

SURAT TUGAS

Nomor: 791-R/UNTAR/PENELITIAN/II/2024

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Judul : Kedudukan Organ Perseroan Perorangan Pada Usaha Mikro Kecil dan Menengah Pasca Berlakunya Undang-Undang Nomor 6 Tahun 2023
Nama Media : UNES LAW REVIEW
Penerbit : Magister Hukum Pascasarjana, Universitas Ekasakti Padang
Volume/Tahun : 6/2/2023
URL Repository : <https://www.review-unes.com/index.php/law/article/view/1341/1056>

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Print Security : 075dabb54da3cea0c67540198163ae96

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DOI: <https://doi.org/10.31933/unesrev>

Received: 3 Desember 2023, Revised: 08 Desember 2023, Publish: 12 Desember 2023

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Kedudukan Organ Perseroan Perorangan Pada Usaha Mikro Kecil dan Menengah Pasca Berlakunya Undang-Undang Nomor 6 Tahun 2023

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Abstract: Many MSMEs in Indonesia are PT legal entities. MSMEs had a positive impact on the Indonesian economy that can't be separated from the presence of Law No.11/2020. This law introduces the concept of individual companies for MSMEs. After experiencing various dynamics, Job Creation Law finally changed to Law No. 6/2023. This research discusses the position of individual company organs in MSMEs in the New Job Creation Law which consists of one founder who is also the shareholder and director. There are inconsistencies in New Job Creation Law, but they can be solved using the principle "lex posterior derogat legi priori". Apart from that, the duties and responsibilities of individual company organs adhere to a one-tier board system which combines directors and commissioners. This normative legal research uses primary and secondary legal materials collected through library research and analysing with a statute and conceptual approach.

Keyword: Company Law; Company Organs; Individual Companies; MSMEs; Job Creation Law.

Abstrak: UMKM di Indonesia banyak yang berbadan hukum PT. UMKM berdampak sangat positif terhadap perekonomian Indonesia yang tidak lepas dari kehadiran UU No. 11/2020 (UU Cipta Kerja). UU ini mengenalkan konsep perseroan perorangan bagi UMKM. Setelah mengalami berbagai dinamika, akhirnya UU Cipta Kerja berganti menjadi UU No.6/2023 (UU Cipta Kerja Baru). Penelitian ini membahas kedudukan organ perseroan perorangan pada UMKM dalam UU Cipta Kerja Baru yang terdiri dari satu orang pendiri yang merangkap menjadi pemegang saham dan direksi. Terjadi inkonsistensi dalam UU Cipta Kerja Baru, tetapi dapat diatasi dengan asas lex posterior derogate legi priori. Selain itu tugas dan tanggung jawab organ perseroan perorangan menganut one-tier board system yang menggabungkan direksi dan komisaris. Penelitian hukum normatif ini menggunakan bahan hukum primer dan sekunder dengan pendekatan undang-undang dan konseptual. Seluruh bahan hukum dikumpulkan melalui library research.

Kata Kunci: Hukum Perusahaan; Organ Perseroan; Perseroan Perorangan; UMKM; UU Cipta Kerja.

PENDAHULUAN

Kondisi perekonomian Indonesia saat ini kembali pulih pasca terjadinya Pandemi COVID-19 yang melanda seluruh dunia. Pulihnya kondisi perekonomian Indonesia tidak dapat dipisahkan dari peran Usaha Mikro, Kecil, dan Menengah (UMKM) yang menjadi tulang punggung perekonomian nasional. Ketika terjadi Pandemi COVID-19, banyak perusahaan besar mengalami kendala dalam menjalankan usahanya bahkan tidak sedikit yang menyatakan bankrut atau pailit. Namun, di saat yang bersamaan, UMKM justru mengalami perkembangan yang positif sampai saat ini. Data dari Kementerian Koperasi dan Usaha Kecil dan Menengah (Kemenkopukm) menunjukkan bahwa UMKM telah berkontribusi lebih dari 60% terhadap Produk Domestik Bruto (PDB) Indonesia.¹ Selain itu, UMKM juga berkontribusi terhadap penyediaan lapangan kerja karena sekitar 97% tenaga kerja di Indonesia bekerja di sektor UMKM.²

UMKM di Indonesia memiliki berbagai pilihan bentuk badan usaha yang hendak dijalankan. Jika ditinjau dari peraturan perundang-undangan di Indonesia, bentuk badan usaha dapat dibagi menjadi dua kategori yaitu badan usaha yang berbadan hukum dan badan usaha yang tidak berbadan hukum. Badan usaha yang berbadan hukum contohnya yaitu Perseroan Terbatas (PT) serta koperasi dan badan usaha yang tidak berbadan hukum contohnya yaitu *Commanditaire Vennootschap* (CV), Firma, Persekutuan Perdata (*maatschap*), serta Usaha Dagang (UD).³ Pelaku usaha UMKM di Indonesia seringkali menggunakan PT dan CV sebagai badan usahanya.⁴

Dinamika perkembangan UMKM yang positif dalam beberapa tahun belakangan, tidak lepas dari ditetapkannya Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja (UU Cipta Kerja). Kehadiran UU Cipta Kerja merupakan suatu upaya pemerintah untuk mendorong kemudahan berusaha dalam rangka peningkatan iklim investasi.⁵ Presiden Joko Widodo dalam pidato pelantikannya sebagai Presiden Republik Indonesia periode kedua juga menegaskan penyederhanaan regulasi dengan metode *Omnibus Law* sebagai salah satu program kerja pemerintahannya.⁶ Namun, berdasarkan Putusan Mahkamah Konstitusi Nomor 91/PUU-XVIII/2020, UU Cipta Kerja dinyatakan inkonstitusional bersyarat karena tidak memenuhi tahapan dalam pembentukan undang-undang dan melibatkan keikutsertaan masyarakat luas.⁷ Dewan Perwakilan Rakyat (DPR) selaku pembentuk undang-undang diberikan waktu selama dua tahun untuk menyempurnakan UU Cipta Kerja. Selama kurun waktu tersebut undang-undang yang dimaksud tetap berlaku untuk menghindari ketidakpastian hukum dan jika dalam

¹ Direktorat Jenderal Perbendaharaan Kementerian Keuangan Republik Indonesia. (2023, Juni 27). Kontribusi UMKM dalam Perekonomian Indonesia. *DJPb*. <https://djpb.kemenkeu.go.id/kppn/lubuksikaping/id/data-publikasi/artikel/3134-kontribusi-umkm-dalam-perekonomian-indonesia.html>

² Anastasya, A. (2023, Juli 8). Data UMKM, Jumlah dan Pertumbuhan Usaha Mikro, Kecil, dan Menengah di Indonesia. *UKMIndonesia.id*. <https://ukmindonesia.id/baca-deskripsi-posts/data-umkm-jumlah-dan-pertumbuhan-usaha-mikro-kecil-dan-menengah-di-indonesia>

³ Putu Devi Yustisia Utami "Pengaturan Pendaftaran Badan Usaha Bukan Badan Hukum Melalui Sistem Administrasi Usaha," *Jurnal Komunikasi Hukum (JKH)* 6, no. 1 (2020):1-19. hal2

⁴ Smesco. (2021, November 2). Saatnya UMKM Naik Kelas, Yuk Daftarkan Bentuk Usahamu Menjadi CV atau PT. *Smesco*. <https://smesco.go.id/berita/daftarkan-bentuk-usahamu-menjadi-cv-atau-pt>

⁵ Putu Devi Yustisia Utami *et.al*, "Perseroan Perorangan Pada Usaha Mikro Kecil: Kedudukan dan Tanggung Jawab Organ Perseroan", *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 10, no. 4, (2021): 769-781. h770-771.

⁶ Anastasia Dhea Widyastuti, "Analisis Yuridis Pembentukan Undang-Undang Cipta Kerja Berdasarkan Undang-Undang Pembentukan Peraturan Perundang-Undangan," *Sovereignty : Jurnal Demokrasi dan Ketahanan Nasional* 2, no. 1 (2023): 56-62. hal.57.

⁷ Xerxes Erika Da Conceicao Silva, "Analisis Yuridis Putusan Mahkamah Konstitusi Nomor 91/PUU-XVIII/2020 tentang Putusan UU Cipta Kerja terhadap Undang-Undang Dasar Negara Republik Indonesia 1945. *Webinar Hak Uji Materiil Terhadap Bab Penjelasan Undang-Undang Landasan dan Akibat Hukumnya* (2023).

kurun waktu yang telah ditetapkan tidak disempurnakan, maka undang-undang tersebut dinyatakan inkonstitusional permanen.⁸

Alih-alih menyempurnakan, pemerintah justru menetapkan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 tentang Cipta Kerja (Perppu Cipta Kerja) pada tanggal 30 Desember 2022. Perppu Cipta Kerja lahir atas dasar kondisi mendesak karena terjadinya ketidakpastian bagi masyarakat dan investor asing yang telah berinvestasi di Indonesia.⁹ Pasca berlakunya Perppu Cipta Kerja, Indonesia menerima banyak *Foreign Direct Investment* (FDI) atau investor asing yang menilai terjaminnya keamanan investasi di Indonesia dan keuntungan yang diharapkan.¹⁰ Maka dari itu, DPR menetapkan bahwa Perppu Cipta Kerja disahkan menjadi Undang-Undang Nomor 6 Tahun 2023 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 tentang Cipta Kerja (UU Cipta Kerja Baru).¹¹

UU Cipta Kerja Baru secara garis besar memiliki kesamaan dengan Perppu Cipta Kerja yang mengubah dan mencabut kurang lebih 82 undang-undang.¹² Salah satu ketentuan yang diubah dalam UU Cipta Kerja Baru ini adalah definisi dari PT seperti yang diatur pada Bab VI bagian kelima, Pasal 109 angka (1) UU Cipta Kerja Baru yaitu:

“Perseroan Terbatas, yang selanjutnya disebut Perseroan, adalah badan hukum yang merupakan persekutuan modal, didirikan berdasarkan perjanjian, melakukan kegiatan usaha dengan modal dasar yang seluruhnya terbagi dalam saham atau badan hukum perorangan yang memenuhi kriteria usaha mikro dan kecil sebagaimana diatur dalam peraturan perundang-undangan mengenai usaha mikro dan kecil.”

