.

ANALYSIS AND DISCUSSION

Understanding and Purpose of earmarking taxs

Earmarking tax is "government policy in using budget whichneither source of revenue and expenditure program will be specified specially."[7] Based on the type of taxes earmarked is divided into 2 (two), first, "Substantive earmarking is the practice of strong linking between sources of funds with expenditure.If the amount of funds received increases then expenditures will also increase proportionately with the increase. "[8] Second," Symbolic earmarking is the practice of linking sources of funds with spending on loose rules, so that the proportion of spending on those earmarked expenditures depends on policy makers (flexible). "[9]The provisions concerning the earmarking of cigarette tax results are closer to refer to symbolic earmarking, which delivers the earmarking use of cigarette taxes for public health services and law enforcement to policy makers.

E-mark is intended for accountability and transparency in tax management.[10]Through this "earmarking" policy the region will progressively fix the sustainable development of public service quality in its region. "[11] According to Widi Widodo & Dedy Djefris," Allocation taxes directly for a specific designation will encourage the community to be more participative in fulfilling its tax payment obligations. "[12]

The implementation of Tax earmarked in Indonesia, seen in Law No. 20 of 2003 on the National Education System (Sisdiknas), of which Article 49 states: "The government (central and local) must allocate at least 20 percent to the budget in the education sector,

[8]https://www.selasar.com/ekonomi/pajak-Earmarked Apa Itu, (accessed May 5, 2015).
[9]Ibid.
[10]Pendapat Akhir Fraksi Demokrat Terhadap Rancangan Undang-Undang Pajak Daerah dan Retribusi Daerah.
[11]Pendapat Akhir Pemerintah Terhadap Rancangan Undang-Undang Pajak Daerah dan Retribusi Daerah.
[12]Widi Widodo & Dedy Djefris, (2008), *Tax Payer's Rights Apa Yang Perlu Kita Ketahui Tentang Hak-Hak Wajib Pajak,* Bandung: Alfabeta, p. 25.

outside educators' salaries and education "[13] The success of earmarking in the field of education is questionable,"[14]first, the application of the educational budget case actually made the budget less flexible. Example of abundant education budget makes it difficult for East Java provincial government to allocate the budget. Second, the allocation and funding needs are not monitored and evaluated by the government, as a result earmarking is considered easy to be misused.

Profit Sharing on Cigarattes Tax

In the Regulation of the Minister of Finance No. 115 / PMK.07 / 2013 on the Procedure for Collection and Deposit of Cigarettes Tax, Article 16 is broadly defined: "Decisions on the proportion of cigarette taxes for each province are determined based on the ratio of the population of the province to the total population national. The population ratio is determined by the number of people used for the calculation of the General Allocation Fund for the fiscal year concerned. "It is stated that:" The central allocation of funds policy is based solely on the population, giving rise to horizontal fiscal imbalances[15] between regions, also affecting inequality growth of its development."[16]

In the provisions of the Regional Tax and Regional Retribution Law, it is stated that "the tax revenue of cigarettes shall be submitted to the districts / municipalities of 70% (seventy percent)"[17]with the stipulation that the tax revenue of cigarettes, both provincial and district / urban district sections, shall be allocated at least 50% (fifty percent) to fund public health services and law enforcement by authorized officers ".[18]

The provision contains government order, which depend on the provincial government of tobacco products to the district/city government and to the prescribed use.

