VAT Issues on Omnibus Law in Indonesia and Their Administrative Implications

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Abstract- The 2020 fiscal year is a turning point for several types of superior taxes in Indonesia -VAT is one of them- since it has undergone two changes through the omnibus law. Based on the Covid-19 pandemic that occurred, the VAT Law amendments were first made through Law No. 2/2020, which regulates the imposition of VAT on electronic transactions. Not long after, Law No. 11/2020, which more broadly aims to facilitate ease of doing business. This paper is one of the earliest studies to analyze the two laws that focus on regulating VAT. Besides analyzing both laws from tax collection principles, this study also aims to present both laws' administrative brief reports. Our analysis on Law no. 2/2020 shows that a platform provider (PPMSE) appointment as a VAT collector is a reasonably simple and effective measure. However, concerning the compliance burden borne by PPMSE, the government needs to provide adequate consultation space so that entrepreneurs who have been designated as PPMSE can properly administer their tax obligations. As for Law no. 11/2020, although in general, the VAT aspect does not get as much attention as the Income Tax development, the VAT arrangement still leaves several issues regarding equality and certainty.

Index Terms- vat, e-commerce, omnibus law, tax policy, tax administration

I. INTRODUCTION

In Indonesia, VAT regulation is under Law No. 42/2009 (VAT Law), an amendment from Law No. 8/1983 concerning VAT on Goods and Services and Sales Tax on Luxury Goods. In 2020, the VAT Law underwent two amendments through legitimated Law No. 2/2020 and Law No. 11/2020. Amendments to the VAT Law in Law no. 11/2020 concerning Job Creation are certainly more diverse than Law no. 2/2020, which is more limited to the imposition of VAT on electronic transactions. Following the habit of updating in previous times (amendments to the VAT Law since 1983 have occurred almost every decade, namely 1994, 2000, and 2009), changes in 2020 through the omnibus law have become an essential milestone in the VAT development. Several provisions in the 2009 VAT Law are proven to be no longer appropriate in supporting the current business climate.

Ensuring that the taxation system is ready to welcome the changes brought about by digital transformation is a critical challenge (OECD, 2019). Changes in the VAT provisions that occur twice a year show the Indonesian government's commitment to catch up with tax regulations from the dynamic business changes. In the early stages, the government and the People's Representative Council (Dewan Perwakilan Rakyat; DPR) have enacted Law no. 2/2020. The content concerning taxation is tax imposition on trading activities through Electronic Systems (Perdagangan Melalui Sistem Eletronik; PMSE) or what we usually know as e-commerce. The tax policy in these provisions is in the form of a VAT collector appointment by the Minister of finance to utilize intangible Taxable Goods and Taxable Services from outside the customs area into the customs area.

The enactment of the Omnibus law on the VAT Cluster Job Creation in mid-October 2020 has changed the VAT Law's four articles. The articles that undergo amendment are: Article 1A, which regulates the definition of delivery of Taxable and Non-Taxable Goods; Article 4A, which holds types of goods that are not subject to VAT and types of services that are not subject to VAT; Article 9, which governs the crediting of input tax; and Article 13 regarding tax invoices. However, one crucial issue that we must not ignore is the matter of legal certainty. Regulations derived from the omnibus law, where many experts predicted it would produce around 500 government regulations (Riyanto et al., 2020), can contradict the efforts to simplify regulations. The new regime for the VAT Law, which requires implementing rules to be implemented, has raised concerns about legal certainty assurance.

Previous experiences show that tax disputes have increased concerning differences in tax administration and taxpayers' interpretation. Based on the Directorate General of Taxes (DGT) Performance Report in 2019, the number of Tax Court decisions on appeals and lawsuits has increased, from 6,034 decisions in 2018 to 6,763 decisions in 2019. However, the DGT's win rate in 2019 has decreased compared to 2018, namely from 43, 54% to 40,54%. According to observations from Pratiwi and Liana (2019), out of IDR 132.5 trillion in tax refunds, around 17 percent of the cause is the defeat of the DGT in fighting taxpayers at the tax court and Supreme Court level. The low level of victory of the DGT in tax disputes causes the DGT to return taxes to taxpayers.

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Referring to the IMF/OECD report (2017), tax uncertainty creates a discouraging investment risk. The report identifies a range of approaches and solutions to increase tax certainty, ranging from increasing the clarity of laws, improving predictability and consistency of tax administration practices, effective dispute prevention, and decisive dispute resolution mechanisms. In their next report, the IMF/OECD (2019) emphasizes a shift from initially dispute resolution into dispute prevention to achieve tax certainty. From the background above, this study analyzes the VAT provisions under the new regime in Indonesia by highlighting the changes from legal certainty and equality principles. We also deepen our analysis concerning the administrative overview of the change.

II. CONCEPTUAL FRAMEWORK

Economists generally prefer the VAT design to be a consumption tax, that is, in the sense that its main effect is to drive the difference between the price consumers pay for their purchases and the price that suppliers receive for the same sale (Bodin & Ebrill, 2001, p. 15). Hence, we know VAT as a tax on transactions (Thuronyi, 2003, p. 307). VAT intends to tax personal consumption in a comprehensive, neutral, and efficient manner (Schenk, Thuronyi, & Cui, 2015, p. 23). VAT collection adheres to the neutrality principle, which means that the collection does not affect business entrepreneurs’ and consumers’ economic decisions. This consumption tax is preferred because of its neutrality for saving and investment decisions, consumption decisions, production decisions, and decisions about labor supply (James, 2015). According to James, the principle of neutrality on VAT directs decisions to suit market conditions to increase investment, efficiency, and economic growth.

