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## Implementation of Fairness Principles in Tax Collections for Health Benefits for Outsourced Workers

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### Abstract

*Efficiency and effectiveness are important factors for the company. To improve efficiency and effectiveness, the company can perform outsourcing system for labor management. PT. Pertamina Hulu Sanga Sanga has business contracts with three Supporting Service Companies, namely PT. PTC, PT. INJ and PT. IRA as a labor support service company. The three supporting service companies have their own policies in managing their employees who provide personnel services in the Pertamina Hulu Sanga Sanga operational area. One of the differences in the implementation of the policy of supporting service companies among the supporting service companies is the collection of health services tax using ASO (Administrative Services Only) services. This difference became a topic of discussion among outsourcing workers and sparked comparisons between support service companies that use the same health services but one company collects taxes, one does not collect taxes, and the other does not collect taxes but cover as if they were paying premium health insurance. . The research method used is through an empirical legal approach, with an analytical perspective with the object of study covering legal theory, and rules for collecting income taxes, especially health benefits tax for outsourcing workers. The primary data sources in this research are facts in the field and tax laws. Data collection techniques are through field orientation and interviews with outsourced workers and management of outsourcing companies and staff of the Tenggarong Tax Office. The results of the study indicate that the application of the principle of justice in tax collection on outsourcing workers has not been implemented. Legal efforts made by employer companies to regulate the equality of health benefit tax treatment have also not been seen. The existing work contracts are very detailed but still need to be clarified, especially regarding the implementation of health service facilities that can be uniformed for all supporting service companies. In addition, supporting service companies must also be wise in managing business contracts so as not to make policies that harm workers due to misinterpretations in determining whether health insurance is taxed or not.*

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## 1. Introduction

PT Pertamina Hulu Sanga Sanga

(PHSS) is the Contractor of Cooperation

Contract (KKKS) appointed by the Government of the Republic of Indonesia to carry out the management of the Sanga Sanga Working Area (Sanga Sanga Block) in Kutai Kartanegara Regency, since August 8, 2018. The management of Sanga Sanga Block begins since 1968, with the first contract holder at that time being was HUFFCO, and continued by VICO Indonesia. The geographical location of the oil and gas area of PT Pertamina Hulu Sanga Sanga consists of 7 on-shore fields, including Semberah, Badak, Lampake, Nilam, Pamaguan, Mutiara, and Beras which are all located in Kutai Kartanegara district, East Kalimantan. The Sanga Sanga Block has made a very large contribution to energy security in our country, and has produced more than 13 TFC (Trillion Cubic Feet-million billion cubic feet unit of gas) and 400 (four hundred) million barrels of oil from the above fields.

As explained by Gedion Kombe, the implementation of outsourcing has penetrated the oil and gas sector in the world since the 1990s. The world's oil and gas companies, such as Phillip, Shell and British Petroleum, have started using outsourced workers to solve the high operating costs of workers (Gedion, 2015). The use of outsourcing personnel in the context of the company to reduce the company's operational costs (Febrianto, 2021; Mansor et al., 2018; Mageto et al., 2018; Haddud & Nyameboame, 2017, and Linder et al., 2002).

One of the efforts taken by capital owners in order to carry out efficiency is outsourcing, also known as sub-contracting, which is to buy up part or parts of the company's activities, which were previously managed by the company itself, to another company, which is then called the works recipient company (Kulembayeva et al., 2021; Eke et al., 2018; Raeissi et al., 2018; González-Gómez et al., 2013; Vintar & Stanimirovic, 2011, and Fauzi, 2006) The definition of outsourcing is regulated in Article 1601 of the Civil Code which regulates contract work agreements. In practice, the basic

understanding of outsourcing is the transfer of parts or all of the works and or authority to other parties to support the strategy of outsourcing service users, whether personal, company, division, or even a unit within the company (Komang, 2008).