The average proportion of cigarette distribution for each province of fiscal year 2015, based on the description of the Director General of Fiscal Balance No. 66 / PK / 2014, is as follows :

[13]Article 49 Act Number. 20 Year 2003.
[14]Departemen Keuangan RI, Kajian kelayakan Penerapan *Earmark Tax* di Indone- sia, www.fiskal depkeu.go.id/2010/m/edef-konten-view.mobileasp?id=20132010
10465787550783, Ibid. p 2-3.
[15]Ketimpangan fiscal horizontal mencerminkan ketimpangan antara kemampuan memperoleh pendapatan dan kebutuhan anggaran pada tingkat pemerintahan yang sama.
[16]Edy Suandi Hamid, *Formula Alternatif Dana Alokasi Umum (DAU) Upaya Mengatasi Ketimpangan Fiskal Dalam Era Otonomi Daerah*, (Yogyakarta: UII Press, 2005), p. 2.
[17]Article 94 (1) (c) Act PDRD
[18]Article 31 Act PDRD

Table 1:Rincian Proporsi Pembagian Pajak Rokok Untuk Masing-Masing Provinsi Tahun Anggaran 2015

No	Region	Proportion
1.	AcehProvince	0,019459
2.	Sumatera Utara Province	0,054595
3.	Sumatera Barat Province	0,020351
4.	Riau Province	0,024541
5.	Jambi Province	0,013263
6.	Sumatera Selatan Province	0,031493
7.	Bengkulu Province	0,007316
8.	Lampung Province	0,031829
9.	Bangka Belitung Province	0,005329
10.	Kepulauan Riau Province	0,007604
11.	DKI Jakarta Province	0,039955
12.	Jawa Barat Province	0,182538
13.	Jawa Tengah Province	0,132940
14.	DI Yagyakarta Province	0,014424
15.	Jawa Timur Province	0,153115
16.	Banten Province	0,046418
17.	Bali Province	0,016279
18.	Nusa Tenggara Barat Province	0,018931
19.	Nusa Tenggara Timur Province	0,019975
20.	Kalimantan Barat Province	0,018702
21.	Kalimantan Tengah Province	0,009676
22.	Kalimantan Selatan Province	0,015556
23.	Kalimantan Timur Province	0,013424
24.	Kalimantan Utara Province	0,002318
25.	Sulawesi Utara Province	0,009464
26.	Sulawesi Tengah Province	0,011228
27.	Sulawesi Selatan Province	0,033439
28.	Sulawesi Tenggara Province	0,009708
29.	Gorontalo Province	0,004424
30.	Sulawesi Barat Province	0,004989
31.	Maluku Province	0,006573
32.	Maluku Utara Province	0,004516
33.	Papua Barat Province	0,003370
34.	Papua Province	0,012258

	Total	1,000000

Source: LampiranKeputusanDirekturJenderalPerimbanganKeuanganNomor 66/PK/2014.

The proportion of cigarette tax sharing for each province is based on the ratio of the total population of the province to the national population and the target of cigarette excise tax on the law on the state budget. And the population ratio is determined by the number of people used for the calculation of the General Allocation Fund for the following fiscal year.[19]

In accordance with the proportion of the tobacco tax revenue proportioned in the Decision of the Director General of Fiscal Balance of the Governor at least on November of the previous fiscal year specifies the cigarette tax sharing allocation for each regency / city as the basis for the preparation of the Regional Revenue and Expenditure Budget of the Regency / City. It was done after the cigarette tax revenue is received in the Regional General Account (RUKD) at least on 7 (seven) working days after the receipt of cigarette tax at the provincial governor's RKUD stipulates the amount of tax revenue share of districts / cities according to the realization of cigarette tax revenues.

The distribution of cigarette tax returns on the basis of this population is not in accordance with the prevailing general provisions in taxation, which usually determines the tax results determined by the potential taxes in each region, so the determination of cigarette tax returns in a region is determined by the number of cigarette consumers or the real result tax cigarettes in a region. In other words, the allocation of cigarette tax revenue does not match the real potential of the cigarette tax itself. It is questionable again, this is contrary to the purpose of tax cigarette tax itself. To prevent the negative impact of cigarette smoke.

