

THE LEGAL POLICY ROLE OF GROUNDWATER TAX ON WATER RESOURCES CONSERVATION IN INDONESIA

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ABSTRACT

Tax is a regular instrument that functions to regulate the imposition of groundwater taxes and has not been able to control the extraction and/or utilization of groundwater. The groundwater tax rate is in practice cheaper than the PDAM clean water tarif, thus making groundwater use excessive and uncontrolled. This study discusses how the role of legal politics in collecting groundwater taxes on water resources conservation and how earmarking taxes in groundwater taxes as an effort to conserve water resources. The research method used is normative juridical with analytical descriptive specifications. Environmental conservation matters are the scope of local government which must be regulated in local government taxation politics through regulations for collecting groundwater taxes on water resource conservation. In earmarking there is a relationship between taxpayers and the benefits obtained from these taxpayers. Through earmarking groundwater tax on water resource conservation, it can overcome environmental damage and benefit taxpayers.

Keywords : Groundwater Tax, Earmarking, Political Law, Conservation Of Water Resources

INTRODUCTION

One type of district/city tax that can increase local revenue is the groundwater tax. Groundwater is a gift from God Almighty, which is essential for human life. Therefore, everyone must use these natural resources wisely. Groundwater is the water found beneath the surface in the cracks and voids of soil, sand, and stone (Asdak, 2018). Meanwhile, according to Suyono Sasrodarsono, groundwater is stored in aquifers, which are geologic formations of soil, sand, and rocks, and slowly moves through them (Sosrodarsono, 1995).

Chay Asdak stated that the groundwater contained in the earth is enormous as a potential natural resource (Asdak, 2018), as follows:

The groundwater amounts on earth are about 97% of the total freshwater available. There is groundwater on almost every surface of the world, including under deserts and covered with snow/ice. The biggest contribution of groundwater comes from arid and semi-arid areas and other areas that have the most suitable

formation to accommodate groundwater (Asdak, 2018).

The government has the authority in the management and utilization of water as mandated in Article 33 paragraph (3) of the 1945 Constitution that "earth, water and the wealth contained therein are controlled by the state and used for the greatest prosperity of the people". Based on the study of a socio-legal perspective, it turns out that in reality there are a variety of phenomena (facts) that are closely related to the different social arrangements and environments in this country. Like natural resources in general, water resources are the basic capital of national development with social functions, environmental functions, and economic functions that must be able to run in harmony so that their use can be sustainable.

The development of groundwater extraction has impacted the sustainability of groundwater supplies in Bandung and its surroundings. At the beginning of Long Term Development I (1970), the average groundwater production of the well

was 0.11 million m³/yr. however, it has not impacted groundwater hydraulics and the environment. In 1970, the number of drilled wells recorded was 96 with groundwater extraction of around 10.5 million m³/yr. Twenty-five years later (1995) the groundwater production rate rose dramatically to 66.9 million m³/yr with 2225 drilled wells recorded. The drastic increase in groundwater abstraction in 1995 has resulted in a drastic decrease in the average groundwater production of wells to 0.03 million m³/yr. The reduced supply of groundwater will increase the cost of extracting groundwater due to the lowering of the groundwater level Sukrisno dan Warsono (1990).

As the groundwater level decreases, it is necessary to conserve groundwater to meet the growing demand for groundwater. So, it is necessary to make a groundwater conservation plan as regulated in Law Number 7 of 2004 concerning Water Resources, which has been amended by Law. Law Number 17 of 2019 concerning Water Resources stated that:

"In facing the imbalance between water availability which tends to decrease and water demand increasing, water resources need to be managed by taking into account social, environmental, and economic functions in harmony to create synergy and integration between regions, sectors, and generations to meet people's needs for water."