In designing the VAT Law, the issues that need to be examined are what is classified as a VAT object, why any consumption is considered a VAT object, and how it is collected (Rosdiana & Irianto, 2013, p. 230). After determining the consumption which is under the scope of the VAT object, it is necessary to examine the meaning of goods to then select the most appropriate alternative, which is following the VAT concept, but at the same time, also following the principles of tax collection (Rosdiana & Irianto, 2013, p. 231). Concerning the VAT basic, Thuronyi (2003, p. 307) states the following:

- Taxable transactions are the provision of goods or services (except for those exempted) carried out within Taxable Entrepreneurs' jurisdiction acting as collectors.
- Goods are usually defined as tangible property, except in the form of money and land.
- Delivery of goods is the transfer of ownership of goods.
- The taxable value of the bid is usually the amount under consideration.
- Certain transactions may be taxable, for example, when a taxpayer withdraws goods for personal use or transfers them to employees free of charge or at a reduced price.

Along with the rapid development of technology, VAT-payable transactions also developed through an electronic system, also known as electronic commerce or e-commerce. E-commerce does not have a definite definition but broadly involves conducting business using most modern communication instruments in the form of telephone, fax, television, electronic payment, and money transfer systems, electronic data exchange, and the Internet (Mitchell, 2009, p. 341). E-commerce is the seamless application of information and communication technology from its point of origin to the endpoint along the value chain of business processes carried out electrically and designed to enable business goals (Pozvek, 2017, p. 37). Pozvek noted that VAT has a substantial impact on cross-border sales of physical and digital products in e-commerce. The government should modernize the VAT provision for cross-border electronic commerce to produce a simple, effective and neutral VAT system (Pozvek, 2017, pp. 50-51).

Meanwhile, du Preez and Stiglingh (2018) made an inventory of tax collection principles from at least 20 tax experts and institutions worldwide concerning the tax collection principle. This fact shows that the tax collection principle can develop according to the dimensions of place and time. In the Indonesian context, three important principles need to be adhered to in a balanced tax system by taking into account all interests (Mansury, 1996, p. 16). The three principles are the revenue adequacy principle, which represents the government's interests; the equity principle, which represents the community's interests; and the certainty principle, representing the government and society's interests. The principle of revenue adequacy or productivity is not discussed further because it is solely limited to the government's interest in collecting state revenue.

For the principle of equality, this is the first trait identified by Adam Smith and has been included at various levels in most tax systems worldwide (Downer, 2001, p. 55). According to Downer, the principle of equality is proven by applying a taxation system built on the "ability-to-pay" of individuals or corporations. The alternative application of the ability-to-pay concept is related to taxes on consumption, which refer to the actual ability to buy goods and services needed (Rosdiana & Irianto, 2013, p. 161).

In connection with the certainty principle, Demin (2020, p. 26) concludes that the tax certainty principle includes several formal requirements rich in content, namely accuracy, clarity, understanding, and ease of getting a general sense of taxation norms. The latter mentioned requisite contains a fair balance between abstract and concrete provisions, completeness, tax regulations stability, and logical and systemic taxation norms consistency. Legal certainty is a fundamental norm in the rule of law so that lawmaking must be assessed based on the principle of legal certainty (Gribnau, 2014, p. 91). The certainty principle is the most fundamental in a taxation system because uncertainty will increase the potential for dispute between taxpayers and tax authorities (Rosdiana & Irianto, 2013, p. 170).
III. RESEARCH METHOD

This research uses a qualitative approach. A qualitative approach is an approach in conducting research where the orientation is towards natural phenomena. It is naturalistic and fundamental and cannot be done in conventional laboratories but must go into the field. This research is descriptive. Descriptive research is research that describes in detail the phenomenon or social phenomenon that is happening. With this descriptive study, researchers can present a detailed and specific description of a situation, social background, and even the relationship (Neuman, 2013, p. 38). In connection with this understanding, this study aims to analyze the issue of Value Added Tax (VAT) in Indonesia's omnibus law. Apart from that, this research also discusses the administrative implications of the new VAT policy. In this study, we used qualitative data collection techniques, namely through literature studies and documentation studies.

IV. RESULT & DISCUSSION

A. VAT Policy Analysis of Law No. 2/2020

The Covid-19 pandemic has a strong impact on many countries' economies (OECD, 2020), including Indonesia. To implement the 2020 State Budget related to handling the 2019 COVID pandemic and facing threats that endanger the national economy and financial system stability, the government has determined state financial policies and financial system stability policies. State financial policies include state revenues policies, including taxation policies, state spending policies, regional finance policies, and policies for financing. Financial system stability policies include policies to address financial institution problems that endanger the national economy and financial system stability.