KesitBambangPrakosa, steded:[18]

> "Tax sharing to the local government is a tricky problem. If a tax is levied intended to finance infrastructure or services in the local area, then the delivery of tax-sharing for the region concerned is not a problem. However, problems arise if expenditures are directed to public services are personal such as education and health services"

Due to the unclearness between the areas in which the tax payments are did with the regions that derive their tax levies, unless the levies are concentrated and divided as well as calculations which not related to the leviedarea). Difficulties arise, if the tax imposed object is

[19]Article 16 (3) and (4) Permenkeu Nomor 102/PMK.07/2015 Concerning "Perubahan Atas Peraturan Menteri Keuangan Nomor 115/PMK.07/2013 Tentang Tata Cara Pemungutan dan Penyetoran Pajak Rokok."
[18]Kesit Bambang Prakosa, (2003), *Pajak dan Retribusi Daerah, Edisi Revisi*, Yogyakarta: UII Press, p. 28.

in some areas for example, tax on profit or sales tax imposed on a company that has branches in some areas.

A. Alocation of Cigarette Tax Revenue

Regional fiscal needs are a regional funding requirement to execute basic public service functions are measured in a row with population, area, construction cost index, gross regional domestic product per capita and human development index.

For regional finances sourced from cigarette taxes, each year in December of the previous fiscal year the Directorate General of Fiscal Balance issues a decision on the proportion of the share of the Cigarette Tax for each Province for each fiscal year, for example the Decision of the Directorate General of Fiscal Balance No. 66 / PK / 2014 on the Proportion of Cigarette Tax Division for Each Province of Fiscal Year 2015. It was only later that the Provincial Governments based on the Governor's Decree set the allocation of funds for cigarette taxes for districts/cities in their territories. For example, Decision of Governor of East Java Number 188/261 / KPTS / 013/2014 About The Amendment on Decision of East Java Governor About Provisional Determination of Local Tax Revenue fordistrict /City Based on Target of Cash Receipt of Fiscal Year 2014. Abdul Rahman stated: "Contribution of revenue cigarette taxes have not been comparable with the negative effects of cigarettes on public health, whether those consuming directly or well from the users of cigarettes."[19]

Governor have to realize cigarette tax according to the realization of cigarette tax revenue in RKUD province, even though the realization of tax revenue of cigarette is bigger or smaller than budgeted. In the same way, if the tax revenue share of cigarettes has not been budgeted in the State Budget or Revised State Budget.

Realization of cigarette tax sharing fund for each province, then by each province submitted to the district / city by 70% (seventy percent).

[19]Abdul Rahman, Pajak Rokok dan Pelayanan Kesehatan masyarakat, http://bangka.tribunenews.com/11.15,(accessed February 28 ,2015).

Utilization of Cigarette Tax Revenue

Utilization of cigarette tax revenue in public health service activities

a. The allocation of the fund to increase public health service is directed to:
   1) Increasing Local Aset, such as:
      - health equipment procurement:
      - procurement / construction / maintenance of facilities / facilities / infrastructure of hospitals / units of public health services; and
      - construction / maintenance of smoking area in SKPD of Local Government Work Unit;
   2) Health promotion activities, such as:
      - Socializationof the dangers of smoking impact;
      - Socialization of local legal products about smoking bans in certain areas; and / or
      - Other health promotion activities to improve public health especially on priority health programs;
   3) Public Health Service for Poor Socity
      - Purchase of medicines
      - Medication subsidize for underprivileged people who do not receive free medical treatment facility National Health Insurance (JKN) / Healthy Indonesia Card (KIS) from central government; and / or
      - Payment of insurance premiums of the Social Security Administering Body (BPJS) for underprivileged people who are not eligible for the National Health Insurance (JKN) Indonesian Healthy Card (KIS) from the government.
   4) Coordination and Filing Legal Products Provincial areas as needed that have an impact on public improvement. Not included in this case is the preparation of local legal products about the cost of public health services made by the local government, minimum hospital service standards, health service (SPO) health services on health care units and local legal products for the benefit of local / SKPD.
b. Excluding health service activities as referred to in section A, item 2 letter A are:
   1) Routine and operational costs of hospital health services / health care units such as electricity, telephone / internet, water, hygiene costs, and land / building leases.
   2) Payment of honorarium seperately (unless it is attached to a particular activity which is direct expenditure)

c. Especially for hospitals that have been implemented Financial management of the Regional Public Service Agency (PPK-BLUD), the cigarette tax funds received can only be used for capital expenditures that are full of public health services, such as the provision of medical equipment and the addition of other facilities and infrastructure.

