



Income Tax Arrangements for Foreign Workers as National Tax Subjects

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Abstract

The legal basis for imposing Income Tax on foreign workers in Indonesia and the forms of accountability that arise for parties who do not comply with tax regulations. The study begins with the increasing use of foreign workers who demand legal certainty regarding tax subject status, administrative obligations, and tax deduction mechanisms by employers. This study aims to analyze the following problems: 1) what is the legal basis for imposing Income Tax on Foreign Workers in Indonesia? 2) What is the form of accountability for violators of Income Tax Regulations on Foreign Workers in Indonesia? The research method used is based on a normative legal approach. The study was conducted through a search of library materials, including laws and various documents related to the issue under study. This approach relies on literature studies (library research) as a basis for examining the content of norms and their relationship to the legal issues raised. The results of the study indicate that the imposition of tax on foreign workers is highly dependent on the length of their presence in Indonesia and the employer's compliance with tax deduction obligations. Administrative and criminal law enforcement are important instruments to ensure tax compliance and protect the country's fiscal interests.

Keywords: Foreign Workers, Income Tax, Tax Subjects, Law Enforcement, Indonesia

1. Introduction

As an archipelagic nation with a vast territory and a favorable geopolitical location, Indonesia has significant potential to increase national income through various sectors, including taxation. Currently, the country's ability to finance development depends heavily on optimizing domestic revenues, the majority of which come from taxes. The vast economic opportunities that can serve as a basis for tax collection provide the government with the opportunity to strengthen the state budget. However, the continued growth in tax revenues each year cannot be achieved without the support of taxpayer awareness, professionalism of officials, an effective administrative system, and legal instruments that guarantee fairness and certainty (Damas Dwi Anggoro, 2017, p. 17) ^[1].

Article 23A of the 1945 Constitution of the Republic of Indonesia stipulates that levies in the form of taxes and other mandatory contributions for the benefit of the state must be established by law. This provision demonstrates that tax collection must be based on clear regulations to ensure the principle of legal certainty is maintained. In general, law functions to create order and prosperity by regulating the rights and obligations of the community, establishing limits on authority, providing means for dispute resolution, and ensuring legal clarity in social life (Asri Ardison, 2021: p. 21) ^[2].

Taxes are the primary foundation for the sustainability of a nation. In the Indonesian context, taxes are the mainstay of state revenue, thus efforts to expand tax coverage and improve tax compliance are ongoing. Essentially, state revenues are derived from public contributions through tax payments and the utilization of national natural resources. These funds are then used to meet public needs, including healthcare, education, public facility development, and other social services. Thus, every public interest is ultimately closely linked to the tax collection mechanism as a state financing instrument (Ayza Bustamar, 2017: p. 15) ^[3]. The industrial sector in Indonesia is one of the sectors that absorbs a large number of workers. The availability of labor is an important element in supporting the production process of both goods and services.

Based on Article 1 number (2) of Law Number 13 of 2003 concerning Manpower, labor is understood as every individual who is able to perform work to produce goods and/or services to meet personal and community needs. In practice, fulfilling labor needs in Indonesia does not only depend on local workers, but also involves foreign workers. Article 1 number (13) of the same law explains that foreign workers are foreign citizens who have a visa to work in Indonesian territory (Farouq, 2018: p. 17) ^[4].

Foreign workers working in Indonesia are subject to national laws, including tax regulations. Issues related to tax obligations often arise, both from taxpayers and the tax authorities. Some people view paying taxes as a burden because it reduces income, even though the purpose of tax collection is to replenish state coffers and then return them to the public welfare (Fitri, 2024, p. 13) ^[5].

Foreign workers in Indonesia are entitled to a living wage according to applicable standards. Furthermore, their presence also makes them taxable, and therefore, all tax regulations apply. Therefore, strict enforcement of tax regulations is necessary to maintain order and legal certainty, particularly regarding the imposition of income tax on foreign workers (Martina Mogi Co., 2021, p. 9).

Based on the background above, the problem can be formulated, namely, what is the legal basis for imposing income tax on foreign workers in Indonesia?, and what is the form of accountability for violators of income tax regulations on foreign workers in Indonesia?