The imposition of VAT on the use of Intangible Taxable Goods (Barang Kena Pajak: BKP) and Taxable Services (Jasa Kena Pajak; JKP) from outside the Customs Area within the Customs Area through Electronic Trading (PMSE) follows the provisions referred to in the VAT Law (Article 6 paragraph (2) Law No.1/2020). VAT imposed on the use of Intangible BKP and JKP from outside the Customs Area is collected, deposited, and reported by foreign traders, foreign service providers, overseas Trade Through Electronic Systems (Penyeleenggara PMSE; PPMSE), and domestic PPMSE, appointed by the Minister of Finance (Article 6 paragraph (3) Law No. 1/2020). The VAT on e-commerce under Law no. 2/2020 cannot be separated from the OECD recommendation (2015). According to the OECD (2015), the digital economy poses broader tax challenges for policymakers. The digital economy creates challenges for VAT collection from the VAT side, especially when private consumers acquire goods, services, and intangibles BKP from suppliers overseas.

Conceptually, the taxable person is the seller of goods or service providers abroad, while domestic consumers bear the tax incidence according to destination principles. Because overseas sellers of goods or service providers as foreign tax subjects are not obliged to become a tax-paying entrepreneur (Pengusaha Kena Pajak; PKP), there is unfairness for domestic business actors who must become PKP. For that, the Indonesian government earnestly strives for an equal level playing field in the arena of international discussion according to the principle of fairness. Furthermore, Law no. 2/2020 authorizes the Minister of Finance (MoF) to appoint the e-commerce providers as VAT Collector. The MoF then delegated the authority to the Director-General of Taxes. In this case, MoF Regulation No. 48/PMK.03/2020, which regulates the procedures for the appointment of collectors, collections, payment, and VAT reporting on the use of intangible BKP, and Taxable Services from outside the customs area in the Customs Area through PMSE. As an implementation of the MoF Regulation No. 48/PMK.03/2020, the Director-General of Taxes has issued regulation number PER-12/PJ/2020.

Director-General of Taxes Regulation no. PER-12/PJ/2020, among others, regulates certain criteria limits for PMSE VAT collectors, the appointment of VAT e-commerce from collectors, collection, payment, and reporting. E-commerce actors appointed as VAT e-commerce collectors (PPMSE) can be overseas traders, overseas service providers, overseas e-commerce operators, or domestic e-commerce operators. To be selected as a VAT collector, e-commerce actors must meet the criteria measured from the transaction value or the amount of traffic or access, exceeding a certain amount in 12 (twelve) months. In the Academic Paper of the Taxation Provisions and Facilities Bill for Economic Strengthening (Omnibus Law concerning taxation cluster), the equal level playing field related to VAT e-commerce refers to the "Equality of Business Climate Theory." According to APBN Kitu's data on October 2020 edition, since July 1, 2020, the Directorate General of Taxation has begun to appoint foreign and domestic digital product players as e-commerce VAT collectors. Six VAT e-commerce collectors, including in September 2020, had deposited VAT in the state treasury of around Rp. 97 billion.

The imposition of taxes on electronic transactions has become the hope of traditional economic actors to present aspects of justice and fair business competition. Traditional business actors spend more on physical costs such as building rent, employee salary costs, and others, raising new tax issues, while digital businesses can save more resources. The absence of various taxes for e-commerce players has indeed nurtured this type of business to develop rapidly. The backwardness of taxation arrangements to tax this type of tax has created a grey area. With the imposition of VAT on cross-border electronic transactions for consumption in Indonesia, the competitiveness of domestic business actors will increase in line with more competitive prices.

As reported by research institutions, video conferencing has increased sharply along with the implementation of Work from Home. The video game industry has grown significantly, with more people staying at home. Table 1 shows the details of VAT e-commerce collectors appointed by the Director-General of Taxes. The imposition of VAT on the use of intangible BKP or JKP from outside the customs area, such as digital products, is nothing new in the Indonesian tax system. Article 3A paragraph (3) of the VAT Law has stated that an individual or entity utilizing an intangible BKP from outside the customs area is obliged to collect, deposit, and report outstanding VAT whose calculation and procedure are under the MoF Regulation. Problems arise in the practice because collection, payment, and supervision mechanisms are relatively difficult to implement in Business to Customer (B2C) to sell digital products from companies.
abroad to end consumers using domestic services. In the process, consumers do not pay VAT because suppliers who are outside Indonesia's jurisdiction are not bound to carry out this collection obligation. With this appointment of VAT e-commerce Collector, tax authorities can eventually impose VAT where it is previously unreachable.

Table 1 Third parties that have been appointed as VAT e-commerce collectors

<table>
<thead>
<tr>
<th>No.</th>
<th>VAT e-commerce collectors (PPMSE)</th>
<th>Batch (Period)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.</td>
<td>Facebook Ireland Ltd., Facebook Payments International Ltd., Facebook Technologies International Ltd., Amazon.com, Services LLC, Audible, Inc., Alexa Internet, Audible Ltd., Apple Distribution International Ltd., Tiktok Pte. Ltd., and The Walt Disney Company (Southeast Asia) Pte. Ltd</td>
<td>2 (September 1, 2020)</td>
</tr>
<tr>
<td>5.</td>
<td>Cleverbridge AG Corporation, Hewlett-Packard Enterprise USA, Softlayer Dutch Holdings B.V. (IBM), PT Bukalapak.com, PT Ecart Webportal Indonesia (Lazada), PT Fashion Eservices Indonesia (Zalora), PT Tokopedia, PT Global Digital Niaga (Blibli.com), Valve Corporation (Steam), and beIN Sports Asia Pte Limited</td>
<td>5 (December 1, 2020)</td>
</tr>
</tbody>
</table>

