

**MINUTES OF PANEL DISCUSSION**  
**TAX AND FACILITY ISSUES FOR FOREIGN LOANS AND GRANTS IN INDONESIA**

Nikko Hotel Jakarta, 31 August 2010

Diamond 3 Room, Lobby Level

Panelists :

1. **Bapak Benny Setiawan** (Director of Development Funding Utilization of Bappenas)
2. **Ibu Rika Kiswardani** (Head of Division of Bilateral Technical Cooperation, Bureau for Technical Cooperation, the State Secretariat)
3. **Bapak Astera Primanto Bhakti** (Head of the Tax Agreement and International Partnership Sub-Directorate, Directorate of Tax Regulations II, Directorate General of Tax, the Ministry of Finance)
4. **Ibu Roslindawaty br Ginting** (Head of Exemption III Section, Directorate of Custom Facilities, Directorate General of Customs and Excise, the Ministry of Finance)
5. **Bapak Budi Harimawan** (Head of Program and Foreign Fund Preparation Section, Directorate of Planning, Directorate General of Highways, Ministry of Public Works)

Moderator: **Bapak Tubagus A. Choesni** (Directorate of State Budget Procurement Planning/LKPP)

**Opening Remarks**

From the Vice Minister of the National Development Planning Agency (Bappenas)/Chairman of the Steering Committee of A4DES, Bapak Lukita Dinarsyah Tuwo, read by Bapak Kennedy Simanjuntak, the Director for Bilateral Funding of Bappenas/Chairman of the Management Committee of A4DES.

*(opening remarks attached)*

**Presentation**

**Panelist 1: Bapak Benny Setiawan**

**Title: Tax and Facility Issues of Foreign Loans and Grants**

*(presentation slides attached)*

Summary:

- Description on policy, direction and principles of foreign loans and grants that includes:
  - Development Funding Policy
  - Source of Development Funding

- Policy Direction of Loans and Grants
- Principle of Loans and Grants
- Related Regulations on Loans and Grants
- About Taxes and Facilities of PHLN
- Important issues PP No. 42/1995
- Changes in Article 3 of Regulation No. 25/2001
- Commentary on the Third Amendment Regulation No. 25/2001

**Panelist 2: Ibu Kiswardani**

**Title: General Facilities for Foreign Grant and Its Mechanism**

*(presentation slides attached)*

Summary:

- Description on general facilities for foreign grants that includes:
  - Meaning of Technical Cooperation
  - Goals Of Technical Cooperation
  - Technical Cooperation Programs
  - Funding, Partners/Donor
  - Facilities for Technical Cooperation

**Panelist 3: Bapak Astera Primanto Bhakti**

**Title: Tax Regulations and Policies Related to Foreign Loans and Grants**

*(presentation slides attached)*

Summary:

- Description on regulations and policies on tax issues for foreign loans and grants that includes:
  - Definition of tax incentives
  - Current Government of Indonesia's policies for donors
  - Legal basis for tax regulations in Indonesia
  - VAT and Import Duties
  - Income Tax
  - Government Project
  - Main Contractors
  - Second-tier contractors, consultants, and suppliers

**Panelist 4: Ibu Roslindawaty Br. Ginting**

**Title: Prosedur Fasilitas Kepabeanan dan Pembebasan Bea Masuk**

*(presentation slides attached – in Bahasa Indonesia)*

Summary:

- Description on procedures for custom and excise facilities that includes:
  - Custom facilities for government-type projects
  - Source of funding of the government-type projects
  - The subject eligible for custom facilities, such as government institutions
  - The object eligible for custom facilities, that is the government's projects financed by foreign loans or grants
  - Procedures from Directorate of Custom Facilities for getting custom and excise facilities
  - Import Mechanism for Facility Custom Goods
  - Obligations of the Facility Recipients

**Panelist 5: Bapak Budi Harimawan**

**Title: Problems in the Implementation of Tax and Facility Issues for Projects at the Ministry of Public Works: Sharing Experiences**

*(presentation slides attached)*

Summary:

- Description on some problems on the implementation for tax exemption and facilities for projects at the Ministry of Public Works that includes:
  - Some taxes applied to projects of the Ministry of Public Works financed by foreign loans and/or grants
  - References for tax and custom
  - Lessons learned
  - Another information should be known by contractors and consultants
  - Expectation

**Q & A Session**

**Session I:**

1. AusAID

Is there uniformity on the agreement regulations in order to appreciate the cooperation between state's development partners and state government itself?

*Response (Directorate General of Tax):*

I think we already solve some problems regarding the agreement for the government substitutes, but we have to check whether the services are covered under the article of government services because sometimes there is a mis-interpretation. That is why I think we have to analyze together, give the facts and circumstances whether the condition is fixed with the coverage of government services.

2. JICA

When the process in State Secretariat/Setneg is not yet finished in giving recommendation letter to the tax office, I have heard, and maybe some of the development partners too, that after 30 days, the custom department will make an auction for the equipments that has been sent to Indonesia and stored at the warehouse. So maybe this will create a problem for implementing the project. Is there such a consideration related to this issue?