Utilization of tax returns in law enforcement activities.

Utilization of cigarette tax revenue in law enforcement activities is directed to its use for:

a. supporting efforts to increase the cigarette tax revenue, such as:
   1) the eradication of excise and illegal cigarettes conducted in a coordinated manner according to the authority of each agency / SKPD;
   2) data collection object and the subject of cigarette tax / cigarette tax
   3) socialization of legislation related to tobacco tax; and
   4) collection of cigarette tax receivables
b. preparation and structuring of local legal products about smoking bans in certain areas / regions without smoking (KTR)
c. enforcement of local legal products on cigarette taxes and utilization of the results, such as :
   1) coordination, acceptance assistance and utilization of cigarette tax;
   2) monitoring and evaluation of cigarette tax utilization; and
   3) Operationalization and coordination for law enforcement.
d. enforcement of local legal products concerning smoking bans in certain non-smoking areas (KTR).
e. Improving the quality of local government law enforcement officers related to local law products about smoking bans in certain areas / regions without cigarettes (KTR) and in order to increase tax revenues of cigarettes.

Viewed from the provision of cigarette tax utilization of at least 50% (fifty) percent for public health services and law enforcement by authorized apparatus in specific means the cigarette tax result has been determined its use.

Concerning the basic use of tax returns RochmatSoemitro stated:[20]

> "Taxes are levied under the law, and then their use should be based on the Law on State Budget (APBN) which describes all estimates and details of outcomes out of each source of income. The proceeds of the taxes are divided into groups of direct taxes and indirect taxes, which are then further detailed into the results of any taxes."

From the State Budget, people know the use of tax revenue proceeds to be used for public purposes, should not be used for the benefit of individuals or the interests of certain groups. After the end of the year it is should be given accountability for the use of state revenue through the calculation of the budget. The budget is not always the same as what is realized, it can be more, or less and this will be seen in the budget calculations.

Theoretically the government policy in using the budget that the source of revenue and expenditure programs that are specified specifically intended more known by the term Earmarking tax and has been widely practiced in several countries. The concept of earmarking can basically also be applied in the form of other government revenues not just on taxes.

The earmarking tax character is "first on the tax-only allocation which is used only to finance the activities relating to the tax paid, secondly when there is a strong benefit relationship between tax payments and the use of tax proceeds to finance the tax sector's expenditure needs."

Reviewd from the character, the tax return on cigarettes has not been fully earmarked for public health services and law enforcement because it is only 50%, while the strong benefits of cigarette tax payments with the needs of public health service spending and law enforcement have not been clearly visible because public health services and law enforcement are not funded from cigarette taxes but also from other funds such as special allocation funds, deconcentration funds, co-funding and DBH HCT. So the earmarking tax on cigarette tax is included in the Partial earmarking tax type, not the full earmarking tax which designs the cigarette tax revenue as the only source of public health service financing and law enforcement.

Then the next question is whether the distribution of cigarette taxes for public health services and law enforcement is appropriate.

[20]Rochmat Soemitro, Asas dan Dasar Perpajakan 1, Op. Cit. p. 48.

It is known that based on Law No, 28/2009 on PDRD that the cigarette tax revenue is allocated for health services and law enforcement of at least 50% (fifty) percent and there is no clear provision of 50% (fifty percent) what percentage (%) for health care workers and what percentage (%) for health care workers, thereby means that local governments are given the freedom to regulate the utilization of cigarette taxes according to the needs of their respective regions.