Furthermore, the legal arrangements for outsourcing in Indonesia are regulated in the Manpower Law Number 13 of 2003 (Articles 64, 65 and 66) and the Decree of the Minister of Manpower and Transmigration of the Republic of Indonesia No. Kep.101/Men/VI/2004 of 2004 concerning Procedures for Licensing for Workers/Labour Service Providers (Kepmen 101/2004). The law does not explicitly mention the term *outsourcing*. However, the definition of outsourcing can be seen in the provisions of Article 64 of the Manpower Law Number 13 of 2003, where companies can transfer parts of their works to other companies through a written agreement for contracting work or providing workers/labor services.

The basic principle in the implementation of outsourcing is regulated in Article 65 paragraph (1) of Manpower Law, which states that "Transfer of parts of the implementation of work to other companies is carried out through a written contract of work agreement". Furthermore, in Presidential Instruction Number 3 of 2006 concerning the Investment Climate Policy Package, it is stated that outsourcing is one of the factors that must be seriously considered in attracting the investment climate to Indonesia. The government is serious in assigning the Minister of Manpower to draft a revision of Law Number 13 of 2003 concerning Manpower (Bohari, 2004).

Outsourcing must be viewed in the long term, starting from employee career development, efficiency in the field of labor, organization, benefits and others. The company can focus on its core competencies in business so that it can compete in the market, where the company's internal supporting matters are transferred to other more professional parties. In practice, this transfer

also raises several problems, especially employment issues (Suyoko & Ghufon AZ, 2021; Putri et al., 2020; (Prabhaputra et al., 2019; and Indahsari, 2019).

The implementation of the outsourcing system provides benefits for the government, society, workers, industry, and companies. For the government, outsourcing helps develop and encourage national economic growth and overcome unemployment and expand employment opportunities. For the community, the outsourcing system provides many benefits, including the activation of industries in the regions. For industry, reducing the burden of limited land for company development in industrial areas, and increasing flexibility in developing new products and technologies. Products that are stable and use old technology can be developed at partner companies. It could increase the company's competitiveness with efficient use of facilities and technology that is growing rapidly.

For companies, first, the principal company (employer) can share the burden/risk of the business. Second, efficiency will be achieved because all the company's resources are directed at jobs that become the company's core business. Thus, the transfer of certain jobs to other parties is actually not in order to reduce production costs. However, in practice, there are often irregularities such as wage discrimination between principal company workers (permanent workers) and outsourcing company workers (generally contract workers). With a contract work system, the continuity of work for outsourcing company workers is not guaranteed (Järveläinen, 2020; Lieke & Mawuntu, 2017; Cross, 2010 and Libertus, 2008).

The outsourcing system has opened up opportunities for the emergence of new companies in the field of outsourcing services, and on the other hand has enabled established companies to perform efficiency through the use of outsourcing company ser-

vices. The outsourcing system is intended to overcome several economic problems, therefore, the outsourced works are not the jobs that directly related to the company's core business, but only the supporting works (staff level below), although sometimes there are also managerial positions that are outsourced, but still only for work in a certain time. In its development, many parties reject the implementation of the outsourcing system, because the outsourcing system is considered detrimental to workers and only benefits the company. This is because outsourcing makes companies prefer to hire outsourced workers rather than permanent workers, because through outsourcing the company can save expenses in financing human resources (HR) working in the concerned company. There are several main problems with improper outsourcing practices, including inappropriate salary payments, absence of benefits (health, service period), and the uncertainty of contracts renewal (Izzati, 2021); (Alam & Arif, 2020); (Saefuloh, 2011); (Kunarti, 2009) (Yohanes, 2006).

Manpower is an important part of a company. For this reason, labor protection is a fundamental factor in the relationship between companies and workers. How the mechanism of the relationship between the workforce and the company will be stated in the agreement between the company and the workforce (Pohan, 2020 and Hidayat et al., 2020).

Law No. 13 of 2003 is the basis for the enactment of outsourcing work agreements by companies that provide jobs and companies that provide labors, which are regulated in articles 64 - 66 of the law. It is regulated by its derivatives in the form of Decree of the Minister of Manpower No. 220/MEN/X/2004 concerning the conditions for transferring parts of the works to other companies and Decree of the Minister of Manpower No. 101/MEN/VI/2004 concerning Procedures

for licensing companies providing worker/labor services and is confirmed by the decision of the Constitutional Court no. 012/PUU-I/2003 dated October 28, 2004. The point is that the implementation of outsourcing does not violate the constitutional rights of citizens.