Source: compiled from https://www.pajak.go.id/staran-pers-page/

With the appointment by the DGT, these business actors will begin to collect VAT on foreign intangible taxable goods and taxable services that they sell to consumers in Indonesia, starting from the beginning of the period, as in Table 1. Based on information from the DGT official website, PT Fashion Eservices Indonesia (Zalora) filed for revocation of status as a PMSE VAT Collector and proposed that one of its subsidiaries is a more appropriate business process to carry out PMSE VAT collection duties. The government then approved Zalora's request. Thus, up to the 6th batch of appointments, 51 business actors collected VAT on foreign digital products.

The government's move to include regulations regarding tax aspects on e-commerce as a response to handling the Covid-19 pandemic is a smart move. Government efforts to tax e-commerce transactions are nothing new. Previously, in 2016 the government, through the Coordinating Ministry for Economic Affairs, began establishing an e-Commerce Road Map which was then legally documented in the following year through Presidential Regulation Number 74 of 2017. Roadmap 74/2017 began to launch three priority tax programs: (i) simplification fulfillment of tax obligations; (ii) preparation of registration procedures for e-commerce entrepreneurs; and (iii) equal tax treatment for foreign and local e-commerce entrepreneurs.

The government has committed to impose the same tax on overseas e-commerce companies as reflected in earlier regulations. Previously, the Circular of the Minister of Communication and Information Technology Number 3 of 2016 stipulated that over the top service providers that run their business in Indonesia must ensure their presence through a permanent establishment (PE). The circular has tried to tax them under Indonesian regulations. However, a number of these regulations cannot be said to be binding due to the principle contained in the Indonesian constitution that "taxes and other levies of a force are collected based on law."

The imposition of VAT on e-commerce transactions from abroad is only binding after the enactment of Law No. 2/2020. Although the two other types of taxes (income tax and electronic transaction tax) under the law are not levied yet due to the global consensus plan postponed until mid-2021, the VAT arrangements simultaneously apply because they are directly nothing to do with taxes on income. Besides, determining a platform provider (see Table 1) as a VAT e-commerce collector is better than appointing other parties such as suppliers or financial institutions. As has been going on so far, a supplier's appointment as a VAT collector cannot going so well. Meanwhile, a financial institution's appointment is also not more appropriate due to difficulties in the administrative process (Van Zyl & Schulze, 2014). By appointing a platform provider as a collector, the tax authorities are sufficient to supervise the implementation of the collection carried out by the platform provider. The fulfillment of VAT obligations by platform providers is somewhat similar to the practice in European Union countries carried out by postal or courier operators on behalf of customers (European Commission, 2015).
### B. VAT Policy Analysis of Law No. 11/2020

After the omnibus law discourse that was first put forward in 2016, the government and the DPR finally succeeded in passing the omnibus law into law on October 5, 2020. In general, the meaning of the Job Creation Law's omnibus is an arrangement related to convenience, protection, and empowerment of cooperatives and micro, small and medium enterprises (MSMEs), enhancing the investment ecosystem and accelerating national strategic projects, including improving workers' protection and welfare. In the official release of the Directorate General of Taxes as the Indonesian tax authority, the taxation cluster aims to achieve this ease of doing business. There are four strategies outlined in the articles of the omnibus law for this purpose: (i) increasing investment funding; (ii) encouraging voluntary taxpayer compliance; (iii) increasing legal certainty; and (iv) creating justice in doing business in the country. In more detail, we summarize the new VAT policy regime in the omnibus law in Table 2.

<table>
<thead>
<tr>
<th>No.</th>
<th>Objectives</th>
<th>Scope of amendments</th>
<th>Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Increasing investment funding</td>
<td>Equity participation in the form of assets (imbreng) as non-delivery of BKP</td>
<td>Article 1A paragraph (2) letter d</td>
</tr>
<tr>
<td>2.</td>
<td>Encouraging taxpayer voluntarily compliance</td>
<td>Relaxation of Input Tax crediting rights for PKP</td>
<td>Article 9 paragraph (2a)</td>
</tr>
<tr>
<td>3.</td>
<td>Increasing legal certainty</td>
<td>a. Delivery of coal as an object of VAT</td>
<td>Article 4A paragraph (2) letter a</td>
</tr>
<tr>
<td></td>
<td></td>
<td>b. Delivery of goods from a consignor to a consignee (consignment) as non-delivery of BKP</td>
<td>Article 1A paragraph (1) letter g</td>
</tr>
<tr>
<td></td>
<td></td>
<td>c. Refund of Input Tax that has been credited</td>
<td>Article 9 paragraph (6e)</td>
</tr>
<tr>
<td>4.</td>
<td>Creating an equal playing field in doing business within the country</td>
<td>Inclusion of buyers' ID number in the tax invoice for those who do not have an NPWP</td>
<td>Article 13 paragraph (5) letter b</td>
</tr>
</tbody>
</table>