Jika dibandingkan dengan Pasal 1 angka 1 UUPT,¹³ maka terdapat istilah baru yang diatur dalam ayat tersebut yaitu Badan Hukum perorangan (selanjutnya disebut perseroan perorangan) yang sesuai kriteria UMKM. Sebelum lahirnya UU Cipta Kerja dan Perppu Cipta Kerja, tidak pernah terdapat istilah perseroan perorangan tersebut di Indonesia.

Jika ditinjau lebih lanjut, PT dan perseroan perorangan sebenarnya memiliki ketentuan pendirian yang cukup berbeda. Merujuk pada Pasal 7 ayat (1) UUPT, diterangkan bahwa PT didirikan atas perjanjian dua orang atau lebih dan terdapat pengecualian untuk perseroan perorangan.¹⁴ Hal ini mengartikan bahwa perseroan perorangan dapat didirikan oleh satu orang saja. Ketentuan ini tentu dapat mempermudah masyarakat sebagai pelaku usaha ketika hendak mendirikan dan merintis bisnisnya.¹⁵ Selain itu, organ perseroan yang terdiri dari Dewan Direksi, Dewan Komisaris, dan Rapat Umum Pemegang Saham dalam Pasal 1 angka 2 UUPT, seharusnya secara umum dijabat oleh lebih dari satu orang.¹⁶ Namun, dalam perseroan perorangan hanya dikenal Direksi dan Pemegang Saham yang dijabat oleh satu orang.¹⁷

⁸ Putusan Mahkamah Konstitusi Republik Indonesia Nomor 91/PUU-XVIII/2020, Mahkamah Konstitusi, 25 November 2021.

⁹ Diani Kesuma, “Meneropong Kepastian Hukum Bagi Pelaku Usaha Pasca Hadirnya Undang-Undang Nomor 6 Tahun 2023 tentang Cipta Kerja,” *Selidik: Jurnal Hukum dan Bisnis* 9, no. 1 (2023): 91-98. hal.93.

¹⁰ *Ibid.* hal.96.

¹¹ *Ibid.* hal.96.

¹² Putu Devi Yustisia Utami *et.al. loc.cit.*

¹³ Indonesia. *Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas*, Ps.1 angka 1: Perseroan Terbatas, yang selanjutnya disebut Perseroan, adalah badan hukum yang merupakan persekutuan modal, didirikan berdasarkan perjanjian, melakukan kegiatan usaha dengan modal dasar yang seluruhnya terbagi dalam saham dan memenuhi persyaratan yang ditetapkan dalam Undang-Undang ini serta peraturan pelaksanaannya.

¹⁴ Indonesia. *Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas*, Ps.7 ayat (1): Perseroan didirikan oleh 2 (dua) orang atau lebih dengan akta notaris yang dibuat dalam bahasa Indonesia.

¹⁵ Putu Devi Yustisia Utami *et.al. op.cit.* hal.772

¹⁶ Indonesia. *Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas*, Ps.1 angka 2: Organ Perseroan adalah Rapat Umum Pemegang Saham, Direksi, dan Dewan Komisaris.

¹⁷ *Ibid.* hal.772

Sebelumnya, Putu Devi Yustisia Utami dan Kadek Agus Sudiarawan pada tahun 2021 telah melakukan penelitian yang berjudul “Perseroan Perorangan Pada Usaha Mikro dan Kecil: Kedudukan dan Tanggung Jawab Organ Perseroan.” Penelitian tersebut berfokus pada kajian tentang kedudukan organ perseroan dalam perseroan perorangan dengan PT serta wewenang dan tanggung jawab organ perseroan dalam perseroan perorangan dari sudut pandang UUPT dan UU Cipta Kerja. Berbeda dari penelitian terdahulu, penelitian ini berfokus pada kajian mengenai kedudukan organ perseroan perorangan pada UMKM serta tugas dan tanggung jawab organ perseroan ditinjau dari sudut pandang UUPT, UU Cipta Kerja, dan UU Cipta Kerja Baru.

Adapun rumusan masalah yang hendak dibahas dalam penelitian ini yaitu:

1. Bagaimana perbandingan dinamika UU Cipta Kerja yang mengatur tentang perseroan perorangan?
2. Bagaimana kedudukan organ perseroan perorangan pada UMKM dalam UU Cipta Kerja Baru?
3. Bagaimana tugas dan tanggung jawab organ perseroan perorangan pada UMKM dalam UU Cipta Kerja Baru?

METODE

Penelitian ini menggunakan metode penelitian hukum normatif dengan bahan hukum primer dan sekunder.¹⁸ Bahan hukum primer yang digunakan yaitu undang-undang, sedangkan bahan hukum sekunder yang digunakan yaitu buku, artikel, dan media massa. Seluruh bahan hukum dikumpulkan melalui *library research*¹⁹ dan dianalisis secara deskriptif.²⁰ Pendekatan dalam penelitian hukum ini adalah pendekatan undang-undang (*statute approach*) dan pendekatan konseptual (*conceptual approach*).²¹ Pendekatan perundang-undangan dilakukan dengan membahas undang-undang yang berkaitan dengan isu hukum yaitu Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja dan Undang-Undang Nomor 6 Tahun 2023 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 tentang Cipta Kerja. Isu hukum yang akan dikaji dalam penelitian ini adalah kedudukan organ perseroan perorangan pada UMKM.

HASIL DAN PEMBAHASAN

Perkembangan Dinamika UU Cipta Kerja yang Mengatur tentang Perseroan Perorangan

Perseroan Perorangan merupakan jenis badan usaha baru yang dikenal di Indonesia sejak ditetapkannya UU Cipta Kerja. Jenis badan usaha baru tersebut merupakan pengembangan dari jenis badan usaha PT. UU Cipta Kerja sendiri yang meregulasi tentang Perseroan Perorangan, sejatinya memiliki riwayat yang cukup panjang sebelum akhirnya secara efektif diberlakukan saat ini. Selain itu undang-undang ini juga tidak lepas dari kontroversi masyarakat Indonesia.

UU Cipta Kerja pertama kali muncul dalam pidato Presiden Joko Widodo pada tanggal 20 Oktober 2019. Kemudian pemerintah mulai membentuk Satuan Tugas pada tanggal 17 Desember 2019. Pada bulan Februari 2020, Presiden Joko Widodo mengirimkan draf Rancangan Undang-Undang Cipta Kerja (RUU Cipta Kerja) kepada DPR dan secara perdana dibahas oleh Dewan Perwakilan Rakyat (DPR) pada tanggal 2 April 2020. Partisipasi publik juga dilibatkan pada proses perumusan undang-undang ini pada bulan Juli 2020. Sejak tanggal

¹⁸ Fajar ND., M., & Achmad, Y., *Dualisme Penelitian Hukum: Normatif & Empiris*. 2010. Pustaka Pelajar. hal.157-158.

¹⁹ *Ibid.* hal.160

²⁰ *Ibid.* hal.183.

²¹ *Ibid.* hal.185-186.

20 Mei 2020 sampai 3 Oktober 2020, RUU Cipta Kerja dibahas dalam total 64 rapat, sebelum akhirnya disahkan pada tanggal 5 Oktober 2020 dalam Rapat Paripurna DPR.²²

Tidak berhenti sampai disitu, pada tanggal 25 November 2021 UU Cipta Kerja dinyatakan inkonstitusional bersyarat oleh Mahkamah Konstitusi (MK). Pada Putusan Nomor 91/PUU-XVIII/2020 dijelaskan bahwa UU Cipta Kerja cacat secara formil. UU Cipta Kerja dinilai bertentangan dengan Undang-Undang Dasar 1945 dan pembentuk undang-undang diminta untuk merevisi dalam jangka waktu dua tahun sejak putusan tersebut ditetapkan.²³ Namun, beberapa bulan kemudian, pemerintah tiba-tiba menerbitkan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 (Perppu Cipta Kerja) sebagai pengganti UU Cipta Kerja yang dinyatakan inkonstitusional bersyarat tersebut.²⁴ Akhirnya pada tanggal 31 Maret 2023, DPR mengesahkan Perppu Cipta Kerja menjadi Undang-Undang Nomor 6 Tahun 2023 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022.