The regulation of groundwater management is intended to maintain the existence of groundwater as a water resource so that the preservation of natural resources and the environment can continue following the demands of sustainable development. Groundwater management needs to be directed to pay attention to social functions, the environment, and the interests of development between sectors in harmony, to overcome the imbalance between the availability of groundwater, which tends to decrease and the water demand is increasing. On the other hand, district/city governments have the authority to collect groundwater taxes. Based on data from the Regional Revenue Agency of West Java Province, West Java has the potential for groundwater that can be utilized around 3.52 billion m³ per year.

The essence of collecting groundwater taxes is to increase tax revenues in the regions. The role of regional taxes and levies as the main source

of regional income in addition to balancing funds obtained from the exploitation of natural resources will greatly determine the strength of the Local Government Budget (LGB). The problem is, the collection of groundwater taxes must be accompanied by the management of the existence of groundwater as a water resource, and the goal is for the preservation of natural resources and the environment to take place.

Economic development that is not well-planned results in environmental damage. Likewise, if the extraction and/or utilization of groundwater are unplanned and uncontrolled, the community around the industry suffers environmental damage and the water needs of the community around the industry are not fully met. This is because every existing industry is allowed to use absorption wells, which makes shallow household wells around the industry experience water discharge and even experience drought. In addition, it can cause a decrease in the water layer in the soil and soil surface.

According to ISO 26000 on social responsibility, it explains how companies must have a social responsibility towards the surrounding environment. This is in line with the condition of the human environment, which is increasingly damaged because many companies are founded and forget to pay attention to their environment.

Tax is a regular instrument that functions to regulate the imposition of groundwater taxes and has not been able to control the extraction and/or utilization of groundwater. In practice, groundwater tax rates are cheaper than clean water of water supply utility (PDAM) rates, thus making groundwater extraction and/or utilization excessive and uncontrollable. Therefore, it is necessary to have an earmarked tax that can control the extraction and/or utilization of groundwater, a portion of the tax proceeds can be used to overcome environmental damage.

Formulation of The Problem

The formulation of the problem identified in this study is how is the role of legal policy in collecting groundwater taxes on water resource conservation and how is earmarking tax in groundwater taxes as an effort to conserve water resources?

METHODOLOGY

The researcher applied the normative juridical method. In normative legal research, library materials are basic data that are classified as secondary data, namely data that is ready to be made, its form, and content that have been compiled by previous researchers and can be obtained without being bound by time and place (Soekanto & Mamudji, 2001).

The research specifications used are analytical descriptive and analytical prescriptive. Analytical descriptive is research that describes, finds legal facts thoroughly, and systematically examines primary and secondary data. While analytical prescriptive is research that studies the purpose of the law, values of justice, the validity of the rule of law, legal concepts, and legal norms relating to Political Problems of Land and Water Tax Law on Water Resources Conservation in Indonesia.

RESULTS AND DISCUSSION

The government needs to make regulations that regulate the allocation of groundwater taxes to overcome environmental damage. According to Law Number 28 of 2009 concerning Local Taxes and Retributions, Groundwater Tax is a tax on the extraction and/or utilization of groundwater. Groundwater is water found in the soil or rock layers below the soil surface.

In addition, with the decrease in groundwater level, it is necessary to make efforts to conserve groundwater to meet the growing demand for groundwater, so it is necessary to make a groundwater conservation plan as regulated in Law Number 7 of 2004 concerning Water Resources which has been amended. with Law Number 17 of 2019 concerning Water Resources that:

"In facing the imbalance between water availability which tends to decrease and water demand increasing, water resources need to be managed by taking into account social, environmental, and economic functions in harmony to create synergy and integration between regions, sectors, and generations to meet people's needs for water."