Furthermore, in Law Number 11 of 2020 concerning Job Creation, in which the implementation of outsourcing is simplified in article 66, it states that the relationship between an outsourcing company and its employees is based on a certain time agreement and an indefinite time agreement and the protection, wages and welfare of the labor are the responsibility of the outsourcing company (Triyono, 2011).

As mandated in Law Number 11 of 2020 article 66 paragraph 2, that the welfare of workers is the responsibility of the outsourcing company, the outsourcing company must guarantee health insurance, retirement insurance and pension insurance for its workers, which is also stated in Article 14 of Law Number 24 of 2011 concerning Social Security Administration Agency, which states that "everyone, including foreigners, who work for a minimum of 6 months in Indonesia, is obliged to become participant in the social security program". Health insurance is part of social security registered by employers to provide health insurance for their workers.

In addition to health insurance managed by BPJS, outsourcing companies mostly use health insurance provided by private company, self-manage it, or submit it to other companies. Currently, health fund management services commonly called ASO (Administrative Services Only), which are administrative services for membership, claims administration, reporting, and other services that can be combined by selecting insurance products. ASO services make it easy for outsourcing companies to manage workers' health funds. The form of the outsourcing company agreement with the ASO company is binding in a separate agreement

and only pays the agreed management fee.

The existence of health benefits received by outsourced workers raises potential taxes that must be borne because they are categorized as *natura*. As stated by Cort Van Der Linden, taxes are the obligation of residents of a country to work and have the right to obtain protection (legal and socio-economic), for which residents of the country are obliged to pay taxes to the state (Bohari, 2004).

Income Tax or commonly referred to as PPh is a type of tax imposed on individual taxpayers (WP OP) or corporate taxpayers on income received in a tax period or year. Referring to Law Number 36 of 2008 concerning the Fourth Amendment to Law no. 7 of 1983 concerning Income Tax, which states "The object of tax or income in question is any additional economic capability obtained by a Taxpayer, both from within the country and abroad, which used for consumption or to add to the wealth of the relevant Taxpayer, including business profits, salaries, honoraria, prizes, royalties, dividends and so on."

Currently, PT. Pertamina Hulu Sanga Sanga has a business contract with 3 Support Services Companies (PJP) in the exact same field of work in terms of scope of work. The business contract between PT. Pertamina Hulu Sanga Sanga as the employer company and the supporting service company as the recipient of the work is a written agreement that contains the rights and responsibilities of the parties in the provision and management of professional workforce that supports oil and gas operations at PT. Pertamina Hulu Sanga Sanga. However, in practice, it is found that there is an inequality in the tax burden on health services received by outsourced workers in the three companies. Outsourced workers from each Supporting Service Company questioned the rights and responsibilities of workers regarding health benefits tax and caused jealousy and the process of comparing between each supporting service companies (Tunggul, 2017).

This article examines and analyzes the

fairness principle in tax collection for health benefits for outsourced workers and legal remedies that can be taken by Employers to regulate equal treatment on tax for health benefits

## **2. Method**

This research is an empirical legal research, which is a legal research method that serves to see how the law works in a society, with a sociological approach (Peter, 2017). Primary data was taken directly from outsourced workers in three supporting service companies that have business partnership with PT. Pertamina Hulu Sanga Sanga. While secondary data is data obtained from books, laws and regulations, and journals related to the problem in resolving the issue of overlapping in land uses. The data analysis technique used descriptive qualitative analysis (Kadir, 2004).

