

Legal Concept of Corporate Income Tax Rates In The Work Agreement For The 3rd Generation Coal Mining Company To Create Legal Certainty

Jukipli, Ismail, Hartana

Bung Karno University, Jakarta, Indonesia

jukipli.tjoa@gmail.com

ABSTRACT

This study examines the normative disharmony between the provisions of Corporate Income Tax (PPh) in the Generation III Coal Mining Work Agreement (PKP2B) and the generally applicable PPh Law. Article 14 number 3 letter i of the Generation III PKP2B sets a maximum progressive rate of 30% for Taxable Income above Rp50,000,000, but also contains a clause that allows for a lower rate through Government Regulations and adjustments to the PKP layer through a Decree of the Minister of Finance. Meanwhile, the PPh Law has reduced the Corporate Income Tax rate from 25% to 22% through the Law on Harmonization of Tax Regulations (UU HPP). The difference in interpretation gives rise to two conflicting principles: "nailed down"—as interpreted by the Directorate General of Taxes, which freezes rates at the time of contract signing—and "prevailing"—as contractors claim to follow generally applicable rates over time. This research uses a normative juridical method with a statutory, conceptual, and case-based approach. The research findings indicate that the absence of specific implementing regulations does not create legal uncertainty, as higher-level laws—the Income Tax Law and the HPP Law—are hierarchically superior. Contract clauses that allow for lower rates and adjustments to the PKP layer implicitly support the application of the prevailing principle. Therefore, the corporate income tax rate for Generation III PKP2B contractors should follow the generally applicable tariff provisions over time, in order to achieve legal certainty, hierarchical alignment of norms, and fiscal justice.

Keywords: Corporate Income Tax Rates, PKP2B Generation III, Legal Certainty.

INTRODUCTION

Indonesia is rich in natural resources, with the mining sector—particularly coal—contributing significantly to state revenue through taxes, royalties, and non-tax revenues. Article 33 of the 1945 Constitution mandates that natural resource management is carried out by the state for the greatest prosperity of the people. In its implementation, the state involves the private sector through a cooperation contract scheme known as PKP2B.

PKP2B developed gradually, from Generation I (1981) to Generation VII (2009). Among all these generations, Generation III PKP2B, signed between 1997 and 2000, is unique

because it contains tax provisions—particularly corporate income tax rates—that are formulated separately in the contract, thus falling outside the generally applicable provisions of the Income Tax Law.

Article 14 number 3 letter i of PKP2B Generation III stipulates a progressive Corporate Income Tax rate of up to a maximum of 30% for Taxable Income above IDR 50,000,000, accompanied by the phrase "or a lower rate stipulated by Government Regulation" and "if the PKP layer is changed through a Decree of the Minister of Finance, then the rate is applied to the changed layer." On the other hand, the Income Tax Law has experienced a change in the Corporate Income Tax rate to 25%, which was then changed again through Law Number 7 of 2021 concerning Harmonization of Tax Regulations to 22%.

This difference in normative construction gives rise to two conflicting interpretations. The Directorate General of Taxes interprets the applicable rate as the rate at the time the agreement was signed, based on Income Tax Law No. 10 of 1994 (nailed down). Conversely, Generation III PKP2B contractors argue that the phrase "or a lower rate" provides a legal basis for following the prevailing rate.

This difference in interpretation has been the source of a protracted tax dispute that has reached the Supreme Court. Supreme Court Decisions No. 1989/B/PK/Pjk/2022 and No. 5066/B/PK/Pjk/2024 essentially affirm that the 30% corporate income tax rate for Generation III PKP2B remains valid because it is "nailed down." However, the inconsistency of Supreme Court decisions in various cases reflects a lack of adequate legal certainty.

Prolonged legal uncertainty negatively impacts both parties: for the government, tariff uncertainty leads to fluctuations in state revenue; for contractors, it creates a high compliance burden and uncertainty in long-term investment planning. Therefore, a *ius constituendum* is needed, in the form of a clear and comprehensive legal norm to regulate the application of corporate income tax rates for Generation III PKP2B contractors.