2. Methods

This research uses a normative juridical approach, a legal study method that emphasizes the exploration and interpretation of applicable written legal provisions, both within the scope of national law and international legal instruments. This approach was chosen because the issues being studied relate to the regulation and forms of legal accountability for foreign workers in the context of Income Tax collection in Indonesia. This issue essentially requires a discussion based on legal norms explicitly regulated in statutory regulations. The research data sources refer to primary legal materials, namely Law Number 36 of 2008 concerning Income Tax, Law Number 6 of 2011 concerning Immigration, Law Number 13 of 2003 concerning Manpower, and various implementing regulations related to the use of foreign workers. In addition, this research also utilizes secondary legal materials in the form of academic books, scientific articles, tax journals, expert opinions, and other relevant research results as recommended in the normative legal research method (I Made Pasek Diantha, 2017:20).

Data collection was conducted through library research, examining legal documents, scientific literature, and official publications containing provisions on taxation and tax procedures for foreign workers. The data obtained were then analyzed using qualitative descriptive analysis methods by describing, interpreting, and linking applicable legal provisions with their implementation practices within the tax administration system. This analytical approach is intended to provide an explanation of the application of tax provisions to foreign workers, including determining tax subject status, administrative obligations, and the mechanisms for withholding and collecting taxes by employers. The results of the analysis are then used to assess the consistency and effectiveness of applicable tax regulations in addressing the

dynamics of the use of foreign workers in Indonesia, while also reviewing their relevance to modern tax law principles.

3. Results and Discussion

3.1 Legal Basis for Imposing Income Tax on Foreign Workers in Indonesia

The use of foreign workers in Indonesia is primarily aimed at providing added value to the business world, primarily through skills transfer, improving human resource quality, and strengthening the capacity of the local workforce. The government then frames the existence of foreign workers through various regulations that serve as instruments of control, regulation, and guidance for those who employ them. All of these regulations are intended to ensure that the process of placing and utilizing foreign workers occurs within the bounds of legal certainty (Deasyella Priskila Koplun, 2022, p. 2).

Article 1 number 13 of Law Number 13 of 2003 defines foreign workers as foreign citizens who have obtained permission in the form of a visa to work in Indonesian territory. This provision confirms the existence of a visa as a legal requirement for foreigners to be able to work legally. This formulation is in line with the provisions of Article 1 number 18 of Law Number 6 of 2011 concerning Immigration, which states that a visa is a written document issued by an official representative of the Republic of Indonesia abroad and serves as the basis for granting a residence permit (Leonard Makalalag, 2016, p. 3) ^[7].

Every employer planning to employ foreign workers is required to obtain a Foreign Worker Employment Permit (IMTA). An IMTA is an administrative measure granted by the state after the employer has fulfilled all procedures and requirements stipulated in laws and regulations. This permit demonstrates that the employer has met the administrative requirements and therefore has the legal right to recruit foreign workers (Hanggoro Pamungkas, 2011, p. 21) ^[1].

In addition to the obligation to obtain a permit, the existence of an employment agreement is a fundamental requirement for establishing an employment relationship between a foreign worker and an employer. An employment relationship is formed when the worker expresses their willingness to perform a specific job, and the employer agrees to provide wages in return for that work. Thus, an employment agreement serves as a legally binding basis and evidence that the employment relationship is legally established (Emma Rosalinawati, Syaiful, 2018, p. 4) ^[10].

The government has imposed several restrictions on positions that cannot be filled by foreign workers. Ministerial Decree No. 40 of 2012 on Manpower and Transmigration stipulated 19 types of positions that cannot be filled by foreign nationals. These regulations were further clarified in Ministerial Regulation No. 16 of 2015, which provides technical guidelines regarding placement procedures, administrative requirements, and procedures for utilizing foreign workers.

In addition, Article 42 paragraph (2) of Law Number 13 of 2003 stipulates that individuals as employers are not permitted to employ foreign workers. Before obtaining an IMTA, employers are required to have a Foreign Worker Utilization Plan (RPTKA), a document detailing the need for foreign workers, the positions to be filled, and the duration of the assignment. The RPTKA, which has been approved by the authorized official, is the basis for issuing an IMTA.