Jika dibandingkan antara UU Cipta Kerja dan UU Cipta Kerja Baru yang mengatur terkait Perseroan Perorangan, maka keduanya tidak memiliki perbedaan apapun. Kedua undang-undang tersebut mengatur Perseroan Perorangan dalam Pasal 109 angka 1 yang mengubah Pasal 1 angka 1 UUPU.²⁵ Selain itu, pengaturan mengenai direksi yang sekaligus merupakan pemilik dari badan usaha juga sama. Maka dari itu, dalam regulasi Perseroan Perorangan tidak memiliki perubahan apapun dari UU Cipta Kerja yang menjadi UU Cipta Kerja Baru.

Kedudukan Organ Perseroan Perorangan pada UMKM dalam UU Cipta Kerja Baru

PT menjadi salah satu badan usaha yang seringkali digunakan oleh pelaku usaha, termasuk pada sektor UMKM. Definisi PT dalam UUPU adalah badan hukum yang didirikan atas dasar perjanjian dari persekutuan modal untuk melakukan usaha dengan modal dasar berupa saham.²⁶ Namun, dalam UU Cipta Kerja Baru terdapat penambahan definisi bahwa PT juga merupakan badan hukum perorangan yang sesuai dengan syarat UMKM.²⁷ Berdasarkan kedua definisi tersebut, pengertian PT dalam UUPU lebih menerangkan tentang PT secara general, sedangkan penambahan definisi dalam UU Cipta Kerja Baru lebih menerangkan tentang perseroan perorangan.

²² Andean W Finaka. 2021. Perjalanan Omnibus Law Cipta Kerja Hingga Menjadi UU. *Indonesia Baik*. <https://indonesiabaik.id/infografis/perjalanan-omnibus-law-cipta-kerja-hingga-menjadi-uu>

²³ Humas MKRI. (2021, November 25). MK: Inkonstitusional Bersyarat, UU Cipta Kerja Harus Diperbaiki dalam Jangka Waktu Dua Tahun | Mahkamah Konstitusi Republik Indonesia. *Mahkamah Konstitusi RI*. <https://www.mkri.id/index.php?page=web.Berita&id=17816>

²⁴ Farisa, F. C. (2023, 16 Juni). *V. YouTube*. <https://nasional.kompas.com/read/2023/03/21/14021541/jejak-kontroversi-uu-cipta-kerja-disahkan-kilat-perppu-diketok-meski-banjir?page=all#page2>

²⁵ Indonesia. *Undang-Undang Nomor 6 Tahun 2022 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 tentang Cipta Kerja*, Ps. 109 angka 1: Pasal 1 ayat (1) Perseroan Terbatas, yang selanjutnya disebut Perseroan, adalah badan hukum yang merupakan persekutuan modal, didirikan berdasarkan perjanjian, melakukan kegiatan usaha dengan modal dasar yang seluruhnya terbagi dalam saham atau badan hukum perorangan yang memenuhi kriteria usaha mikro dan kecil sebagaimana diatur dalam peraturan perundang-undangan mengenai usaha mikro dan kecil.

²⁶ Indonesia. *Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas*, Ps. 1 ayat (1): Perseroan Terbatas, yang selanjutnya disebut Perseroan, adalah badan hukum yang merupakan persekutuan modal, didirikan berdasarkan perjanjian, melakukan kegiatan usaha dengan modal dasar yang seluruhnya terbagi dalam saham dan memenuhi persyaratan yang ditetapkan dalam Undang-Undang ini serta peraturan pelaksanaannya

²⁷ Indonesia. *Undang-Undang Nomor 6 Tahun 2023 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 tentang Cipta Kerja*, Ps. 109 angka 1: Pasal 1 ayat (1) Perseroan Terbatas, yang selanjutnya disebut Perseroan, adalah badan hukum yang merupakan persekutuan modal, didirikan berdasarkan perjanjian, melakukan kegiatan usaha dengan modal dasar yang seluruhnya terbagi dalam saham atau badan hukum perorangan yang memenuhi kriteria usaha mikro dan kecil sebagaimana diatur dalam peraturan perundang-undangan mengenai usaha mikro dan kecil.

PT dalam menjalankan usahanya memerlukan organ perseroan. Organ perseroan merupakan hal krusial yang wajib dimiliki oleh sebuah PT. Eksistensi PT sebagai subjek hukum mandiri terpisah dari eksistensi pemegang sahamnya sehingga secara absolut memerlukan organ-organ tertentu untuk mewakili dalam rangka melakukan perbuatan hukum.²⁸ Status subjek hukum mandiri pada PT mengakibatkan PT dapat dilekatkan hak dan kewajiban yang secara mendasar sama dengan subjek hukum manusia.²⁹

Organ perseroan secara umum diatur dalam ketentuan Pasal 1 angka 2 UUPT yang tidak mengalami perubahan dalam UU Cipta Kerja Baru. Organ perseroan tersebut disebutkan secara eksplisit yang terdiri dari Rapat Umum Pemegang Saham (RUPS), dewan direksi, dan dewan komisaris. Lain daripada itu, pengaturan organ perseroan perorangan tidak disebutkan secara eksplisit, tetapi ketentuannya tersebar di beberapa pasal UU Cipta Kerja Baru.

Organ perseroan perorangan diatur dalam Pasal 109 angka 5 UU Cipta Kerja Baru. Pada pasal tersebut disebutkan bahwa perseroan perorangan memiliki seorang direksi untuk menjalankan kepengurusan perseroan perorangan untuk kepentingan perseroan perorangan tersebut.³⁰ Selain direksi, organ perseroan perorangan juga terdiri dari pemegang saham seperti yang diatur dalam pasal yang sama.³¹ Pemegang saham dari perseroan perorangan hanya dimiliki oleh satu orang saja karena perseroan perorangan juga didirikan oleh satu orang saja.³² Pada UU Cipta Kerja Baru ini tidak ditemukan sama sekali ketentuan yang mengatur tentang dewan komisaris dalam perseroan perorangan.

Jika dianalisis lebih detail, perseroan perorangan yang hanya didirikan oleh satu orang saja mengartikan bahwa satu orang tersebut juga merupakan pemegang saham sekaligus merangkap sebagai direksi dalam perseroan perorangan tersebut. Hal ini diperkuat oleh Pasal 7 ayat (2) Peraturan Pemerintah Nomor 8 Tahun 2021 tentang Modal Dasar Perseroan Serta Pendaftaran Pendirian, Perubahan, dan Pembubaran Perseroan yang Memenuhi Kriteria Untuk Usaha Mikro dan Kecil. Pasal tersebut mengatur tentang pernyataan pendirian perseroan perorangan yang wajib menyertakan identitas dari pendiri sekaligus direktur dan pemegang saham perseroan perorangan.³³ Ketentuan Peraturan Pemerintah tersebut masih tetap berlaku karena UU Cipta Kerja Baru tidak terdapat perubahan ketentuan mengenai organ PT.

Berkaitan dengan organ perseroan yang diterangkan dalam Pasal 109 angka 1 UU Cipta Kerja Baru terjadi inkonsistensi secara horizontal dengan Pasal 109 angka 5 UU Cipta Kerja

²⁸ Mulhadi. *Hukum Perusahaan: Bentuk-Bentuk Badan Usaha di Indonesia*. 2020. PT Raja Grafindo Persada. hal.99.

²⁹ Chatamarrasjid Ais, *Menyingkap Tabir Perseroan (Piercing the Corporate Veil) Kapita Selektika Hukum Perusahaan*. 2000. PT Citra Aditya Bakti. hal.25.

³⁰ Indonesia. *Undang-Undang Nomor 6 Tahun 2023 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 tentang Cipta Kerja*, Pasal 109 angka 5: Pasal 153D ayat (1) Direksi Perseroan untuk usaha mikro dan kecil sebagaimana dimaksud dalam Pasal 153A menjalankan pengurusan Perseroan untuk usaha mikro dan kecil bagi kepentingan Perseroan sesuai dengan maksud dan tujuan Perseroan.

³¹ Indonesia. *Undang-Undang Nomor 6 Tahun 2023 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 tentang Cipta Kerja*, Pasal 109 angka 5: Pasal 153E ayat (1) Pemegang saham Perseroan untuk usaha mikro dan kecil sebagaimana dimaksud dalam Pasal 153A merupakan orang perseorangan.

³² Indonesia. *Undang-Undang Nomor 6 Tahun 2023 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 tentang Cipta Kerja*, Pasal 109 angka 5: Pasal 153A ayat (1) Perseroan yang memenuhi kriteria usaha mikro dan kecil dapat didirikan oleh 1 (satu) orang.

³³ Indonesia. *Peraturan Pemerintah Nomor 8 Tahun 2021 tentang Modal Dasar Perseroan Serta Pendaftaran Pendirian, Perubahan, dan Pembubaran Perseroan yang Memenuhi Kriteria Untuk Usaha Mikro dan Kecil*, Ps. 7 ayat (2): Format isian sebagaimana dimaksud pada ayat (1) memuat: a. nama dan tempat kedudukan Perseroan perorangan; b. jangka waktu berdirinya Perseroan perorangan; c. maksud dan tujuan serta kegiatan usaha Perseroan perorangan; d. jumlah modal dasar, modal ditempatkan, dan modal disetor; e. nilai nominal dan jumlah saham; f. alamat Perseroan perorangan; dan g. nama lengkap, tempat dan tanggal lahir, pekerjaan, tempat tinggal, nomor induk kependudukan, dan nomor pokok wajib pajak dari pendiri sekaligus direktur dan pemegang saham Perseroan perorangan.