**Source: processed from Directorate General of Taxes Release (2020)**

In the Academic Paper of the Ciptaker Bill, there is no discussion of amendments to the Law on General Provisions and Tax Procedures Law, Income Tax Law, and VAT Law. However, we can find the academic paper in the academic paper on the Tax Provisions and Facilities Bill for Economic Strengthening. An academic paper is the spirit of a bill. It is a text of the results of research or legal studies and other research results on a particular problem that can be scientifically accounted for regarding a bill's problem regulation. According to the policy paper from the Faculty of Law Gadjah Mada University (Riyanto et al., 2020), the Job Creation Bill will not resolve over-regulated and over-lapping issues in the country's development or investment-related sector since it requires about 500 derivatives regulations. The Job Creation Bill possibly produces hyper and complex regulation. Experts also concern that the Job Creation Bill pays attention to areas that facilitate investment, emphasizing economic aspects. However, the Job Creation Bill leaves out the environmental and social aspects. With a purely economic approach, the State should be tasked with ensuring that economic growth targets are met and have neglected other social groups' needs and aspirations. It narrows the business actors' term as those who have only capital, not groups that support the economy's running.

The omnibus law (omnibus law) siding with capital owners is evident, especially in increasing investment funding. The last VAT Law in the 2009 regime made equity participation in the form of assets commonly known as "imbreng." The VAT Law of 2009 categorized imbreng as the delivery of taxable goods. Based on this rule, when shareholders participate in imbreng capital to the newly established company, both property and non-property assets, an issue of delivery will arise, which is a factor of the VAT payable. Meanwhile, equity participation with cash does not raise a handover issue, so there is no VAT issue. Apart from raising the neutrality issue, the unequal treatment of these similar objectives is ultimately considered to be deterring investment. The omnibus law further renewed the VAT regulation related to equity participation through this imbreng scheme to increase investment funding. However, this arrangement's partiality is questionable because the requirement for imbreng participation as a non-BKP only applies if the transfer occurs between fellow tax-paying entrepreneurs (PKP). For administrative order purposes, this policy should be appreciated. However, we should not expect that the general public who are not PKP or small businesses that have not been confirmed as PKP will enjoy VAT-free facilities when making equity participation using the imbreng scheme. There is no hope!

If we refer back to the academic paper of Omnibus Bill on Taxation Provisions and Facilities for Economic Strengthening, the concept that underlies the VAT policy under Article 112 of Law No. 11/2020 in the form of relaxation of Input Tax crediting is the principle of justice and the theory of voluntary compliance. Article 112 provides relaxation of Input Tax for PKP because the VAT that should have been paid and is entitled to be credited against Output Tax cannot be credited according to the old provisions. The provision of input tax crediting rights in the new provision is expected to provide a sense of justice and create more funding space for PKP that can be used to increase investment. Thus, the above conditions can accelerate Indonesia's economic growth and, at the same time, increase voluntary PKP compliance. There are six basic concepts (underlying concepts) of new VAT related to the relaxation of this Input Tax credit. First, the use of conditions that have not been audited for the crediting of Input Tax is less relevant and considered unfair because the VAT on the Input Tax should have been paid. If the 3 (three) month period has been elapsed, the Input Tax crediting can be done by correcting the relevant VAT periodic tax return. The ambiguity that arises from Article 9 paragraph (9) of the VAT Law is:

(i) does it apply to the normal VAT periodic tax return or also to the Revised VAT periodic tax return?; and
(ii) can it only be done by correcting the VAT periodic tax return when the Tax Invoice is made, or can it also be done through correcting the VAT periodic tax return is not the same?

Second, relaxation of the provisions for Input Taxes credit before entrepreneurs are confirmed as PKP in Article 9 paragraph (9a) of the VAT Law is applied for a certain amount by taking into account the VAT payable2 that must be paid by PKP. The aspect of justice that will be realized through this new regulation is considering the added value of BKP or JKP in PKP business activities. Several existing regulations used deemed Input Tax, as summarized in the following table.

Table 3 Existing regulations that use deemed Input Tax

<table>
<thead>
<tr>
<th>No.</th>
<th>Deemed Input Tax</th>
<th>Type of Delivery</th>
<th>Output Tax (10% x Tax Base)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>90% of Output Tax</td>
<td>Delivery of used motorbikes</td>
<td>10% x (10% x selling price)</td>
</tr>
<tr>
<td>2.</td>
<td>80% of Output Tax</td>
<td>Delivery of solely gold jewelery</td>
<td>10% x (20% x selling price)</td>
</tr>
<tr>
<td>3.</td>
<td>70% of Output Tax</td>
<td>Delivery of BKP for PKP with gross revenue or gross circulation not exceeding IDR 1,800,000,000</td>
<td>10% x (30% x selling price)</td>
</tr>
<tr>
<td>4.</td>
<td>60% of Output Tax</td>
<td>Delivery of JKP for PKP with gross revenue or gross circulation not exceeding IDR 1,800,000,000</td>
<td>10% x (40% x selling price)</td>
</tr>
<tr>
<td>5.</td>
<td>80% of Output Tax + 1% sanction of Tax Base</td>
<td>For entrepreneurs who should be confirmed as PKP (plus 1% administrative sanction from the Tax Base because PKP does not report the business to be confirmed as PKP)</td>
<td>10% x (20% x selling price) + 1% of Tax Base</td>
</tr>
</tbody>
</table>