RESEARCH METHODS

This study aims to analyze the disharmony of norms between PKP2B Generation III and the Income Tax Law, and to formulate a legal concept for the imposition of ideal Corporate Income Tax rates to realize legal certainty and fiscal justice. The method used is normative juridical with three approaches: (1) a statute approach to examine the hierarchy of norms; (2) a conceptual approach to analyze Gustav Radbruch's theory of legal certainty and

Adolf Wagner's taxation theory; and (3) a case approach to analyze relevant court decisions.

RESULTS AND DISCUSSION

1. Disharmony between Corporate Income Tax Rate Regulations for Generation III PKP2B and the Income Tax Law

A PKP2B (Work Agreement for Construction and Construction) is a special contract between the Indonesian government and private companies in the coal mining sector. Its position as an administrative contract arising from government authority makes it a special instrument (*lex specialis*) within the mining regime. However, this special status does not mean that the PKP2B can override the Income Tax Law, which serves as the *lex generalis* binding on all taxpayers.¹

The Generation III PKP2B uses the tariff principle following the prevailing tax laws, namely the 30% tariff as stipulated in Article 17 of the Income Tax Law before the 2000 amendment.² The fiscal stability clause contained in the Generation III PKP2B is not designed to freeze the Corporate Income Tax rate as something that cannot be changed, but rather as a form of limited protection against changes in fiscal policy that are considered to create uncertainty for business actors.

Following the enactment of Law Number 4 of 2009, the Government began reviewing the fiscal aspects of Generation III PKP2B, including the Corporate Income Tax rate. Tax reforms through Law Number 17 of 2000 to Law Number 36 of 2008 brought significant changes, where the Corporate Income Tax rate was gradually reduced from 30% to 28% (2009), 25% (2010), and then 22% based on the HPP Law.³ The new rate provisions apply to all taxpayers, including Generation III PKP2B contractors.

Different interpretations have created a dualistic approach to tariff implementation in practice. The Directorate General of Taxes argued that the tariff reduction was automatic because Generation III PKP2Bs did not contain a tariff freeze clause. Conversely, some contractors viewed the tariff change as part of a fiscal policy that needed to be discussed jointly. This situation prompted the government to establish a Contract Renegotiation Team through Presidential Decree No. 9 of 2012, but the results varied: some contractors agreed to the tariff adjustment, while others maintained their original contractual positions.

Between 2009 and 2018, disputes related to the Corporate Income Tax rate for Generation III PKP2B (Cooperative Work Agreements). Significant changes occurred following the enactment of Law Number 11 of 2020 concerning Job Creation, which abolished the PKP2B scheme and mandated a transition to a Special Mining Business Permit (IUPK) upon contract expiration. Under this new scheme, fiscal provisions fully comply with applicable laws and regulations, including the 22% Corporate Income Tax rate under the HPP Law.

An analysis of Article 14, number 3, letter i of the Generation III PKP2B shows that the phrase "or a lower rate stipulated by Government Regulation" has a weak normative construction and opens up wide room for interpretation. This phrase does not provide an explicit explanation of the parameters of the "lower rate"—whether it refers to the rate in the national Income Tax Law or the rate under the Generation III PKP2B contract regime. The lack of clarification regarding this normative reference led Generation III PKP2B contractors to interpret the phrase as a right to participate in the reduction in the Corporate Income Tax rate established through amendments to the Income Tax Law. Therefore, when tax reforms reduced the rate from 30% to 28%, 25%, and 22%, contractors assumed the adjustment was automatic without requiring additional government approval.

In contrast, the Directorate General of Taxes interprets the phrase differently. The government believes that the application of lower rates in the context of Generation III PKP2B should be placed within a contractual fiscal framework, not as a mechanism for directly implementing lower national rates. This difference in perspective emphasizes that the primary weakness lies in the formulation of norms in the contract, which do not provide clear, comprehensive, and measurable provisions.

Evaluatively, the phrase "or a lower rate" constitutes a provision containing a vague norm that directly impacts legal certainty. This wording weakness not only creates implementation difficulties but also creates disharmony between contractual tax practices and national tax regimes. Inconsistencies in interpreting this provision have resulted in disparate fiscal treatment among Generation III CCoW contractors.