Baru. Pada Pasal 109 angka 1 UU Cipta Kerja Baru menerangkan secara eksplisit bahwa organ perseroan terdiri dari RUPS, dewan direksi, dan dewan komisaris, sedangkan dalam Pasal 109 angka 5 UU Cipta Kerja Baru menerangkan secara implisit bahwa organ perseroan perorangan hanya terdiri dari pemegang saham dan direksi. Pasal 109 angka 1 tidak menerangkan secara jelas definisi perseroan yang dimaksud.

Hal ini dinilai dapat menimbulkan ketidakpastian hukum karena masyarakat akan kebingungan berkaitan dengan pasal mana yang berlaku. Namun, merujuk pada penelitian terdahulu, diterangkan bahwa jika terjadinya inkonsistensi substansi secara horizontal dalam peraturan yang sama, maka dapat berlaku asas *lex posterior derogate legi priori*.³⁴ Asas tersebut mengartikan bahwa peraturan yang lebih baru mengesampingkan peraturan yang lebih lama. Maka dari itu, dalam hal terjadi inkonsistensi pada organ perseroan perorangan di UU Cipta Kerja yang berlaku adalah Pasal 109 angka 5 UU Cipta Kerja Baru yang mengatur lebih baru dibandingkan Pasal 109 angka 1 UU Cipta Kerja Baru.

Tugas dan Tanggung Jawab Organ Perseroan Perorangan pada UMKM dalam UU Cipta Kerja Baru

Berdasarkan kedudukan organ perseroan perorangan yang telah diterangkan sebelumnya, maka terdapat dua organ yang akan dikaji pada pembahasan kedua ini yaitu pemegang saham dan direksi. Berbeda dari organ PT secara umum, organ perseroan perorangan tidak mengenal dewan komisaris. Berdasarkan Pasal 109 angka (1) diterangkan bahwa *kesatu*, RUPS memiliki tugas dan tanggung jawab tertentu yang tidak dapat dilakukan oleh dewan direksi dan dewan komisaris sesuai peraturan perundang-undangan dan anggaran dasar PT.³⁵ *Kedua*, direksi memiliki tugas dan tanggung jawab secara penuh terhadap kepengurusan PT demi kepentingan PT serta dapat bertindak untuk mewakili PT.³⁶ *Ketiga*, dewan komisaris memiliki tugas dan tanggung jawab untuk mengawasi dan menasihati dewan direksi agar tetap menjalankan tugas dan tanggung jawabnya sesuai anggaran dasar yang berlaku.³⁷

Perbedaan lain adalah pendiri antara organ PT secara umum dengan organ perseroan perorangan. PT secara umum didirikan oleh dua orang atau lebih,³⁸ tetapi perseroan perorangan dapat didirikan oleh satu orang saja. Satu orang pendiri tersebut tidak hanya akan bertindak sebagai pemegang saham, tetapi juga merangkap sebagai direksi. Kedua jabatan tersebut memiliki tugas dan tanggung jawab yang berbeda.

Pendiri perseroan perorangan sebagai pemegang saham memiliki tugas dan tanggung jawab berdasarkan UU Cipta Kerja Baru sebagai berikut:

³⁴ Sitti Mawar, Metode Penemuan Hukum (Interpretasi Dan Konstruksi) Dalam Rangka Harmonisasi Hukum, "Jurnal Justisia: Jurnal Ilmu Hukum, Perundang-Undangan dan Pranata Sosial" 1, no. 1 (2016).

³⁵ Indonesia. *Undang-Undang Nomor 6 Tahun 2023 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 tentang Cipta Kerja*, Pasal 109 angka 2: Pasal 1 ayat (4) Rapat Umum Pemegang Saham, yang selanjutnya disebut RUPS, adalah Organ Perseroan yang mempunyai wewenang yang tidak diberikan kepada Direksi atau Dewan Komisaris dalam batas yang ditentukan dalam Undang-Undang ini dan/ atau anggaran dasar.

³⁶ Indonesia. *Undang-Undang Nomor 6 Tahun 2023 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 tentang Cipta Kerja*, Pasal 109 angka 2: Pasal 1 ayat (5) Direksi adalah Organ Perseroan yang berwenang dan bertanggung jawab penuh atas pengurusan Perseroan untuk kepentingan Perseroan, sesuai dengan maksud dan tujuan Perseroan serta mewakili Perseroan, baik di dalam maupun di luar pengadilan sesuai dengan ketentuan anggaran dasar.

³⁷ Indonesia. *Undang-Undang Nomor 6 Tahun 2023 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 tentang Cipta Kerja*, Pasal 109 angka 2: Pasal 1 ayat (6) Dewan Komisaris adalah Organ Perseroan yang bertugas melakukan pengawasan secara umum dan/atau khusus sesuai dengan anggaran dasar serta memberi nasihat kepada Direksi.

³⁸ Indonesia. *Undang-Undang Nomor 6 Tahun 2023 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 tentang Cipta Kerja*, Pasal 109 angka 2: Pasal 7 ayat (1) Perseroan didirikan oleh 2 (dua) orang atau lebih dengan akta notaris yang dibuat dalam bahasa Indonesia.

1. Melakukan perubahan pernyataan pendirian perseroan perorangan;³⁹
2. Melakukan pembubaran perseroan perorangan dengan membuat pernyataan pembubaran dan diumumkan kepada menteri;⁴⁰

Selain itu, pendiri perseroan perorangan sebagai direksi memiliki tugas dan tanggung jawab berdasarkan UU Cipta Kerja Baru sebagai berikut:

1. Menjalankan kepengurusan perseroan perorangan menurut maksud dan tujuan pendirian perseroan perorangan;⁴¹
2. Membuat laporan keuangan demi terwujudnya pengelolaan yang baik;⁴²

Konsep rangkap jabatan yang dilakukan oleh pendiri perseroan perorangan sebagai pemegang saham sekaligus direksi menunjukkan sistem kepengurusan perusahaan *one-tier board system*. Sistem kepengurusan perusahaan semacam ini biasa ditemukan dari negara yang menganut sistem hukum *Anglo Saxon* atau *common law*.⁴³ *One-tier board system* artinya dalam kepengurusan perusahaan tidak dikenal dewan komisaris, melainkan hanya RUPS dan direksi.⁴⁴ Dewan direksi atau *board of directors* dibagi menjadi dua jenis yaitu *Chief Executive Officer* (CEO) yang menjalankan tugas dan tanggung jawab kepengurusan perusahaan sehari-hari dan *Chairman* yang berkedudukan sebagai direktur non-eksekutif.⁴⁵ Dewan komisaris pada sistem ini sebenarnya diakui keberadaannya, tetapi dalam lingkup board of director.⁴⁶

Hal ini tentu bertolak belakang dengan konsep kepengurusan perusahaan dalam PT secara umum yang menganut *two-tier board system*. *Two-tier board system* lebih sering dijumpai di negara yang menganut sistem hukum *civil law* atau Eropa Kontinental.⁴⁷ Pada sistem ini, dewan direksi yang berperan sebagai penentu kebijakan PT secara penuh terpisah dengan dewan komisaris yang berperan sebagai pengawas dari dewan direksi untuk melindungi kepentingan pemegang saham.⁴⁸ Pada hakikatnya perbedaan mendasar dari kedua sistem ini terletak pada wewenang dalam mengawasi kinerja dewan direksi.

Perseroan perorangan yang menganut *one-tier board system* memberikan tugas dan tanggung jawab yang lebih besar bagi pendiri. Hal itu karena di satu sisi pendiri berperan sebagai pemegang saham dan di sisi yang lain berperan sebagai dewan direksi dengan dua fungsi yaitu menjalankan kepengurusan sekaligus mengawasi. Maka dari itu, pendiri perseroan perorangan dalam melakukan perbuatan hukum yang diartikan sebagai pemegang saham

³⁹ Indonesia. *Undang-Undang Nomor 6 Tahun 2023 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 tentang Cipta Kerja*, Pasal 109 angka 5: Pasal 153C ayat (1) Perubahan pernyataan pendirian Perseroan untuk usaha mikro dan kecil sebagaimana dimaksud dalam Pasal 153A ditetapkan oleh RUPS dan diberitahukan secara elektronik kepada Menteri.

⁴⁰ Indonesia. *Undang-Undang Nomor 6 Tahun 2023 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 tentang Cipta Kerja*, Pasal 109 angka 5: Pasal 153G Pembubaran Perseroan untuk usaha mikro dan kecil sebagaimana dimaksud dalam Pasal 153A dilakukan oleh RUPS yang dituangkan dalam pernyataan pembubaran dan diberitahukan secara elektronik kepada Menteri.

⁴¹ Indonesia. *Undang-Undang Nomor 6 Tahun 2023 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 tentang Cipta Kerja*, Pasal 109 angka 5: Pasal 153D ayat (1) Direksi Perseroan untuk usaha mikro dan kecil sebagaimana dimaksud dalam Pasal 153A menjalankan pengurusan Perseroan untuk usaha mikro dan kecil bagi kepentingan Perseroan sesuai dengan maksud dan tujuan Perseroan

⁴² Indonesia. *Undang-Undang Nomor 6 Tahun 2023 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 tentang Cipta Kerja*, Pasal 109 angka 5: Pasal 153F ayat (1) Direksi Perseroan untuk usaha mikro dan kecil sebagaimana dimaksud dalam Pasal 153A harus membuat laporan keuangan dalam rangka mewujudkan tata kelola Perseroan yang baik

⁴³ Putu Devi Yustisia Utami *et.al*, *op.cit.* hal.778-779.