## **3. Result and Discussion**

### **Occupational Health Service**

Occupational Health Services, according to the Regulation of the Minister of Manpower & Transmigration No. 01/MEN/1982, is a health service organized to protect workers from the possibility of experiencing health problems caused by workers and the work environment as well as seeking to improve the physical abilities of workers. The company's obligation to provide health services for its workers is enshrined in Law Number 24 of 2011 concerning the Social Security Administration Body (BPJS) that regulates health and employment insurance programs. The rules regarding the obligation of companies to provide health services to their workers are reaffirmed by Government Regulation Number 86 of 2013 concerning procedures for imposing administrative sanctions on employers other than state officials and individual person. Employers other

than state administrators are obligated to: a) register themselves and their workers as participants of BPJS in stages in accordance with the social security program they are participating in; and b) provide complete and correct data about themselves and their employees and family members to BPJS (Widi, 2018).

A supporting service company that has business contract with PT. Pertamina Hulu Sanga Sanga has registered all of its workers in terms of health care insurance and employment insurance at BPJS as well as providing health services to its workers through a third party or self-managed with the ASO (Administrative Service Only). ASO (Administrative Service Only) is a service provided by a Third Party to manage the administration of health care insurance funds for employees of a company and their families, for companies that carry out their own health management and are supported by a cashless system and technology from EDC machines/Web providers.

The advantages of using the ASO System are: monitoring health funds in real time through web reports, analyzing health programs regularly through UR, increasing employee health awareness through healthtalk and minimizing company health funds.

Labor support service company at PT. Pertamina Hulu Sanga Sanga submit the health services of its workers to one of the National ASO providers whose network already exists throughout Indonesia. It is hoped that by using ASO's health services, workers and families who work in supporting service companies get health services in the workers' origin areas which scattered throughout the country without having to come to urban centers where health services are usually available.

In terms of the availability of health services managed by ASO, the service is easier and more affordable according to the workers. Additional health services includ-

ing clinics, optics, and pharmacies are also partners in the management of ASO. In terms of health services, workers get many benefits by using the ASO system. Employee benefits are something that is usually included with the compensation offered by the company to its employees during the recruitment process. In contrast to compensation in the form of wages, benefits of all forms other than wages that lead to the welfare of workers, both in the form of cash and non-cash. Health services for workers and their families are one of the benefits provided by the company to its workers.

### Health Service Tax

Health services are one of the benefits that the company provides to its employees and is enjoyed by workers and their families. Health benefits in Law Number 36 of 2008 concerning Taxation, articles 6 and 9 stipulate that there are two types of applicable employee costs, namely deductible expenses or fees that can be charged and non-deductible expenses or costs that cannot be charged. The explanation is as follows: a) Deductible Expense, deductible expenses or costs that may be charged are costs related to

activities to obtain, maintain, and collect income. Examples of these costs are the cost of employee salaries, electricity costs, telecommunications costs and costs that are related to the company's operations. b) *Non-deductible Expense*, non-deductible expenses or costs that should not be charged are costs that are not related to activities to obtain, maintain, and collect income. Examples of non-deductible costs are profit sharing, donations, gifts in natura or refreshment, and other personal costs that are not related to the interests of the company so that they should not be charged (Siti, 2008).

As mentioned previously that PT. Pertamina Hulu Sanga Sanga has business contracts with three labor support service companies, namely PT. PTC, PT. INJ and PT. IRA. The three companies carry out health benefit tax collections for their workers differently from one another. The author tries to contact and confirm with the management of the supporting service company regarding the legal basis used to determine the health service tax for its workers. The survey results are obtained as table 1.

Table 1. Result of Survey on Health Benefits

No	Item	PT. PTC	PT. INJ	PT. IRA
1	The number of workers	301	176	227
2	Health services	ASO Admedika	ASO Admedika	ASO Admedika
3	Tax Implementation	Not deducting health services taxes to workers	All workers are deducted from their salaries in mutual cooperation to finance health care funds, as if paying insurance premiums	Cut health tax to workers
4	Legal basis used	S.E. Director General of Taxes No.: SE-03/PJ41/2003	Management ASO, but using the Insurance Premium method	Benefits are categorized as rewards in other forms in Article 4 of Law no. 36 year 2008