In line with the spirit of regional autonomy, the issue of environmental preservation is one of the government's affairs, which is under the authority of the region, so that all government

programs in preserving the environment are the burden of the LGB of the region concerned. The concept of collecting groundwater taxes in synergy with the concept of environmental conservation, especially the conservation of water resources, must be regulated in the legal policy in Indonesia. As with the matter of legal policy stated by (Soekanto, 2007) as follows:

The legal policy is to investigate social demands that the law wants to pay attention to so that the contents of the *ius constituendum* are often appointed by the legal policy so that the *ius constituendum* is adapted to the needs of the community (Soekanto, 2007). In line with the opinion of (Sudarto, 1983). According to (Sudarto, 1983), Legal policy is a state policy through authorized bodies to implement the desired regulations which are expected to be used to express what is contained in society and to achieve what is aspired to (Sudarto, 1983). According to Moh Mahfud MD, the legal policy can simply be formulated as a law that will be or has been implemented nationally by the government; It also includes an understanding of how politics influences the law by looking at the configuration of power behind the making and enforcing of the law. Here the law cannot only be seen as articles that are imperatives or *das sollen*, but must be seen as a sub-system which in reality (*das sein*) is not impossible to be determined by politics, both in the formulation of material and its articles as well as in its implementation and enforcement (Mahfud, 1998).

The opinion mentioned above, concerning the regulation of local tax collection, is a state policy through the competent bodies to implement the desired regulations adapted to the needs of the community and implement what the community aspires to, namely justice, legal certainty, and expediency. Romli Atmasasmita said that the essence of national legal policy is justice, legal certainty and benefit must be viewed as *conditions sine qua non* for the development of national law, not vice versa as conditions *qum qua non*. If people want the national legal order as a system, then the national legal policy in the context of realizing a holistic and comprehensive national legal system includes not only the development of legal materials but also the development of legal culture. It also includes the development of legal institutions and apparatus, the improvement of legal processes, procedures, mechanisms, and

modernization of legal facilities and infrastructure (Atmasasmita, 2012).

Based on this understanding of legal policy, the legal policy of the local government is in the form of regional legal products (regulations) such as Regional Regulations (RR), which apply specifically in their respective regions and do not conflict with statutory higher regulations to regulate the policy of collecting regional taxes and retributions.

Law Number 17 of 2019 concerning Water Resources explains that water resource conservation is an effort to maintain the existence and sustainability of the condition, nature, and function of water resources so that it is always available in sufficient quantity and quality to meet the needs of humans and other living things both at present and in the future. Thus, it can be concluded that the conservation of water resources is an important thing for the government to do to maintain the availability of water in the present and the future. However, the collection of groundwater tax has not been allocated for the conservation of water resources and the contribution of groundwater tax for Local Own-source Revenue (LOR) is relatively small which makes it increasingly difficult to allocate groundwater tax for groundwater conservation. The existence of local government regulations regarding the allocation of groundwater taxes for groundwater conservation can encourage the restoration of environmental damage and restore the groundwater level to its original state.

The Indonesian state perceives water as a resource that has social functions, environmental functions, and economic functions that are carried out in harmony. Social functions prioritize the use of water for public interest above individual interests. Furthermore, the function of the environment means that water resources are part of the ecosystem as well as a place for the survival of flora and fauna. While the economic function means that, water resources can be utilized to support business activities by collecting many groundwater taxes and surface water taxes. As an economic resource, it does not mean that water has a certain price so becomes a burden for the poor. There are two things in the economic principle of water, namely the value (value) and the cost of the water load (charging). The value of water indicates a rational distribution of water as a scarce resource, which is regulated in

government regulation. Meanwhile, the burden costs are intended to encourage conservation efforts and water-saving behavior, create incentives for managing water needs, and cover the investment costs of water resources infrastructure. The economic function of water resources in the Indonesian IWRM concept is more accurately referred to as the water economic value. The allocation of water for business activities shows the government's intention to use water for purposes that have economic value.