2. Legal Concept of Imposing Corporate Income Tax Rates to Achieve Legal Certainty

Within the framework of *ius constituendum*, the regulation of Corporate Income Tax rates for Generation III PKP2B contractors needs to be established as a norm that guarantees

clarity, certainty, and predictability in its implementation.⁴ The fundamental problem lies in the phrase in Article 14 number 3 letter i which opens up the possibility of different interpretations, so that a reformulation of the provision is needed to avoid ambiguity.

Structural weaknesses are reflected in several fundamental aspects. First, the ambiguity of the phrase "30% or lower tariff" in Article 14, number 3, letter i of the Generation III PKP2B. This formulation does not provide concrete definitions regarding the conditions under which lower national tariffs can be applied and does not include any normative parameters that can be used as a reference. This ambiguity gives rise to two conflicting interpretations and undermines the validity of the *lex specialis* principle.

Second, there is no bridging norm that explicitly regulates the hierarchical relationship or interaction pattern between the contractual provisions of Generation III PKP2B and the Income Tax Law, as part of national positive law. The Indonesian legal system does not provide a rule that explicitly determines whether Generation III PKP2B should be positioned as *lex specialis*, which can deviate from the Income Tax Law, or whether it should remain subject to the Income Tax Law as the *lex superior* norm.⁵

The disharmony of norms in the application of corporate income tax rates in Generation III PKP2B is essentially a consequence of the conflict between contractual provisions and laws and regulations that have never been harmonized through adequate legal instruments.⁶ This disharmony is rooted in the fundamental differences in character between Generation III PKP2B—which relies on the nailed down principle to provide long-term fiscal certainty—and the national tax regime that applies the prevailing law principle.

The disharmony is exacerbated by the lack of consistent jurisprudence from the Supreme Court. Several decisions related to Generation III PKP2B tariff disputes have shown inconsistent results, both between tax years and between cases with similar substance. This inconsistency reflects the lack of established jurisprudence that judges can use as a reference for interpretation, resulting in each panel reviewing cases without established standards. The lack of intersectoral coordination further exacerbates the situation, as two legal regimes with differing objectives are allowed to operate in parallel without normative coordination.⁷

To address this legal uncertainty and disharmony, structural and comprehensive normative improvements are needed. First, the creation of implementing regulations—either

Government Regulations or Minister of Finance Decrees—that explicitly regulate the mechanism for adjusting tariffs in the event of changes to the Income Tax Law. These regulations must include standard tariff adjustments, contract harmonization procedures when national tariffs change, and the Directorate General of Taxes' obligation to apply tariffs consistently to all Generation III CCoW contractors.

Second, the establishment of a permanent jurisprudence by the Supreme Court is an equally important normative necessity. The lack of uniformity in dispute decisions has led to disparities in legal treatment among Generation III PKP2B contractors and undermined substantive legal certainty. A consistent pattern of decisions will prevent disparities between years, provide guidance for the Directorate General of Taxes and contractors, and reduce recurring disputes.

The formulation of an ideal tariff regulation model must be based on the understanding that the legal relationship between the government and Generation III PKP2B contractors is not merely administrative but also has a contractual dimension. Two main objectives that must be pursued simultaneously are: (1) safeguarding fiscal interests for the sake of state revenue; and (2) ensuring legal certainty for the sake of investment sustainability.

In developing the ideal model, the first step is to clarify phrases that have previously given rise to differing interpretations, particularly the phrase "or a lower rate" in Article 14, number 3, letter i. This provision needs to be reformulated by adding clearer criteria regarding when the new rate can be implemented, the parameters underlying the rate change, and a harmonization mechanism with the national Income Tax Law. From Radbruch's perspective, clarity of norms is a fundamental requirement for the law to function in providing certainty.

Second, a fiscal stability clause in an ideal contract should provide sufficient room for the government to adjust national tax policies. The stability clause should not be formulated as an absolute freeze, but rather as a conditional stabilization clause that provides protection to Generation III CCoW contractors while still allowing the government to change tariffs if certain conditions are met.