Furthermore, the field of public health services and law enforcement are sourced from Deconcentration and Co-Administration Fund, Special Allocation Fund for Health and Shrimp Excise Revenue Sharing Fund as a result of cigarette tax, this should be separated so that each funding source is used for what only. For example, the use of cigarette tax funding program, for the improvement of public health services, including the increase of regional assets, health promotion activities, and health service assistance to the underprivileged and the coordination and filing of provincial law products, do not appear to directly address the needs people affected by cigarette smoke.

On the other side, the source of financing of law enforcement in the field of excise is from the Directorate General of Customs and Excise, with the existence of tax cigarette financing for the implementation of law enforcement in the field of excise tax and cigarette taxes to be increased. In this case the benefit of cigarette tax is still less clear still less optimal to guarantee the health of smokers as a single contributor / taxpayer of cigarettes, even the smokers are treated inhumanely because it is required to smoke in a special place less feasible (area smoking) is not adequate. Suppose the example in Mataram Local Regulation No. 4 of 2013 stated:[21]

"Smoking spots must follow the requirements:

a. It is a green open space or space that is directly related to the outside air so that air can circulate well;
b. separated from the main building / space / space and other space used for activity; and
c. Equipped with air-drying equipment. "

In terms of setting the formulation of a special place smoking seems ideal but the smoking area which built by the local government seems not in accordance with the expected provisions yet.

[21]Article 4 (2) Perda Kota Mataram Number 4 Year 2013 Tentang Kawasan Tanpa Rokok

Review of the function of taxes budgetair, tax collection of cigarettes strongly supports the increase of local taxing power in order to improve the ability of regions in providing public services, especially health services, as evidenced by the number of streams of cigarette tax funds to the Regional Public Account, as shown in the table above.

Government policy on tobacco taxes is ultimately directed to the proven budgetaires with the cheaper price and the acceptance of cigarette taxes for each province in accordance with the Decision of the Director General of Fiscal Balance Number 72 / PK / 2015 has been determined the revenue of Rp. 969.155.109.000.dan 2016 estimate of Rp. 13,702,360,000,000. meaning that here the revenue from cigarette taxes continues to increase.

Assessed from the regulerend (set) function of tobacco tax, which requires the government to tax cigarettes is expected to reduce the number of smokers / reduce the consumer cigarette "will not materialize". Thus, there is also Law no. 28 of 2009 on Regional Taxes and Levies that serve as "a tool of social engineering," (Law as a tool to change society, in the sense of law as a tool or agent of change in social change as previously planned) has not functioned as well as expected.

However this is because the government's policy on tobacco taxes is still anbigu on the one hand the government wants to increase local taxing power. This will obviously be realized by making cigarette taxes as a function of budgetair, putting as much money into the provincial public treasury from taxes cigarettes, but if the number of consumers of cigarettes is reduced, for example by increasing the tariffs of excise tax and cigarette taxes that cause the price of cigarettes expensive until only affordable by certain people with money then by itself the income into the local treasury will be reduced.

According to the theory of interest of everyone who has greater interest must pay larger taxes also. In tax cigarette taxes the interests of cigarette consumers with government services are not directly connected with the amount of cigarette tax payments, in the sense that the amount of public health care costs have nothing to do with the amount of cigarette tax paid. Let's say the utilization of cigarette taxes for the assistance of Health Services to the less fortunate, such as: the purchase of drugs; medical assistance / subsidy to the underprivileged people who do not have a National Health Card (JKN) Healthy Indonesia Card (KIS) from the Central Government, the amount of which has nothing to do with cigarette taxes paid by a smoker.

CONCLUSION

The provisions about the earmarking of cigarette tax revenue for public health services and law enforcement are more directed to symbolic earmarking, which submits the use of earmarking cigarette tax results for public health services and law enforcement to policy makers so that the benefits of earmarking cigarette tax results in public health services and law enforcement are still not clear. In the future, it is necessary to specific program earmarking of cigarette taxes, thus it is clear that the utilization of cigarette tax returns is separate from funding from other sources and it is clear the relation between the planned program and the amount of tax that should be paid.

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