When preparing such a recommendation, so many responses need to be collected from the counterpart ministries and sometimes they need a long time to get approval process. And while we wait for the process of approval, JICA has to use the warehouse which is not free. Even though there is a regulation that every projects funded by international loan or grant is tax-free but we still have to pay for the warehouse. We found that this problem is rather confusing because in the corporation we already mention that the import duty after the material arrived in the port is under the Government of Indonesia (Gol)'s responsibility. How can we solve this problem?

*Response (DG Tax):*

Regarding to tax exemption, it is based on Government Regulations No. 42/1995. We just follow this regulation. If there is budget or similar document, it seem like it will be included in this kind of regulation. But we have to make sure of the contract because every condition is different and can create other complication.

*Response (DG Custom & Excise):*

For JICA projects, the fulfillment of the requirements is through Setneg. After its completion, then the letters are forwarded to custom/tax office and from there, they will issue for goods release. For goods release, there are certain regulations for imported goods. For example, if there are goods restricted with Limitation/Prohibition label like used clothes, then these items have to be cleared by the Ministry of Industry with statement that these items are still usable. Goods and items that have been stored for more than 30 days are not directly being sent for auction but it will be the property of the state. And it is not exactly 30 days but can be up to 90 days. Before sending for auction, we will of course get the confirmation first from the owner.

*Response (Setneg):*

Sometimes the goods are already on the way but the information to the ministries or supporting documents are late. There should be common understanding between parties among Setneg, donors and line ministries that time is a crucial one, especially for those imported goods eligible for custom facilities because there are some restrictions for these goods, such as the limited capacity of the warehouse. There should be a clear and smooth communication in

Indonesia before the goods are shipped (along with the complete supporting documents).

Regarding to technical equipments from JICA, usually the request comes from the ministry and therefore the communication and administration can be completed first so that the recommendation letter can be issued on time. However, in accordance with the Custom & Excise Regulations, if the Decree Letter (SK), either from the Ministry of Finance or Setneg, there is a letter issued for goods release with guarantee. This can be done while waiting for administration process within the ministries. Related to *vooruitslaag*, if the application has been sent to Custom & Excise office, then goods release scheme suspension.

## Session II:

1. PT PLN kepada Direktorat Jenderal Pajak:
  - Apabila telah ditegaskan bahwa pendanaan berasal dari 100% pinjaman, mengapa yang mendapatkan fasilitas pembebasan pajaknya hanya antara PLN dengan *main contractor* saja, padahal dalam waktu pelaksanaannya, tidak mungkin *main contractor* mengerjakan semua pekerjaan sehingga mereka membutuhkan *sub-contractor*. Pekerjaan antara subkontraktor dengan PLN tidak mendapatkan pembebasan pajak. Selain karena memang sudah diatur di perundangan, apakah ada alasan lain mengapa subkontraktor tidak mendapatkan pembebasan pajak?
  - Apabila kita melihat Peraturan Pemerintah No. 42/1995 mengenai fasilitas yang diberikan, fasilitas yang diberikan itu hanya berlaku untuk *imported person*. Lalu bagaimana dengan *local person*?

Pertanyaan kepada Direktorat Jenderal Bea Cukai :

- Suatu saat kami mempunyai proyek dengan barang yang kami impor berjumlah sangat banyak lalu pada saat kami mengurus pembebasan pajak membutuhkan waktu. Kemudian dengan keterbatasan tempat di kepabeanan Semarang, barang kami langsung dipindahkan untuk dilelang padahal kami belum cukup waktu untuk pembebasannya. Mohon kedepannya kami diberikan kelonggaran waktu untuk mengurus pembebasan pajak ini.

Jawaban:

Dari Direktorat Jenderal Pajak

- Sebuah proyek bisa berubah-ubah pelaksanaannya. Bisa saja ada main-contractor dan sub-contractor, lalu kembali hanya main-contractor saja, semuanya tergantung pada Peraturan Pemerintah (PP), padahal PP sendiri merupakan keputusan politis. Saat kita bernegosiasi dengan negara yang memiliki *power* yang lebih kuat secara tidak langsung posisi kita menjadi

lebih tidak leluasa. Kemudian kaitannya dengan PPn , untuk *local person* ini ada kaitannya dengan *eco-treatment*, kami tidak mungkin memberikan sesuatu fasilitas untuk sebagian kecil tapi dampaknya bisa mendistorsi sistem pelaksanaan PPn secara keseluruhan karena apabila kita memberi fasilitas kepada domestik, walalupun ada kaitannya dengan proyek PHLN akan muncul *moral hazard* bagi yang lain. Untuk lebih lanjut mungkin bisa mengirimkan surat kepada Direktorat Jenderal pajak mengenai fakta-fakta yang terjadi pada kasus di PLN .