Analysis Based on Wagner and Radbruch's Theory

According to Adolf Wagner's Taxation Theory, there are three main relevant principles: fairness, efficiency, and certainty.⁸ The tariff disharmony that arises between the contractual rate of 30% and the national corporate income tax rates (28%, 25%, and 22%)

indicates an imbalance in treatment between Generation III PKP2B contractors and mining business entities outside the contract scheme. This discrepancy indicates that the tariff structure does not meet the principles of fairness and consistency.

The ambiguity of the phrase "or a lower rate" not only opens up room for different interpretations but also contradicts the principle of fiscal justice, which requires that tax burdens be proportional and applied based on clear standards. Wagner also emphasized the importance of efficient tax administration, where tax norms must be easily implemented and avoid conflicting interpretations. When tax norms give rise to different interpretations, administrative burdens increase, law enforcement becomes inefficient, and the potential for disputes increases.

From the perspective of Gustav Radbruch's theory of legal certainty, the conflict in corporate income tax rates in Generation III PKP2B shows that existing norms do not yet fulfill the fundamental values: clarity, predictability, and consistency of application.⁹

First, in terms of clarity: the phrase "30% or lower" does not provide operational limits on the conditions under which a lower rate can be applied, thus making the norm vague and open to different interpretations. Second, in terms of predictability: uncertainty regarding the applicable rate prevents Generation III CCoW contractors from accurately estimating their long-term tax burden. This contradicts the nature of mining investment, which requires specific fiscal projections over decades. Third, in terms of consistency: differences in interpretation between the Directorate General of Taxes and Generation III CCoW contractors have created a dualistic application of the rate, demonstrating the norm's failure to meet the value of regularity.

The affirmation that Generation III PKP2Bs are subject to prevailing law principles also serves to strengthen legal certainty, as certainty requires consistent and predictable application of norms. Without clarity regarding the relationship between contractual provisions and the Income Tax Law, uncertainty will continue to accompany the legal relationship between the government and Generation III PKP2B contractors.

One fundamental weakness in the regulation of corporate income tax rates in Generation III PKP2B is the lack of a clear mechanism governing how contractual rates must adjust when changes occur to the Income Tax Law. The absence of an automatic adjustment mechanism creates a normative vacuum whenever the government changes income tax rates, leading to uncertainty about which rate should be applied. An automatic adjustment

mechanism is essentially a normative instrument needed to ensure that contractual rates align with changes in national tax policy without creating ambiguity.

CONCLUSION

Based on the research results, it can be concluded that the provisions of the Corporate Income Tax rate in the Generation III PKP2B still leave disharmony with the generally applicable Income Tax Law. The formulation of Article 14 number 3 letter i of the Generation III PKP2B—particularly the phrase "30% or lower rate"—does not provide adequate operational limits regarding the method and conditions of its application. This ambiguity gives rise to two conflicting interpretative approaches: the Directorate General of Taxes applies the nailed down principle, while the Generation III PKP2B contractors argue that the rate can follow the provisions that apply from time to time based on changes to the Income Tax Law.

Examined through Gustav Radbruch's theory of legal certainty, the tariff provisions in Generation III PKP2Bs fail to meet the requirements of clarity, predictability, and consistency. From the perspective of Adolf Wagner's tax theory, this indicates that the tariff structure fails to meet the principles of fiscal justice and administrative efficiency.

This research confirms that the provisions of the Income Tax Law, as statutory regulations, hold a higher position in the hierarchy of norms than contractual provisions. Therefore, the applicable rates for Generation III PKP2B contractors should refer to the provisions of the Income Tax Law that have been generally applicable over time. Contracts cannot override coercive tax norms.

To address this normative disharmony, the study recommends: (1) the formation of implementing regulations—in the form of PP or KMK—that explicitly regulate the tariff adjustment mechanism in the event of changes to the Income Tax Law; (2) reformulation of tariff clauses in future mining contract models to be more explicit, measurable, and free from diverse interpretations; and (3) the formation of permanent jurisprudence by the Supreme Court to prevent disparities in decisions in similar cases.

Overall, legal certainty in regulating Generation III PKP2B tariffs can only be achieved through harmonization of contractual provisions with the Income Tax Law, consistency of judicial decisions, and the application of taxation principles that guarantee fairness and predictability as a solid foundation for sustainable investment in the coal mining sector.

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