⁴⁴ Jodi Ghozali, *et.al.*, "Kajian Yuridis Pendirian Perseroan Terbatas Pasca Berlakunya Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja" *Jurnal Commerce Law*, 3 no. 1 (2023): 252-265 hal. 262

⁴⁵ Yahya Harahap. *Hukum Perseroan Terbatas*. 2019. Sinar Grafika. hal.343.

⁴⁶ Jodi Ghozali, *et.al.*, *loc.cit.*

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

sekaligus menjalankan kepengurusan dapat mengakibatkan fungsi pengawasan kurang optimal dalam menjalankan perseroan perorangan tersebut.⁴⁹

KESIMPULAN

Berdasarkan hasil dan pembahasan, terdapat tiga kesimpulan sebagai berikut:

1. UU Cipta Kerja memiliki riwayat yang panjang dan mengandung pro-kontra dalam masyarakat. UU Cipta Kerja sempat dinyatakan inkonstitusional bersyarat oleh MK dan meminta pembuat undang-undang untuk melakukan revisi. Kemudian beberapa bulan setelahnya, alih-alih merevisi undang-undang tersebut, pemerintah malah menetapkan Perppu Cipta Kerja untuk menggantikan UU Cipta Kerja. Pada akhirnya Perppu Cipta Kerja kembali disahkan oleh DPR menjadi undang-undang pada awal tahun 2023 ini.
2. Terdapat dua organ perseroan perorangan pada UMKM dalam UU Cipta Kerja Baru yaitu pemegang saham dan dewan direksi. Hal itu berbeda dengan organ PT secara umum yang memiliki tiga organ perseroan yaitu RUPS, dewan direksi, dan dewan komisaris. Pendiri dari perseroan perorangan juga merupakan pemegang saham sekaligus dewan direksi. Pada masalah organ perseroan ini muncul inkonsistensi antara Pasal 109 angka 1 dengan Pasal 109 angka 5 UU Cipta Kerja Baru. Namun, berdasarkan penelitian terdahulu hal ini dapat diatasi menggunakan asas hukum *lex posterior derogat legi priori* yang berarti peraturan yang lebih baru mengesampingkan peraturan yang lebih lama.
3. Pada perseroan perorangan dibagi menjadi dua organ yaitu pemegang saham yang berwenang mengubah pernyataan pendirian dan membubarkan perseroan perorangan serta direksi yang berwenang menjalankan kepengurusan dan membuat laporan keuangan. Selain itu, tugas dan tanggung jawab organ perseroan perorangan pada UMKM dalam UU Cipta Kerja baru juga berbeda dengan tugas dan tanggung jawab organ perseroan pada PT secara umum. Hal itu karena terjadinya perbedaan konsep antara perseroan perorangan yang menganut *one-tier board system* dan PT secara umum yang menganut *two-tier board system*.

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⁴⁹ Jodi Ghozali, *et.al.*, *op.cit.* hal 263.

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Vol. 23 Issue 2, May 2023

E-ISSN 2407-6562 P-ISSN 1410-0797

National Accredited Journal, Decree No. 21/E/KPT/2018

DOI:

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IMPOSITION OF INCOME TAX ON TIKTOKERS' ENDORSMENT INCOME BASED ON INDONESIA TAX REGULATION IN 2023

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Abstract

The virtual world has provided various benefits and new opportunities in various aspects of human life. One of these opportunities is through social media. With the expansion of social media platforms, a considerable number of individuals are reshaping their careers to become content creators. Beyond just seeking pleasure, TikTok has given its users a ton of options to earn a living. Creative industry players get enormous opportunities to earn income from TikTok through the various content they create. Tax responsibilities have emerged for TikTokers because of the increase in persons switching occupations to become TikTokers and reaping benefits from TikTok in Indonesia. This research employs a normative juridical approach, encompassing both statutory and factual approaches. The objective of this research is to know the imposition of income tax on TikTokers' endorsement income based on Indonesia tax regulation. From the findings of this study, several conclusions can be drawn. Firstly, the imposition of income tax on TikTokers adheres to a self-assessment system. This entails that the calculation processes, up to the reporting stage, are directly undertaken by the taxpayer, in accordance with pertinent laws and regulations. TikTokers fulfill their obligations by appraising and promoting products they genuinely appreciate. In return, TikTokers receive compensation for the review videos they conceive and share. This remuneration constitutes their income or profit. TikTokers could be subject to the provisions outlined in Article 21 of the UUPPh (General Provisions and Procedures of Taxation Law) when computing their Income Tax. This provision is applicable to artistic practitioners, those operating without representation, as well as freelancers and private employees. TikTokers are encouraged to consult a tax professional or the Direktorat Jenderal Pajak (Directorate General of Taxes). As a recommendation, the government, via the Directorate General of Taxes, could organize outreach programs and information sessions for TikTokers, elucidating matters concerning income tax and its computation.

Keywords: TikTok, Income, and Tax.

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Introduction

Technological advancements have given rise to a novel realm known as the virtual or digital world. Leveraging this technology, individuals can access diverse resources without the constraints of space, time, or atmosphere. The virtual world has ushered in an array of advantages and novel prospects across various facets of human existence. Among these prospects is the realm of social media. In the contemporary era, human existence is significantly intertwined with the utilization of social media. Presently, individuals find it indispensable to engage with social media platforms, which have evolved into effortless and concise modes of communication such as sending short messages (Whatsapp, Line, Facebook Messenger, etc.), sharing pictures and videos of daily life (Instagram, Facebook,

YouTube, TikTok, etc.), to conducting business activities through social media platforms such as Instagram and TikTok.

As a result of the development of social media platforms, currently many people are turning their profession into content creators, such as YouTubers for content creators on YouTube, Selebgram for content creators on Instagram, and TikToker for content creators on TikTok. This professional transition occurs most often for people in the millennial age category. Millennials perceive social media as more than just a means of seeking entertainment or sharing moments; they view it as a potentially lucrative avenue for generating income. Over the past few years, there has been a notable shift towards individuals pursuing careers as YouTubers. However, in recent times, content creators have increasingly migrated to the TikTok platform, which has gained significant popularity and garnered a following among people of TikTok various age categories. TikTokers can be defined as people or groups who make short videos based on their fields and then upload them via the TikTok social media. TikTokers are divided into individual TikTok accounts and TikTok agency (organization) accounts. TikTok social media is not only a means of sharing information but also a means of earning income, therefore TikTokers are now a profession that is in great demand by various parties (Jusikusuma & Wijaya, 2022).

Currently, TikTok stands as one of the rapidly evolving social media platforms, witnessing a remarkable surge in popularity with a staggering 672 million downloads recorded in 2022. This exceptional achievement positions TikTok as the leading platform in terms of downloads, surpassing even the likes of Facebook and Instagram (P, 2022). TikTok has provided enormous opportunities for its users, apart from just looking for entertainment, up to making a living. Creative industry players get enormous opportunities to earn income from TikTok through the various content they create. TikTok is a very supportive and friendly social media platform for content creators. Through TikTok, businessmen can work with TikTokers (creative content creators) to promote their products. On the other hand, TikTokers get paid through the promotional content they create.

Fundamentally, endorsements are executed by endorsers and can be categorized into two primary types: Typical Person Endorsers and Celebrity Endorsers. The former comprises non-celebrity individuals who engage in promotional activities. On the other hand, Celebrity Endorsers encompass renowned figures who partake in promotions and often embody a notable public persona associated with allure or aspiration (Natalia, 2013). So now it's no longer stranger to hearing celebrity endorsers (Falya & Dirkareshza, 2021), Celebrity endorsers in TikTok are busy called 'celebtok', which is a designation for those who are trusted to provide promotions for products sold online through TikTok accounts. The influencer profession is currently a new phenomenon because it is valued very promising with quite fantastic income (Nazulfa et al., 2021).

Some of the most popular TikTok content creators with the highest income, including Ria Ricis with ±300 million followers who are able to generate income of up to Rp. 131,000,000, - from partners/affiliates. Apart from Ria Ricis, there is also Meicy Villia with ±21,000,000 followers and is able to generate income of up to Rp. 149,520,000, - from partners/affiliates on TikTok. These TikTokers earn their income through endorsements, collaborations with brands/industries, as well as gifts from their viewers. Based on this, the income of TikTokers has prospered due to the emergence of diverse new professions resulting from technological advancements. Consequently, the income earned by TikTokers holds the potential to be subjected to income tax. The substantial nature of this income potential warrants consideration by the government, particularly the Directorate General of Taxes, to encourage content creators' participation in contributing to the state's tax revenue (Gunawan & Sari, 2023).

Apart from endorsements, many people use the Tik Tok application for creativity or to provide information about something. Through the videos and songs/songs that are displayed in this application, it is easier for information to be conveyed and can provide stimulation for those who see it, imitate/pass it on. The significant count of Indonesian individuals, particularly those from Yogyakarta, who extensively utilize the internet, presents a promising market segment for businesses to promote their products/services through social media, particularly TikTok (Dewa & Safitri, 2021). Therefore TikTok is very close to people's lives.