Source: Minister of Finance Regulation

In Article 9 paragraph (9a) of the VAT Law, there is a tax loophole because Entrepreneurs can deliberately postpone reporting their business activities to be confirmed as PKP voluntarily. The reason is that even though the entrepreneur does not report his business activities, the Input Tax he has obtained can still be credited retroactively. Third, there needs to be an effort to encourage voluntary compliance through relaxation of Input Tax arrangements originating from a defective Tax Invoice. By the provision under Article 13 paragraph (5) and paragraph (9) of the VAT Law, the inclusion of an ID number as a substitute for Taxpayer Identification Number (NPWP) so that the Tax Invoice can still be credited.

Fourth, Input Tax that is collected through Notice of Tax Assessment (Surat Ketetapan Pajak; SKP) can still be credited as long as it has been paid and there is no legal remedy on the SKP. The amount that can be credited is only the principal amount of VAT. Fifth, to fulfill the aspect of fairness, the Input Tax found at the time of the inspection can be credited as long as the PKP buyers can show that the Tax Invoice has met the Tax Invoice's formal and material requirements. Sixth, the crediting of Input Tax is allowed for both capital goods and non-capital goods because, in the early stages of establishment and development of a PKP business, the expenditure of PKP is not limited to capital goods. Therefore, it is necessary to ensure that the PKP requesting the VAT overpayment return is not the final consumer. Besides, it is necessary to set a certain time period that is considered reasonable so that the concept of VAT = t (Output) - t (Input) adopted (Tait, 1988) in the system in Indonesia can be fulfilled: t (Input) can be credited if there is t (Output). The period of time which is considered reasonable is 3 (three) years or another specified period under Article 9 paragraph (6c) with or based on the MoF Regulation (see Article 9 paragraph (13)). To implement the new regulation in Article 112 of Law No. 11/2020, the government has conducted a comparative study of VAT policies with other countries: South Korea, China, and Austria.

The Job Creation Bill regulation is more friendly for business than previous law since it gives a certain time limit for PKP to credit the input tax even though it is not yet in production. The time limit for crediting the input tax is three years, or even more for certain business sectors, further regulated by the Minister of Finance Regulation. The relaxation of the input tax crediting rights can be a motivation for PKP to carry out production. In this case, we can say that tax regulation is an instrument that aims to encourage economic development (Rosdiana & Irianto, 2013, p. 50). However, the absence of clear criteria in the law regarding certain business sectors—which easily delegated to the Minister of Finance—can create legal uncertainty. Legal predictability protects those subject to the law from arbitrary state interference to build legal certainty, allowing people to plan for the future (Gribnau, 2014). Regulations regarding certain criteria at the Minister of Finance Regulation level can complicate predictability and create uncertainty. It might result in potential investors' perception that it is difficult to make business projections in Indonesia.

At the same time, the Job Creation Bill also has a mission to increase legal certainty. The omnibus law VAT cluster changes three main things to achieve this goal: submission of coal mining products to become VAT objects; exempting delivery of goods from the consignor to the consignee (consignment) (non-BKP delivery); and the provisions for the refund of the Credited Input Tax. Adding coal as an object of VAT will allow coal mining companies to apply an input tax crediting scheme so that national coal commodities become more competitive when exporting their products. However, taking into account the coal as an object of VAT on the pretext of legal certainty was not entirely correct because there was no such issue in the previous delivery. The reason to increase the climate of doing business in the coal mining sector seems more plausible. However, it still raises a question mark for the public because only coal mining tends to be privileged while other mining products are still non-subject to VAT. Whereas according to Due (1990), VAT should ideally be applied to all production activities, by the private and government sectors, at a uniform rate, with no exceptions but for exports.

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The issue of legal certainty seems more prominent concerning consignment as an object of VAT. Therefore, the omnibus law tries to eliminate the emerging issues by issuing a consignment submission from VAT imposition. Initially, business schemes with a consignment model were subject to VAT. However, the implementation is not easy because the consignment transactions are not documented yet in the accounting books. As a result, although the tax authorities have a set of policies to impose taxes, they find it difficult to implement. By exempting the consignment business model from the list of VAT objects, the principle of legal certainty has become more accommodated. Besides, this policy seems to be more pro towards MSMEs' business environment by making it easier for them to practice the consignment business model.

Finally, to create business climate justice in the country, the VAT cluster of omnibus law specifically regulates a buyer's Identity Number (NIK) in the tax invoice if the buyer does not have a TIN or NPWP. If the buyer is an individual who is a foreign tax subject, the identity listed on the tax invoice is the passport number. With these provisions' enactment, there is no longer any reason for the PKP or the buyer to avoid including this identity if they do not want the tax invoice to be deemed incomplete (defective). If to this time PKP or buyers have been able to evade the inclusion of their identity with an excuse that they do not have an NPWP (including those who already have an NPWP), then with the obligation to include this ID number, they can no longer argue. Like it or not, PKP must include an NPWP for those who already have it or an identity number (NIK or passport number) for those who don't have an NPWP. Thus, this provision allows the DGT to detect all transaction data so that, in the end, the government can oversee the implementation of tax obligations on each transaction.