Dari Direktorat Jenderal Bea Cukai:

- Persoalan 30 hari memang sudah ada peraturan pemerintahnya tetapi setahu saya tidak langsung dilelang. Kalau persoalannya masalah waktu yang lama dalam mengurus surat di pajak, berdasarkan peraturan pemerintah No. 42/1995, permohonan itu seharusnya disampaikan ke Direktorat Jenderal Bea Cukai, tidak perlu ke Direktorat Jenderal Pajak.
- Berdasarkan peraturan pemerintah No. 42/1995 yang ketentuan pelaksanaannya berdasarkan Keputusan Menteri No. 239 tahun 1996, diatur lebih lanjut dalam Surat Edaran bersama Direktur Jenderal Anggaran, Direktur Jendral Pajak dan Direktur Jenderal Bea Cukai, dengan menyatakan bahwa untuk pengajuan pembebasan bea masuk untuk proyek pemerintah itu harus melampirkan beberapa persyaratan yang kalau menurut saya mungkin sangat sederhana yaitu: kontrak, DIPA, daftar barang, serta surat perintah kerja.

## 2. Bappenas

I think the main problem is the text on the agreement. We also have difficulties to understand the statement written in the agreement. Is there any standard about how to write a statement in the agreement?

Jawaban:

Menteri keuangan memang pernah memberikan surat kepada Presiden bahwa kita ingin membuat suatu standar. Jadi apabila nantinya ada *agreement* dengan negara lain, tentunya kita bisa liat *prevailing tax law and regulations*-nya. Ini sebenarnya adalah senjata pamungkas yang kadang disalahtafsirkan. Semestinya semua yang tertera di perjanjian dijelaskan pada saat melakukan negosiasi. Apa peraturannya dan bagaimana kondisinya sehingga pada saat menghadapi masalah di ke depannya kita mengetahui dan yakin betul dengan *agreement* yang dibuat. Saya setuju bahwa menciptakan sebuah standar penulisan *agreement* itu tidak mudah. Untuk itu dibutuhkan sosoalisasi lebih mendalam mengenai isi dari perjanjian. Karena sesungguhnya semua kesalahpahaman dalam mengartikan perjanjian sebenarnya berasal dari adanya *information gap*.

Sebaiknya semua perjanjian dikomunikasinya kepada setiap kantor di distrik. Ke depannya mungkin kita bisa membuat sebuah Peraturan Pemerintah terkait dengan standar penulisan *agreement* ini sehingga tidak terjadi lagi kesalahpahaman yang berimbas pada implementasi dalam proyek.

3. UNDP

Ada surat keputusan Kementerian Keuangan mengenai sistem akuntansi bank. Disana disebutkan bahwa hibah hanya bisa diberlakukan apabila sudah dibekukan oleh direktorat pengelolaan utang. Kalau kita kaitkan dengan apa yang ibu katakan, ada perbedaan definisi hibah yang ibu katakan dengan keputusan menteri keuangan. Bisa dijelaskan perbedaannya?

Jawaban:

Mengenai definisi hibah, yang dimaksud dengan hibah dalam keputusan Kemmenkeu No. 239 yakni setiap penerimaan negara dalam bentuk devisa yang dirupiahkan/tidak atau dalam bentuk barang dan jasa termasuk tenaga ahli yang berasal dari luar negeri yang tidak perlu dibayar kembali. Tapi memang hibah tersebut harus sudah terdaftar dalam DIPA. Sebenarnya ini hanya perbedaan acuan definisi saja, intinya tetap sama.

**Session III:**

1. Is it possible to re-arrange all these arrangements that we had with the state government and make a specific article about the consultant recruitment?

Response:

The issue for agreement amendment is out the scope of Directorate General of Tax because we are not directly related during agreement negotiation process. But if it feels necessary to mention the issue, then it is better to put the clauses on tax specifically in the agreement.

2. PLN

Instruksi pemerintah berisi prioritas PLN untuk menggunakan *local material* dan membayar *imported persons*. Namun yang terjadi malah PLN harus membayar *local people* yang seharusnya bebas pajak dan fasilitas.

Jawab:

Dampak bagi pemberian *tax exemption* sangatlah besar. Pembayaran *local content* dan PPN haruslah seimbang, sehingga PLN seharusnya tidak perlu bingung dan cenderung bersikap positif.

3. World Bank

Mengapa sering ada perbedaan interpretasi tentang proyek-proyek pemerintah antara kantor pajak satu dengan kantor pajak yang lain? Mengharapkan adanya *guidance* akan adanya perlakuan yang sepatutnya dimiliki oleh instansi pajak pemerintah.

Jawaban:

*Guidance* dibutuhkan untuk diangkat menjadi sebuah isu sesuai dengan interpretasi yang ada dan butuh pengujian akan permasalahan sebenarnya agar tidak terjadi *misleading*. Semua isu yang ada mengenai perjanjian pengenaan tarif pajak atau pembebasan pajak haruslah dimunculkan sebagai suatu isu di kalangan publik dan pemerintah luas terlebih dahulu.

4. Asian Development Bank

Permasalahan seputar perbedaan interpretasi antarkantor pajak berimbas pada perbedaan *treatment* pada proyek-proyek yang ada sesungguhnya hanya berada di seputar pengenaan PPN atas proyek-proyek tersebut.

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