The description of the research can be described that PT. PTC does not withhold tax on health services to its workers who based it on the Circular Letter of the Director General of Taxes Number SE-03/PJ.41/2003

point 1 which reads: Based on Article 9 paragraph (1) letter d of Law Number 7 of 1983, concerning Income Tax, which has been amended several times, most recently by Law Number 17 of 2000, among others, it

regulates that to determine the amount of Taxable Income for domestic Taxpayers and permanent establishment, it may not deduct the premiums of health insurance, accident insurance, life insurance, endowment insurance, and scholarship insurance, which are paid by an individual taxpayer, unless paid by the employer and the premium is calculated as income for the concerned taxpayer. In the explanation of this article, it is stated that if the insurance premium is paid or borne by the employer, then for the employer the payment may be charged as a fee, and for the concerned employee it is considered as income that count as Tax Object (Supadmi, 2009).

PT. PTC take the basis that the medical costs in ASO's method are the same as insurance premiums. Insurance premiums do not reduce taxable income, so that health services for PT. PTC's workers have the potential to underpay taxes if they are carried out on a remuneration basis. PT. INJ does something different, by cutting a certain amount of money for each employee to be used as a health care fund for their workers. The discounted funds are calculated to cover the need for health services for the duration of the contract and are lower when compared to the payment of health insurance premiums in general. It is in contrast to PT. IRA, which enforces health services for its workers by referring to Article 4 of Law Number 2008 by classifying the medical costs of its workers into the company's operating costs and as a consequence for increasing the amount of workers' income so that it is included as tax objects (Artawan et al., 2020; Sulistyowatie & Amelia, 2020; Pratiwi & Prabowo, 2019; Fatima, 2019; Irawati et al., 2018; Akbar & Nuryatno, 2018; and Mahfud et al., 2017).

Consultations and interviews with experts had been done, one of which was with the Tenggara Tax Office officer who said that the health service tax with the ASO

mechanism had not yet been clearly regulated in the law and its derivative rules, but the Director General of Taxes had provided clear guidelines regarding the components of cost, which can be classified as operating costs and become a burden on workers, or classified as non-taxable costs.

### **Analysis on the Implementation of Fairness Principle in Tax Collectionfor**

#### **Health Benefits for Outsourced Worker**

From the research result above, we get an idea that the implementation of tax collection for health benefit in the three supporting service companies specializing in outsource labor that has a business contract with PT. Pertamina Hulu Sanga Sanga has differences in the interpretation of tax objects that may or may not reduce the company's burden. From the review of journals or regulations that the author studied, there is no regulation concerning the health benefit services, whether to be included as tax objects or not, so there are still different interpretations.

It was found that one of the supporting service companies specializing in outsource labour used the method of paying insurance premiums to ASO companies. Workers are asked in mutual concern to cut the monthly income for premium and deposit it as a health service fund deposit. Because the company considers it an insurance premium, it becomes a tax burden for workers. This company argues that the premium price set for its workers by dividing the burden of health services among all workers is cheaper than paying health insurance premiums in general.

#### **Agreement of PT. Pertamina Hulu Sanga Sanga with the Supporting Services Company**

In supporting its operations, PT. Pertamina Hulu Sanga Sanga cooperates with supporting services companies specializing in outsource labour in the provision of pro-

fessional workers. The supporting services company specializing in outsource labour is a company that has been selected through a national open auction process and announced through the national media. In addition to that, the process of selecting the winner is in accordance with the procurement rules in oil and gas sector and in accordance with government regulations regarding general procurement.

After determining the winners of the procurement of labor supply services (labor supply), it will be bound by a work agreement between PT. Pertamina Hulu Sanga Sanga with the selected supporting service companies. Currently PT. Pertamina Hulu Sanga Sanga has work agreements with 3 supporting service companies specializing in outsource labour, with contract term of 2 years. The current labor support service companies are PT. PTC; PT. INJ; and PT. IRA.