In terms of the generality of implementation, the inclusion of references to sellers or buyers is no longer a new way to combat underground economic activities by countries in the world. As Schenk and Oldman (2007) stated, the taxation system in several European Union countries and New Zealand has required that one of the invoice's information is the buyer's name and address. The inclusion of information about buyers in tax invoices has also been previously suggested (Tait, 1988). Tait argued that it is necessary to have rules regarding the inclusion of information in tax invoices in the form of names, addresses, or any other information about sellers and buyers to prevent the black market's growth. After the regulation is promulgated, it is very important to ensure that the authorities firmly enforce the regulation (Tait, 1988).

**C. Implications for Tax Administration**

The real tax system should reflect the tax law and be applicable in practice (Bird, 2014, p. 270). There are no less essential components than mere policies, namely related to how the implementation is. The tax system's key is to administer it (Pistone et al., 2019, p. 17). According to Pistone et al., the concept of administrability simply requires that tax collection costs are not excessive. In this case, the State is responsible for efficiently using the resources entrusted to them, including tax collection. Pistone et al. (2019, pp. 18-21) present numerous concepts: certainty, transparency, accountability and legality, collection cost or tax yield, simplicity, enforceability, and information security and confidentiality. They believe that these concepts could support a tax law's administrability.

Certainty in tax matters includes certainty regarding who should be taxed, what is the object of tax, the amount of tax that must be paid, and how the amount of tax owed must be paid (Rosdiana & Irianto, 2013, p. 168). There must be the same certainty regarding interpreting and applying tax law, especially by the tax authorities. Therefore, there is a need for transparency on how tax authorities apply laws uniformly for all taxpayers (Pistone et al., 2019). Regarding the appointment of a VAT collector for digital transactions by the tax authorities, the government needs to establish criteria that generally apply to all taxpayers. In this view, all taxpayers who meet these criteria have the potential to become collectors. It's just that the law that delegates authority (indirectly) to the Director-General of Taxes to make appointments makes taxpayers who have not been appointed not to bear the burden of tax collection and all its consequences. Meanwhile, related to Law No. 11/2020, several regulations that still require tax ruling from the executive, as in Table 4, can leave a certainty issue to this law.

**Table 4 VAT regulations in the Job Creation Bill that still require implementing regulations**

<table>
<thead>
<tr>
<th>No.</th>
<th>Principal Arrangement</th>
<th>Delegated to</th>
<th>Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Low-risk PKP, which is given a preliminary refund of the excess tax as referred to in Article 9 paragraph (4c)</td>
<td>MoF Regulation</td>
<td>Article 9 paragraph (4d)</td>
</tr>
<tr>
<td>2.</td>
<td>If the PKP makes taxable delivery and those that are not subject to tax, while the Input Tax for the delivery that is subject to tax cannot be known with certainty, then the amount of Input Tax that can be credited for taxable delivery is calculated using the guidelines regulated by the MoF Regulation</td>
<td>MoF Regulation</td>
<td>Article 9 paragraph (6)</td>
</tr>
<tr>
<td>3.</td>
<td>The amount of Input Tax that can be credited by PKP with certain business circulation [Article 9 paragraph (7)]</td>
<td>MoF Regulation</td>
<td>Article 9 paragraph (7b)</td>
</tr>
<tr>
<td>4.</td>
<td>The amount of Input Tax that can be credited by PKP conducting certain business activities [Article 9 paragraph (7a)]</td>
<td>MoF Regulation</td>
<td>Article 9 paragraph (7a)</td>
</tr>
<tr>
<td>5.</td>
<td>Guidelines for calculating Input Tax crediting as referred to in Article 9 paragraph (7) and paragraph (7a)</td>
<td>MoF Regulation</td>
<td></td>
</tr>
</tbody>
</table>
Table 4 VAT regulations in the Job Creation Bill that still require implementing regulations

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<tbody>
<tr>
<td>6.</td>
<td>Criteria for not delivering BKP, JKP or exporting BKP or JKP as referred to in paragraph Article 9 (2a)</td>
<td>MoF Regulation</td>
<td>Article 9 paragraph (13)</td>
</tr>
<tr>
<td>7.</td>
<td>Calculation and procedures for refunding excess Input Tax as referred to in Article 9 paragraph (4a), paragraph (4b), and paragraph (4c)</td>
<td>MoF Regulation</td>
<td>Article 9 paragraph (13)</td>
</tr>
<tr>
<td>8.</td>
<td>Determination of certain business sectors as referred to in Article 9 paragraph (6c)</td>
<td>MoF Regulation</td>
<td>Article 9 paragraph (13)</td>
</tr>
<tr>
<td>9.</td>
<td>Procedure for reimbursement of Input Tax as referred to in Article 9 paragraph (6e) letter a</td>
<td>MoF Regulation</td>
<td>Article 9 paragraph (13)</td>
</tr>
<tr>
<td>10.</td>
<td>The procedure for crediting the Input Tax as referred to in Article 9 paragraph (9a), paragraph (9b), and paragraph (9c)</td>
<td>MoF Regulation</td>
<td>Article 9 paragraph (13)</td>
</tr>
<tr>
<td>11.</td>
<td>“Other time” arrangement for tax invoice creation</td>
<td>MoF Regulation</td>
<td>Article 13 paragraph (1a) letter d</td>
</tr>
<tr>
<td>12.</td>
<td>PKP retail merchants can make tax invoices without including the identity of the buyer with the buyers’ characteristics is the end customer</td>
<td>MoF Regulation</td>
<td>Article 13 paragraph (5a)</td>
</tr>
<tr>
<td>13.</td>
<td>Procedures for making a Tax Invoice and procedures for correcting or replacing a Tax Invoice</td>
<td>MoF Regulation</td>
<td>Article 13 paragraph (8)</td>
</tr>
</tbody>
</table>

