

Tinjauan yuridis terhadap transaksi pinjaman dari pemegang saham

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Abstrak

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Legal certainty is an important factor in the tax management in any country, considering that in general taxes do not offer direct reward to the community. On the other hand, taxes directly impose additional burden on the community. Therefore the tax collection should take legal certainty into consideration to ensure fair treatment. One of the Decrees of the Director General of Taxation which becomes a controversy in the business world and often becomes a topic for debate among the tax experts is the policy of the Director General of Taxation formulated in the Letter Number: S-1651PJ.31211992. The provision regulates the fiscal correction to the companies which take a loan from the shareholders. Taxpayers are of the opinion that the policy does not make sense, since in practice the provision brings about fiscal correction which is based on assumption. The fact is that the Tax Court always passes the judgment stating that the taxpayer wins the case in the disputes related to the transaction. Despite the fact that the Directorate General of Taxation has lost the case many times in the Court of Appeal, the Directorate General of Taxation has not changed the policy to regulate the transaction of loan from the shareholders. The foregoing matter underlies the normative research which carries out a study on the legal provision on the transaction of loan from the shareholders. The normative research aims to discover how other countries regulate the transaction and to compare it with the prevailing provisions in Indonesia; how the Tax Court passes the judgment stating that the taxpayer wins the case if the judgment is compared to the provisions formulated in the Letter of Director General of Taxation, how the issuance and use of the Letter of Director General of Taxation is observed from the principles of authority delegation and the principles of discretion. The research is descriptive and explanatory by employing the data collection instrument in the form of documents study, namely in the form of primary, secondary, and tertiary legal materials. The result of the normative research indicates that the provisions in the Letter of the Director General of Taxation Number: S-1651PJ.31211992 is in contradictory with the judgment of the Tax Court and the provisions in the income Tax Act. In passing the judgment stating that the taxpayer wins the case the Tax Court employs the principles of Substance Over Form Rule which relies more on the material truth as the requirements for the burden of proof. While the Income Tax Act delegates the authority to the Director General of Taxation to determine the debt to equity ratio.

Whereas observed from the principles of authority delegation, the Letter of the Director General of Taxation is not in conformity with the authority of the Director General of Taxation based on the Income Tax Act to solve the case in the transaction. Likewise, if the regulation is observed from the principles of discretion, the provisions made should not employ free discretion, but employs restricted discretion which still refers to the provisions contained in the law.

In various countries, the transaction is classified as special relation transaction that has a potential to incur losses, namely in the form of the potential loss in the national revenue of a country. Therefore many countries stipulate provisions which limit the loan from the shareholders by stipulating the debt to equity ratio.