The work agreement between PT. Pertamina Hulu Sanga Sanga with the three supporting service companies have the same scope of work, namely providing professional workers who are placed in the operational area and offices of PT. Pertamina Hulu Sanga Sanga. In the contract document, Appendix A, mentions the obligations of the supporting service company as follows but are not limited to: providing work agreements with employees before work, reporting to the Manpower Office regarding its service in providing labor chartering services, providing personal protective equipment for workers, paying salaries and allowances according to the applicable rules, paying health benefits and employment premiums, providing health service facilities and regular medical check-up for workers and their families and paying taxes incurred during the contract period

#### **Implementation of the Agreement of PT. Pertamina Hulu Sanga Sanga with the Supporting Services Company**

Implementation of business contract

agreement by PT. Pertamina Hulu Sanga Sanga with the supporting service companies began with the Pre Job Activities (PJA) or the delivery of the companies' commitments to the contract agreements, and the exposure of PHSS operating conditions related to the regulations on health, safety and operating facilities. This activity is a mandatory activity to be carried out before project implementation. In addition to PJA, there is a work agreement monitoring activity which is carried out every 3 months with the aim of ensuring that the implementation of the work agreement is carried out according to the work contract and evaluated at the end of the contract and to give assessment to the performance of the supporting service company.

According to the author's observations to the work contract document between PT. Pertamina Hulu Sanga Sanga, it has written down the rights and obligations of the parties. However, there are still differences in the policy of tax collection for health benefits applied to workers of the supporting service companies. This difference is actually the authority of the supporting service company to resolve with its workers.

The employment contract between the supporting service company and its employees also does not mention in detail about the tax object and only displays tax provisions according to the applicable regulations. From the aspect of management, the supporting services companies are not much affected by the differences in tax collection for health benefit for its workers, on the basis that the management of labour is regulated by each company and in accordance with the rules and do not conflict with the applicable provisions. However, for PT. Pertamina Hulu Sanga Sanga, it may have impacts in form of decreasing in the employees' performance which also gives impact to the decrease in company's productivity.

#### **Analysis on the Legal Action of the Outsourcing Company in Regulating Equality**

## on Tax Collection for Health Benefits for Outsourced Worker

From the results of study on the work contract documents, the agreement between PT. Pertamina Hulu Sanga Sanga with the supporting service companies specializing in outsource labor has been very detailed in regulating rules regarding the rights and obligations of the parties. The employment contract between the supporting service company and the employee is also a normative employment contract as in general work contract without further detailing the use of health services.

The use of ASO health services is a new thing which encountered when making work contracts between supporting service companies and PHSS, so that it is not clearly regulate the use of health services for supporting service companies. ASO services have only gained a place in the health industry within the last 2 years and there is still less information about the benefits of health services managed by third parties so that the employment contract does not specifically include third party health service providers.

By not providing a special provider, it aims to give the supporting service companies the freedom to choose an insurance company, or self-manage their health funds, or being organized by a third party. However, it is contradictory between the freedoms granted to have an impact on the implementation of the health service tax charged by supporting service companies to their workers. Uniformity of health services and methods for allocating health benefits can reduce differences in the implementation of health services and the impact of its use.

## 4. Conclusion and Suggestions

The implementation of fairness principle in tax collection for health benefits for outsourced workers has not reflected a sense of justice among the supporting service

workers. There are different interpretations of health benefits among supporting service companies, thus causing different tax treatment for outsourced workers. Furthermore, there is lack of supervision from the relevant agencies on the implementation of the health service tax for outsourced workers.

Furthermore, legal efforts by the employer to regulate equal treatment in tax collection for health service for outsourced workers have been carried out as follows, namely PT. Pertamina Hulu Sanga Sanga as the employer has requested clarification from the supporting service companies regarding the differences in the application of the health service tax to outsourced workers and requested the basis for the application of the service tax, provide a socialization on the implementation of tax for health benefits to its partners by cooperating with the Director General of Taxes and the Director General of Tax for KKP Migas, to provide education and further legal information about definite taxes, so that supporting service companies get the same legal overview and can be used as a basis for decision making, so that they understand about tax rules not only by looking at one source of law but with a comprehensive study.

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