Source: compiled from Law No. 11/2020

The issue of cost collection is also an issue that needs attention in implementing the new VAT regime. As previously explained, administrative expenses and compliance charges in VAT on electronic transactions rest with the collector appointed by the tax authority. VAT as a type of tax with a broad base is preferred with cost-effective and straightforward administration. However, according to Pistone et al. (2019, p.19), tax collection costs should not be simply transferred from the tax authority to taxpayers or third parties. Transfer of collection responsibilities to third parties (or, for the Indonesian context is PPMSE) on behalf of tax authorities will make these organizations less efficient and erode the concept of economic efficiency in taxation.

Simplicity in an administrative context refers to providing facilities to support taxpayer compliance (Pistone et al., 2019, p. 19). The tax administration’s first task is to facilitate compliance (Bird, 2010, p. 2). The imposition of VAT at the time of goods or services acquisition is an administrative effort to ease compliance cost on the person responsible for the taxes. In this case, the consumer bears the VAT, but the collection and payment obligations are by the supplier. However, there needs to be an increase in services to the appointed parties by providing clear instructions, understandable forms, and necessary assistance and information (Bird, 2010, p. 4) to make parties like PPMSE to carry out its obligations. As a tax on transactions (Thuronyi, 2003), the imposition of VAT on electronic transactions can erode the number of business-to-consumer (B2C) transactions. However, the burden of compliance that is not borne by consumers can be an incentive in the form of simplicity.

On another side, a country with a large informal sector like Indonesia often needs law enforcement to guarantee tax payments. However, tax authority should note that the means of enforcement of the law through the imposition of excessive sanctions can cause underlying economic activity to cease altogether, thereby eliminating the potential of future taxes. Excessive taxation can also cause embezzlement, abusive practices, aggressive tax planning, or increased black market activity (Pistone et al., 2019, p. 21). In connection with the compliance burden by PPMSE, the government's gradual appointment should provide enough time for the government to assist entrepreneurs who have been designated as PPMSE to carry out administrative tasks properly with minimal shadows of sanctions. Another essential thing in the new VAT tax administration is related to taxpayer data's information security and confidentiality. The tax authorities' neglect of this principle can lead to taxpayer non-compliance and evasion (Pistone et al., 2019, p. 21). The key success of tax authorities in protecting taxpayer confidential information will guarantee compliance with broadly recognized confidentiality principles (Uridia, 2018, p. 25). Furthermore, in many ways, guaranteeing the taxpayers' information also determines the attitude and trust of taxpayers towards their tax authorities and their actions (Uridia, 2018, p. 25).

V. CONCLUSION

To build a climate of ease of doing business following the spirit of the times and in response to the Covid-19 pandemic situation, the government and DPR have approved Law No. 2/2020 and Law No. 11/2020, which includes provisions regarding VAT. Unlike the changes to the Income Tax Law in the Job Creation Bill or Omnibus Law, which has received much attention, the new regime of VAT provisions both in Law No. 2/2020 and Law No.11/2020 is considered more appropriate to the context of current needs. Besides, several regulations in the Job Creation Bill that tend to the side of MSMEs are a special compliment for this tax cluster concerning VAT. To impose VAT on transactions of digital products and services from abroad commerce to consumers in Indonesia, Law No. 2/2020

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indirectly authorizes the Director-General of Taxes to designate e-commerce providers (PPMSE) as VAT collectors. The appointment of PPMSE as a VAT collector is a fairly simple, effective, and neutral measure (Pozvek, 2017) if compared to appointing consumers (as has happened) or appointing a financial institution as is the case in several other countries.

To regulate VAT in Law no. 11/2020 in general, there is an intention to support the MSME business climate. However, there are still some notes, especially regarding equality and legal certainty. From an equality perspective, the regulation in Article 9 paragraph (9a) allows Entrepreneurs who have not been confirmed as PKP to credit Input Tax can create a tax loophole and distort the compliance of compliant PKP. Excluding coal delivery from the list of mine deliveries not subject to VAT also raises equality issues for other types of mines. Meanwhile, an issue that arises related to legal certainty is the granting of discretion to the Minister of Finance to determine certain criteria for certain business sectors that receive input tax crediting facilities that exceed three years. In terms of tax administration, the implementation of Law no. 2/2020 will be easier in practice because the burden of tax collection is on PPMSE even though they will be less efficient in business terms. For Law No. 11/2020, relaxation of Input Tax crediting for entrepreneurs who have not been confirmed as PKP can lead to administrative disorder. It also could lead to tax non-compliance in the future.

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