In the taxation system, the presence of foreign workers has

the consequence that they are treated as tax subjects based on the provisions of Law Number 36 of 2008. Article 2 of the law distinguishes between domestic and foreign tax subjects. The tax status of foreign workers is determined based on the length of their presence in Indonesia (Tri Setiady, 2015, : p. 4)^[12].

Foreign workers who are in Indonesia for more than 183 days within a 12-month period are designated as domestic taxpayers. In this category, foreign workers are required to have a Taxpayer Identification Number (NPWP), as stipulated in Article 1, number 6 of Law Number 28 of 2007. The NPWP serves as official identification in the tax administration system.

The NPWP plays a crucial role in tax administration as it serves as taxpayer identification, a data validation tool, and a primary requirement for various tax documents. Everyone who meets the subjective and objective requirements is required to register for an NPWP, and failure to comply with this obligation can result in criminal sanctions as stipulated in Article 39 of Law Number 28 of 2007.

Foreign workers who stay for less than 183 days within a 12-month period are designated as non-resident taxpayers. They are subject to tax on income derived from Indonesia, particularly income received through employment with a local employer without a business activity or permanent establishment. In this category, the tax base is gross income. In general, the tax base is a specific value used as a reference for calculating the amount of tax payable. For domestic taxpayers, the calculation base uses taxable income. Conversely, for foreign taxpayers, the calculation base uses gross income. This division is intended to tailor the taxation mechanism to the characteristics of each taxpayer.

Withholding income tax from foreign workers, both under Article 21 and Article 26 of Law Number 36 of 2008, is the employer's responsibility. Employers must withhold, report, and remit taxes on compensation in the form of salaries, honorariums, or other forms of payment.

Through this employer-deductible mechanism, the state ensures that foreign workers remain within the national tax system. This system serves as a monitoring tool to ensure that foreign workers' tax obligations are met in an orderly and systematic manner, thus preventing a shortfall in state revenue.

3.2 Forms of Accountability for Violators of Income Tax Regulations for Foreign Workers in Indonesia

Enforcing tax regulations has always been a crucial task for the state, as it involves the obligation to restore order when established provisions are violated. Violations in this area can arise from attempts to delay, avoid, or refuse to fulfill tax obligations, whether intentional or not, thus hindering state revenue collection. This situation is often referred to as tax resistance, which is a variety of obstacles that prevent the tax collection process from proceeding as intended (Made Dwi Surya Suasa, I Made Arjaya, I Putu Gede Seputra., 2021, p. 5).

Sanctions in tax law are essentially a means of maintaining taxpayer discipline and ensuring their behavior remains in line with applicable regulations. In the Indonesian tax system, sanctions are imposed through two channels: administrative and criminal. Both types of sanctions are clearly regulated by law, ensuring that every violation has definite legal consequences that can be enforced by tax authorities.

Tax sanctions also serve as a deterrent to taxpayers from

ignoring established regulations. Through sanctions, the state ensures that tax norms are respected and complied with. From a law enforcement perspective, these sanctions fall into two main categories: administrative sanctions and criminal sanctions, each with a distinct role depending on the type of violation (Daniel Sonatha Sinaga, Edmira Rivani, 2018, p. 2). In the administrative realm, sanctions are imposed through fines, interest, or increases in the amount of tax due. Fines are imposed on taxpayers who fail to comply with reporting obligations, while interest is levied for late payments. On the other hand, tax increases are imposed when violations involve non-compliance with material provisions, resulting in an overstatement of the tax due.

Imposing administrative sanctions is a form of restitution for state losses due to taxpayer negligence. In various provisions, such as the General Tax Procedures (KUP), administrative sanctions include fines, interest, and increases in the amount of tax owed. Interest sanctions can be imposed when taxpayers amend their tax return, pay their tax debts late, or postpone payments. Meanwhile, tax increases are applied to violations that result in underpayments of a certain percentage depending on the severity of the violation (Adhi Rizal Suhono, Reminta Lumban Batu, Seva Madjid., 2023, p. 6).

In addition to administrative sanctions, criminal sanctions serve as a last resort to ensure tax compliance. These sanctions are imposed when violations become criminal, such as premeditated tax evasion or actions that result in significant losses to the state. These sanctions can range from fines to imprisonment, depending on the severity and nature of the violation.