In connection with the rise of people who have switched professions to become TikTokers and benefit/income from TikTok in Indonesia, tax obligations have also arisen for these TikTokers. This obligation is regulated in the 1945 Constitution Article 23A. According to the article, every citizen who has a fixed income is obliged to contribute to the country's development through the payment of income tax. According to Mardiasmo, "Income Tax is a tax imposed on individuals, companies or other legal entities on income earned" (Mardiasmo, 2018). In addition, income tax is a tax on any additional economic capabilities obtained from taxpayers (Wirawan, 2013). One of the regulations regarding income tax is Law Number 36 of 2008 concerning the Fourth Amendment to Law Number 7 of 1983 concerning Income Tax (UUPPh). This law regulates the relationship with a taxable object called a Taxpayer.

Regarding the rise of people who are switching professions to become TikTokers in Indonesia, the government can actually benefit from increasing taxation from state revenues through Personal Income Tax (Pph) for TikToker content creators. But of course the government must have basic rules when collecting taxes from these TikTokers (Mansury, 2003). The issue lies in the fact that TikTokers' income sources have not been subject to taxation by employers or income sources. Conversely, the UUPPh stipulates that the taxable entity encompasses additional net assets originating from untaxed income. Consequently, there is a necessity for the government to levy taxes on TikTokers who accrue income or profits from TikTok. Presently, regulations concerning income tax

pertaining to TikTokers or content creators at large have not been explicitly established. Regarding the research topic, there are several previous studies that were used as references by the author, including in the writings of Christian Gunawan et al entitled "Implementation of Digital Tax Of Content Creator On TikTok Social Media" (Gunawan & Sari, 2023). In this study it was explained how the tax on digital content is applied, but the focus of the research was on the knowledge of various parties such as digital content creators, the TikTok agency regarding imposing taxes on TikTokers. In this study, it was concluded that most of the content creators on TikTok do not know about the obligation to pay taxes. Then there is also an article written by Teta Dirgantara Jusikusuma et al entitled, "*Pajak Penghasilan atas TikTokers*" (Jusikusuma & Wijaya, 2022), and article written by Kevin Hoo Kurniawan at all entitled, "*Pelaksanaan Pengenaan Pajak terhadap TikToker Serta Hambatannya di Indonesia*" (Kurniawan & Melanie, 2022) both articles explained about income tax on TikTokers, the difference with the article that authors made is, in this article the author will discuss more in regarding the TikTok monetization process which is the most important thing for TikTokers to receive income. The primary objectives of composing this article are as follows: to discern the monetization process within the TikTok application, to determine whether being a TikToker qualifies as a profession subject to income tax, and to ascertain the stipulations concerning income tax applicable to the TikToker profession. The central aim of this study is to comprehend the application of income tax on endorsement earnings by TikTokers, guided by the regulations of Indonesia's tax framework.

Research Problems

TikTok Drawing from the elucidation provided by the author, several problem formulations have been articulated. One such formulation is: How is the calculation and imposition of income tax on TikTok content creators in Indonesia executed according to the prevailing Tax Regulations?

Research Methods

Legal research is a scientific activity, which is based on certain methods, systematics, and ideas that aim to study one or several specific legal phenomena by analyzing them (Marzuki, 2017).

1. Approach Method

In accordance with the title and issues to be discussed in this study and to provide useful results, this research was conducted using normative juridical research (normative legal research method). The normative juridical research method is library law research which is carried out by examining library materials or mere secondary data.

Normative juridical research is a legal research approach that is carried out by examining library materials or secondary data as the main research

material. Normative juridical research methods also refer to legal norms contained in laws and regulations, court decisions, and norms that apply and are binding on society as well as regarding customs that apply in society. This research focuses on the legal research method of literature in studying the subject matter, normative juridical research is research that includes: (1) research on legal principles; (2) research on legal systematics; (3) research on the level of vertical and horizontal synchronization. The secondary data includes official documents, books, and research results in the form of reports, diaries, and others.

2. Research Specification

The specification of the research used is analytical descriptive. The analytical descriptive method is a study that is intended to answer the imposition and calculation of income tax on TikTok.

3. Types and Sources of Data

To solve legal issues and at the same time provide a prescription regarding what should be done, research sources are needed (Marzuki, 2017). The data needed in writing this research was obtained by conducting library research through secondary data sources. Secondary data consists of:

- a. Primary legal materials, namely binding legal materials in the form of statutory regulations, consist of:
 - 1) Regulation of the Director General of Taxes No. PER-17/PJ/2015 concerning Norms for the Calculation of Net Income
 - 2) Law no. 36 of 2008 concerning Income Tax
- b. Secondary legal materials, namely materials that are closely related to primary legal materials, and help explain primary legal materials. Secondary legal materials include writings or opinions of experts, books, articles, journals, magazines, newspapers, and so on relating to the problems in this study.
- c. Non-legal legal materials, namely materials that provide instructions, information, and explanations of primary legal materials and secondary legal materials, including dictionaries and encyclopedias.
- d. Electronic Library, With an electronic library, the author also collects and conducts research on literature and related sources through Internet media.

4. Data Acquisition Technique

For data acquisition, the authors collect data through document study, which is a way to obtain data directly which is theoretical. How to obtain it

by reading, and studying books, literature, articles, and written regulations related to income tax.

5. Data Analysis Technique

The data analysis method used is the normative juridical analysis method. This method of data analysis is carried out as a way to conclude from the research results collected without using a mathematical formula, by describing the existing data which are directly related to the problems discussed.

Discussion

TikToker as a Profession that Earns Income

People who create content on the TikTok application are known as TikTokers. TikTokers create content that contains various information in the form of short videos, which are then uploaded/uploaded on TikTok. The uploaded videos can be accessed by all TikTok users around the world. The reputation of a TikToker can be seen through the number of followers. The more followers, the greater the reputation of the TikTokers. Then there are more opportunities to cooperate with various other parties.

In carrying out their profession, there are several ways that TikTokers do to get income. The first way is through endorsements (Wreta, 2022) . The term "endorsement" originates from the English word "endorse," which signifies giving support to a candidate or proposal. In essence, endorsement can be understood as a form of backing or approval. Endorsements entail collaborations established between a brand or business and a specific artist or influencer, typically for the purpose of promotion. Meanwhile, Musdalifa in the journal *Effects of Selebgram/TikTokers Promotion on Consumer Purchase Interest in the Digital Age* explains endorsement as asking for support from people who have many followers on social media such as Instagram to introduce products to the public or the public (Musdalifah, 2022). Recommendations are usually from brands and shops that offer products to artists and influencers, who are required to take photos and videos and provide reviews of the products they receive. The review will be published on social media and considered as a testimonial. Endorsement on TikTok is a form of influencer marketing where brands collaborate with popular TikTok creators to promote their products or campaigns to the influencer's audience. The process commences with brands identifying influencers whose style and follower base resonate with their target audience and brand identity. Subsequent negotiations define the extent of the endorsement, compensation terms, and any particular prerequisites. Upon cementing the partnership, both the brand and influencer collaborate to produce compelling and genuine branded content. The influencer seamlessly integrates the brand's product or service into their videos, ensuring transparency by incorporating disclosure hashtags such as #ad or #sponsored. The content is then shared on the influencer's TikTok account, reaching their dedicated followers. Brands closely track the campaign's performance employing a range of metrics. TikTok's

viral nature and the influencer's ability to create relatable content contribute to the effectiveness of these endorsements. Successful TikTok endorsements can significantly enhance brand awareness, drive sales, and foster positive brand associations among the influencer's followers.

The next way for TikTokers to make money is to make videos as attractive as possible that can bring in viewers. With a large number of viewers, videos uploaded by TikTokers have the opportunity to be included in the FYP (For Your Page) criteria. When many people watch the video, the opportunity to monetize the TikTok account is even greater. There are three main criteria that will determine whether content enters FYP or not, namely user interaction, information in videos, and account preferences. In addition, TikTokers can do Live with certain targets and bonus prizes from viewers (*sawer*). The last way is to collaborate with other parties in creating video content. Generally, estimated revenue on TikTok starts from IDR 1,000,000 to IDR 100,000,000 per video (Telkomsel, 2022). In comparison, the income of TikTokers abroad, such as America and China, can reach \$ 1000 – \$ 30,000 or the equivalent of Rp. 14 million to Rp. 422 million per month. But then, every account has different estimated income. This is because each account has different data and content characteristics. Revenue is also heavily influenced by the number of followers and the reputation of the account owner. Accounts owned by artists or famous people have greater earning potential because they will attract more viewers.

The amount of income for TikTokers in Indonesia varies greatly. The nominal amount obtained can be affected by location, appearance, and cooperation agreements between content creators and sponsors. For example, the popular TikToker Sandy Saputra with the account @sandy.ss, the income reached \$ 1395 to \$ 3488 or the equivalent of IDR 19.6 million to IDR 49 million. But in general, the types of TikTokers' income are divided into 2 types, namely, first, income per post which is calculated based on the number of impressions or clicks per content. For example, a product promotional video through TikTok is able to get 100,000 views per post, so the income can reach \$ 1000 or the equivalent of 14 million rupiah. The second type of income is the accumulated amount of income per post plus other income in 1 month.