Criminal fines are imposed on both taxpayers and other parties involved if their actions are proven to seriously violate tax regulations. Imprisonment is usually applied to minor, administrative violations, but still has legal consequences. Imprisonment is more severe because it restricts the offender's freedom and is imposed for serious tax crimes (Revina Putri Utami, Amelia Cahyadini, Tasya Safiranita, 2025, p. 7).

In a legal system, the imposition of sanctions is meaningless if the rules cannot be effectively enforced. Therefore, criminal sanctions are often considered a crucial instrument because they directly relate to restrictions on individual freedom. Many laws and regulations are accompanied by criminal sanctions to ensure public compliance, including in the tax sector, which plays a strategic role in the sustainability of the state.

Imprisonment serves a developmental purpose, providing a deterrent effect on violators and reinforcing their commitment to complying with the law. In the context of foreign worker income tax, the responsibility for withholding and paying taxes rests with the employer, primarily a legal entity. Since individuals are not permitted to employ foreign workers, any violations are ultimately the responsibility of the legal entity, acting as the tax withholding agent.

Tax law enforcement serves to foster compliance and maintain a balance between fairness, utility, and legal certainty. These three aspects are always the benchmarks for law enforcement because the public expects protection of rights and certainty when tax obligations are enforced. Therefore, law enforcement must be carried out proportionally to benefit the state while still considering the taxpayer's circumstances.

Law enforcement efforts in taxation are carried out through

the stages of collection, inspection, and investigation. Collection aims to ensure that unpaid tax debts can be settled through specific procedures, including warnings, reprimands, and enforcement actions such as seizure. Immediate and simultaneous collection can also be carried out if the taxpayer is deemed uncooperative in fulfilling their obligations.

Beyond billing, audit procedures are used to assess the extent to which taxpayers have fulfilled their tax obligations. Audits are conducted through data collection and analysis to verify the accuracy of reporting and the compliance with obligations. This step is key to ensuring both material and formal compliance for each taxpayer.

The final stage is a tax investigation, which is conducted if indications of a tax crime are found. Investigations are conducted by civil servant investigators within the Directorate General of Taxes and must follow applicable criminal procedure. This investigative mechanism aims to uncover unlawful acts and determine the perpetrators responsible for the tax crime.

Taxpayer compliance is ultimately influenced by the quality of tax authorities' services and the firmness of law enforcement. When tax services improve and legal action is taken firmly, taxpayers will be encouraged to fulfill their obligations voluntarily. Conversely, a strong law enforcement system discourages taxpayers from committing violations due to the high risk of sanctions and the tax administration's ability to conduct cross-institutional audits.

4. Conclusion and Suggestion

4.1 Conclusion

The legal basis for imposing income tax on foreign workers in Indonesia rests on a unified set of labor, immigration, and tax regulations that integrally regulate the entry of foreign workers, the granting of work permits, their employment relationships, and their tax status based on their length of stay in Indonesia. All of these mechanisms, from the requirement to have a visa and IMTA to determining status as a domestic or foreign taxpayer, are designed to ensure that the utilization of foreign workers is orderly, measurable, and provides legal certainty for both the state and employers, while maintaining their tax obligations in accordance with the applicable income tax withholding system.

The form of accountability for income tax violations related to foreign workers shows that the state has a multi-layered mechanism to maintain compliance and ensure that tax revenues are maintained, starting from the imposition of economic administrative sanctions to the application of criminal sanctions for violations deemed serious, where all these instruments not only function to provide consequences for actions that do not comply with the rules, but also serve as a means of prevention so that employers as the parties responsible for withholding and reporting foreign worker taxes do not repeat the same violations, so that the entire tax law enforcement system can run more effectively and support the creation of compliance both formally and materially.

4.2 Suggestion

The government needs to implement clearer and more coordinated regulations so that tax obligations for foreign workers can be applied consistently and differences in interpretation can be minimized in the field.

The government needs to create more detailed and easily implemented guidelines so that tax obligations related to foreign workers can be implemented consistently and do not

give rise to differences in interpretation in the field.

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