The nominal income per month usually varies according to the number of followers. For accounts with a large number of followers (more than 1 million), the income you get will also be high. Meanwhile, for accounts that have less than 100,000 followers, it will usually be difficult to make money. Then there are three income classifications on TikTok (Ayu, 2022). First, the classification of beginner TikTokers, which are accounts with a small number of followers. According to the 2022 exchange rate, the beginner TikTokers income is from \$ 100 to \$ 700 per month. This figure is equivalent to IDR 1,455,000 to IDR 10,183,950.

Second, the TikToker classification with followers of 1,000 accounts. The estimated income for a TikTok account with 1,000 followers is from \$1,370 – \$2,500. Or the equivalent of IDR 20,000 to IDR 30,000 per month. The number of followers really affects the amount

of income. Especially if the number of impressions is not stable. It is usually quite difficult for an account to generate substantial income. The third classification is a TikTok account that has a minimum of 10,000 followers, which can generate hundreds of thousands of dollars a month. For example, the TikTok account owned by @tryn283 has 11K followers. His monthly income is \$6,890 – \$10,330. This income range can be an illustration of the amount of income for accounts with 10 thousand followers. However, it could be lower or higher.

The "For You Page" (FYP) on TikTok is a fundamental feature of the platform and plays a crucial role in users' content discovery and engagement experience. When you open the TikTok app, you are immediately directed to the FYP, which is a personalized feed of videos curated by TikTok's sophisticated and constantly evolving algorithm. The FYP operates on a content recommendation system that aims to show users videos that align with their interests, preferences, and behavior on the platform. After setting up a TikTok account, the algorithm initiates by suggesting popular and trending videos, offering users an initial point of engagement. As users interact with content—such as liking videos, following creators, and scrolling through their feed—the algorithm accumulates valuable data to gain a deeper insight into their preferences. TikTok's algorithm compiles a diverse array of data points to construct a comprehensive user profile. It takes into consideration factors like the most engaged-with video types, followed accounts, used hashtags, written captions, and favored music. This thorough data collection empowers the algorithm to analyze the attributes of videos that strongly resonate with a specific user. Content ranking is a crucial aspect of how the FYP works. The algorithm assesses the likelihood that a user will engage with a video based on their past interactions and preferences. Videos that the algorithm predicts will receive higher engagement from a particular user are given priority in their FYP. This personalized ranking ensures that users are more likely to see content that they find interesting, entertaining, or valuable. However, TikTok also recognizes the importance of providing diverse content to its users. While the FYP is personalized, the algorithm incorporates a variety of videos to prevent users' feeds from becoming too narrow and to expose them to different perspectives and topics.

One of the most intriguing aspects of TikTok's algorithm is its ability to propel videos to viral status quickly.

If a video garners substantial traction, indicated by a high number of likes, comments, and shares within a brief span, the algorithm might enhance its visibility by displaying it to a wider audience. This capability for swift virality has significantly fueled the platform's rapid expansion and the proliferation of numerous viral challenges and trends. Importantly, it should be recognized that TikTok's algorithm is consistently evolving and adapting based on user behaviors. The platform regularly updates its recommendation system to enhance user satisfaction and increase engagement. As a

result, users' FYP experiences are not static but may change over time as the algorithm refines its understanding of individual preferences and trends.

In summary, TikTok's For You Page is a product of a sophisticated algorithm that leverages user data to deliver personalized content recommendations. By analyzing user interactions, preferences, and behavior, TikTok's algorithm aims to present users with a captivating, diverse, and engaging feed of videos, making the platform an addictive and popular destination for content consumption and creation.

Income Tax in Indonesia, in Relation to the TikToker Profession

Income tax in Indonesia is a crucial component of the country's revenue system, and it applies to both individuals and businesses (Ditjen Pajak, 2022). Indonesia adheres to a self-assessment system in implementing its tax imposition, this self-assessment system must be supported by the good faith of the taxpayer to be honest and open about the administration of bookkeeping as stipulated in statutory provisions (Lie et al., 2022).

The Indonesian tax system is based on a progressive tax structure, where higher-income earners are subject to higher tax rates. The income tax rates for individual taxpayers are divided into several brackets, with the tax rate increasing as income levels rise. As of 2021, the income tax rates for individuals are as follows:

1. Up to IDR 50 million: 5%
2. Over IDR 50 million up to IDR 250 million: 15%
3. Over IDR 250 million up to IDR 500 million: 25%
4. Over IDR 500 million up to IDR 1 billion: 30%
5. Over IDR 1 billion: 35%

Individual taxpayers may also be eligible for certain deductions, allowances, and tax credits, which can help reduce their taxable income and overall tax liability. These deductions may include expenses related to health, education, housing, and other specific items.

For businesses, the corporate income tax rate in Indonesia is generally a flat rate of 25% of the company's annual net income. However, there may be different tax rates for specific industries or sectors, and some businesses may be eligible for certain tax incentives or exemptions. The Indonesian tax year runs from 1 January to 31 December, and individual taxpayers are required to file their annual tax returns by the end of March of the following year. Businesses must also comply with regular tax reporting and payment obligations throughout the year.

The Indonesian Tax Office, known as Direktorat Jenderal Pajak (DJP), is the government agency responsible for administering and enforcing tax laws in Indonesia. The DJP provides guidance, regulations, and resources to help taxpayers understand and fulfill their tax obligations. Individuals and businesses in Indonesia need to maintain accurate and organized financial records to facilitate tax compliance and reporting. Seeking advice from qualified tax professionals or consultants can also be beneficial in navigating the

complexities of the Indonesian tax system and ensuring compliance with tax laws. As tax regulations and rates may change over time, taxpayers must refer to official sources such as the Indonesian Tax Office (DJP) or consult with tax experts for the most up-to-date and accurate information on income tax in Indonesia (Limited, 2022).

TikTok influencers or content creators in Indonesia, like in many other countries, can be subject to income taxes if they earn a significant income from their activities on the platform (CPA, 2021). Income tax regulations in Indonesia apply to any individual or entity that receives taxable income, regardless of the source of that income, including earnings from online platforms like TikTok. According to the Indonesian Income Tax Law, individual taxpayers may be subject to income tax if their annual gross income exceeds a certain threshold. As of my last update, the threshold for taxable income was set at IDR 60 million per year (approximately USD 4,100). If a TikToker's income from sponsored content, advertisements, or other revenue sources on TikTok exceeds this threshold, they would be required to report their earnings and pay income tax on it (Walker, 2023). TikTok influencers or content creators should keep proper records of their income and expenses related to their activities on the platform to accurately determine their taxable income. Expenses incurred for producing content, equipment, and other relevant costs may be deducted to arrive at the taxable income.

TikTok Monetization System

TikTok is one of the fastest-growing and most phenomenal social media platforms at the moment. People of all ages use this platform to find entertainment and relaxation. TikTok is widely used because the content offered is relaxed and entertaining. However, apart from entertaining TikTok, it is also widely used as a place to seek income and profit. This can be seen through the large number of people who have switched professions to become TikTokers with quite promising incomes.

TikTok has become a breadwinner because of the monetization system adopted by it. Monetization is an effort, in which content creators earn money from the content they upload on various social media platforms, one of the most popular of which is YouTube and which is currently very popular, TikTok. The rise of the profession to become TikTokers is none other than because content creators can not only channel their hobbies or preferences in creating content, but the content they create, and upload can be used as a source of income that can meet their daily needs. To be able to monetize on a TikTok account, users must first reach 1000 followers. The income that can be generated through TikTok is very diverse and is largely determined by the content of the content and the number of followers of that account. TikTokers who have medium followers can earn an income of USD 200 to USD 5000 or around Rp. 3,000,000, - up to Rp. 75,000,000, -. However, TikTokers who have a large number of followers and viewers can earn around USD 1,000 – USD 30,000 or around Rp. 15,000,000, - up to Rp. 450,000,000. Of course, this is very promising and attracts the public's interest in switching professions to become a TikTokers in droves (Hirose, 2023).

Making a living on TikTok has become a viable option for some creators due to the platform's immense popularity and its potential for reaching a vast audience. Many individuals have leveraged TikTok's unique features, algorithm-driven content discovery, and the ability to go viral to build a substantial following and monetize their content. TikTok's algorithm, known for its accuracy in recommending content, plays a crucial role in helping creators gain visibility. When a video gains traction, it can quickly reach a large audience, even if the creator has a relatively small follower base. This potential for virality has encouraged people to invest time and effort into producing engaging and shareable content.

Moreover, the platform's diverse user base provides an opportunity for creators to cater to specific niches or demographics. This diversity allows for the creation of content that resonates with specific groups, leading to loyal followings and a dedicated audience. TikTok also offers several ways for creators to make money from their content. Some of the common methods include:

1. **Brand Partnerships and Influencer Marketing:** As creators amass a substantial following, they become attractive to brands looking to reach their target audience. Influencers can collaborate with brands for sponsored content or promotional campaigns, earning income from these partnerships.
2. **TikTok Creator Fund:** The TikTok Creator Fund allows eligible creators to earn money based on the performance of their videos. Creators receive a share of the advertising revenue generated by their content, incentivizing them to consistently produce engaging videos.
3. **Live streaming and Virtual Gifts:** Creators can host live streams on TikTok and receive virtual gifts from their viewers. These gifts can be converted into real money, providing an additional revenue stream for popular creators.
4. **Selling Merchandise:** Some TikTok creators create and sell their merchandise to their followers, capitalizing on their brand and audience loyalty.
5. **Cross-promotion:** Successful TikTok creators often use their platform to promote their other social media channels or ventures, expanding their reach and monetization opportunities.
6. **Several real-life examples demonstrate the potential for TikTok creators to earn a living through the platform.** For instance, Drea Okeke (@dreaokeke), a TikTok creator who shares cooking videos, has been able to turn her passion for food into a full-time career, earning income from sponsored content and brand partnerships. Additionally, Riyaz Aly (@riyaz.14), an Indian TikTok star, has amassed millions of followers and leveraged his popularity to gain brand collaborations and build a successful career.

While TikTok has enabled many creators to make a living from their content, it's important to note that success on the platform often requires consistent effort, creativity, and the ability to adapt to the ever-changing trends and interests of the audience. Furthermore, there are several types of TikTok monetization, including (Firstmedia, 2022):

Creator Marketplace. This is a feature where a content creator can promote himself so that he has the opportunity to get endorsements from companies for the products they sell. One of the conditions that must be met is that the TikTok account used must be changed to a business account with a minimum of 1000 followers. Next is the TikTok Shop. This feature assists users to sell and buy products from TikTok (Market Place). Every customer who is going to buy a product does not need to open another marketplace application (Tokopedia, Shopee, etc.) to make a transaction, just on TikTok. To use this feature, the seller displays information about the items being sold and completes information about store details. The next form of monetization is Live Streaming. Through this feature, TikTokers can broadcast their activities live and can be watched by their followers. Finally, the form of monetization that can be used is the Gifts feature. This feature is in the form of prizes that can be given to TikTokers who are live streaming. Each prize given can be cashed, apart from that each prize has a different amount of money.

To be able to calculate their income, TikTokers uses an application known as Exolyt (Zakawali, 2022). Exolyt is a site that provides statistical, analytical and calculator tools to calculate the estimated income of a TikToker. The data provided by this site includes data on content production, engagement, and the number of followers. The main feature of Exolyt is to calculate estimated income from a TikTok account. Even though the data provided is estimated, this can be used as a reference for TikTokers in making collaborations and partnerships, as well as relating to tax calculations.

Exolyt is an analytics and influencer marketing platform designed for TikTok, providing comprehensive insights and data analysis for creators, influencers, and marketers. The platform functions by collecting and processing data from TikTok profiles and videos. Users can input their TikTok account handle to access data about their followers, video views, and engagement metrics. Additionally, Exolyt offers detailed performance metrics for each video, including likes, comments, shares, and engagement rate. Audience insights provide information on the demographics of a TikTok account's followers, helping users understand their audience better. The platform also provides users with the capability to examine competitor profiles, enabling them to gauge their performance and stay up-to-date with trending hashtags and challenges. For marketers, Exolyt offers influencer discovery, aiding in the identification of relevant influencers based on niche, audience demographics, and engagement metrics. Additionally, the platform facilitates real-time tracking of influencer marketing campaigns, allowing marketers to oversee reach, engagement, and ROI. Exolyt's data-driven approach empowers TikTok users to refine their content strategy, effectively engage their audience, and make well-informed decisions in an ever-evolving social media landscape. Nevertheless, users must responsibly utilize the data and adhere to TikTok's terms of service and data usage policies.

Imposition of Income Tax on the TikToker Profession in Indonesia

Tax is a compulsory financial contribution levied by governments on individuals, businesses, and other entities to generate revenue for funding public services and

government activities (Investopedia, 2021). It plays a pivotal role in bolstering various public initiatives, spanning from infrastructure development, education, healthcare, to social welfare programs. Different tax types are in place, encompassing income tax, corporate tax, value-added tax (VAT), property tax, excise tax, and inheritance tax, each targeting distinct facets of economic activity. Income tax is usually levied at progressive rates, contingent on income levels, whereas corporate tax is imposed on business profits. VAT and GST stand as consumption taxes enforced at each stage of the supply chain. Property tax hinges on the assessed value of real estate properties. Excise taxes target specific goods and services, and inheritance tax is levied on inherited assets. These taxes provide governments with the necessary resources to fund essential public services and programs that benefit society as a whole (Internal Revenue Service, 2020).

Taxes are contributions given by the people to the state based on law (can be forced) by not receiving reciprocal services that can be directly received and used. Taxes in Indonesia vary and have different characteristics based on their classification. One type of tax known in Indonesia is Income Tax (PPh). PPh is a tax or levy that is addressed to someone who already has a steady income. Every individual who has met the stipulated criteria for tax payment is designated as a Taxpayer (WP). According to Article 4 of the UUPPh, income encompasses any augmented economic capacity acquired or received by a Taxpayer, whether within or outside Indonesia, which can be utilized for consumption or to enhance the wealth of the respective Taxpayer, under any denomination or manifestation. Furthermore, based on Article 4 UUPH, there are various classifications of income with each of its elements. The first element is the economic capacity of the taxpayer. This can be interpreted as everything that a person gets from the income he receives. Income here can be interpreted as fixed and additional income received by the WP within one year (from the beginning of the year to the end of the year counted). The second element is that the income is received by the Taxpayer concerned. This means all income received by someone who has received income that is more than Non-Taxable Income (PTKP). The last element is that the income comes from within, as well as outside Indonesia.

Regarding the TikTokers profession, this profession is actually a new profession that exists as a result of changing times and developments in information and communication technology. One of the duties of TikTokers in carrying out their profession is to conduct reviews and promote products that have been endorsed by them. TikTokers then get rewarded for the review videos he has made and uploaded. This is then what is income or profit for TikTokers. So, based on Article 4 UUPPh, the compensation received by TikTokers after he helped promote the product is included in the economic element in that Article and is an object of Income Tax.

Calculation of Income Tax for the TikToker Profession in Indonesia

In terms of tax collection, Indonesia itself adheres to a self-assessment system. According to this system, it is the taxpayers who calculate, calculate and report

independently their respective tax reports according to UUPPh. This mechanism requires that the amount of tax paid to the state be fully submitted to the Taxpayer through the Notification Letter (SPT) document submitted to the Taxpayer through various media; postal, online, or other media.

Even though the self-assessment system is in place, implementing it might pose challenges for TikTokers and content creators. This arises due to the uncertainty surrounding their earned income, which tends to vary. To effectively implement this system, it necessitates a strong sense of integrity and transparency on the part of TikTokers and content creators during reporting. For self-employed or freelance TikTokers, the regulations outlined in Article 21 of the UUPPh are applicable. This particular provision pertains to artistic professionals, individuals lacking agency representation, as well as freelancers and private employees. Furthermore, the imposition of income tax on TikTokers can refer to the Director General of Taxes Regulation No. PER-17/PJ/2015 concerning Norms for Calculation of Net Income. The profession of TikTokers or content creators is included in the 50% classification of art workers. This is because TikTokers create and upload content or artwork in the form of images, photos or videos that are uploaded to their respective TikTok accounts. The 50% arts worker sector is based on the classification of casual workers which is not determined rigidly in the tax withholding regulations. In terms of calculating it, TikToker does it by bookkeeping, so the method of calculation is the result of gross income minus operational costs incurred in creating content. Where these costs are categorized as costs incurred in supporting professional operations. The calculation results are then adjusted to the contents of Article 17 UUPPh in order to get the amount of net income (Supadmi, 2009).

As previously explained, the income of a TikTokers can be estimated through the Exolyt site. The data submitted usually consists of the lowest to the highest estimate of the income of a TikTokers within one year. So, based on these estimates, the midpoint of TikTokers' annual income can be taken as the basis for calculating their income tax.

Conclusion

Based on the explanation provided by the writer, several conclusions can be derived. Firstly, the imposition of income tax on the TikToker profession follows a self-assessment system, whereby the calculation processes up to reporting are conducted directly by the taxpayer in accordance with the relevant laws and regulations. In the pursuit of their profession, TikTokers engage in the evaluation and endorsement of products. Subsequently, TikTokers receive compensation for the review videos they create and share. This is then what is income or profit for TikTokers. Based on Article 4 UUPPh, the compensation received by TikTokers after he helped promote the product is included in the economic element in that article and is an object of income tax. Furthermore, the calculation of imposing income tax on the TikToker profession can use the Director General of Taxes Regulation No. PER-17/PJ/2015 concerning Norms for Calculation of Net

Income. This is based on the TikTokers profession, where TikTokers create and upload content or works of art in the form of images, photos or videos that are uploaded to their respective TikTok accounts.

Second, the suggestion based on the research that has been carried out, the authors suggest: First, the Government through the Directorate General of Taxes can conduct outreach and hearings to TikTokers regarding income tax and how it is calculated. Second, the government persistently strives to enhance services for taxpayers, aiming to ensure that individuals feel secure and at ease while handling all aspects concerning income tax within their community. As a final suggestion, TikTokers in Indonesia are advised to seek guidance from a tax professional or directly engage with the Direktorat Jenderal Pajak (DJP) to access the latest information on income tax regulations and their corresponding tax responsibilities.

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