Currently, most countries in dealing with environmental problems, including in the management of water resources, often use economic instruments as part of their public policies. These economic instruments can be related to financial aspects such as user fees, taxes, or other retribution or those that are not directly related to finance such as environmental audits. The use of economic instruments is, of course, different from the use of regulatory instruments, which focus more on the command and control approach (Association Des Industries De Marque, 2008), because economic instruments emphasize the market mechanism approach. The market mechanism-based approach is supported by the business community, which has a major influence on the policies taken by the government. Economic instruments are defined by the OECD as: "Instruments that affect costs and benefits of alternative actions, [ie choices], open to economic agents, with the effect of influencing behavior in a way which is intended to be favorable to the environment" (Instruments that affect costs and benefits as alternative courses of action (from various options), as an economic instrument, with the effect of influencing behavior as expected to be better for the environment).

The use of these economic instruments is one of the important principles in environmental law because this principle contains the responsibility of polluters including unwise water managers (not only producers) to bear the costs of pollution and damage that occurs, which must be realized in reality along with corporate responsibility. Economic instruments are justifications or justifications for the internalization of environmental impacts that were not previously financed into the market structure. The current approach, either by

increasing the tax burden for a purpose or by shifting the tax burden from one sector to another, should be to add an approach to environmentally beneficial behavior through tax collection or incentives. Cost savings will encourage industry to improve the environment, especially groundwater use and management, at the same time long-running social subsidies require a reassessment from an environmental impact perspective.

In general, there are two kinds of tax functions, namely the budgetary function and the regulerend function. The budgetary function is the main function of taxes, in which taxes are used as a tool to optimally enter funds into the state treasury based on the applicable tax laws. The regulerend tax function means the regulating function or also known as an additional function, where the government to achieve certain goals uses the regulerend function (Association Des Industries De Marque, 2008).

Revenues from several types of local taxes must be allocated (*earmarking*) to fund the construction of facilities and infrastructure that can be directly enjoyed by taxpayers and the entire community. Indonesia has regulated regional taxes that must be allocated (*earmarking*), namely the Vehicle Tax (VT) must be allocated at 10% for road construction and/or maintenance, as well as improving public transportation modes and facilities. Cigarette tax revenue is allocated 50% to fund public health services, and law enforcement by the authorized apparatus, and the Street Lighting Tax is allocated for the provision of street lighting.

Earmarking is defined as the result of tax revenue that is devoted or intended for the implementation of certain public services related to the tax. As explained in the quote "in its strictest sense, earmarking requires that the revenues or a particular tax are diverted to the provision of public good and that the public good is only financed from tax (Bos, Diater, 2000)

The definition of earmarking by McCleary is "Earmarking is the practice of assigning revenue generally through the statute of the constitutional clause from specific taxes or groups of taxes to specific government activities or areas of activity.

Earmarking is a common practice carried out to determine income from certain taxes or certain tax groups that are used to finance more specific government activities. As a policy, earmarking tax has several justifications for its application. Justification for the application of earmarking proposed by Derran in McCleary:

Earmarking applies to the benefit principle of taxation.

1. Earmarking gives more assurance of minimum levels of financing for public services that governments consider worthy, thus avoiding periodic haggling within the bureaucracy and the legislature over the appropriate level of funding.
2. Greater stability and continuity of funding may lead to lower costs because of the speedy completion of projects.
3. By linking taxation with spending, earmarking may overcome resistance to taxes and help to generate new sources of revenue. (McCleary, 1991)

Based on the above, in earmarking there is a relationship between taxpayers and the benefits obtained from these taxpayers. Earmarking will provide stability in environmental funding. Environmental taxes in various countries are known as "Green Taxes" or "Environmental Taxation"

Green tax is a broad variety of tools or basic market equipment designed to change people's behavior in their role in the economy. This relates to an externality, which is a side effect of an action of a certain party against another party. To overcome these externalities, tax instruments can be used, taxes on activities that cause negative externalities are commonly called *Pigovian* taxes, which are taken from the name of the originator, namely Arthur Pigou, as is a translation of the theory expressed by Rock:

Green taxes refer to a wide variety of market-based instruments designed to change the environmental behaviors of economic actors. The obvious point of departure for consideration of green taxes is their economic rationale and Pigou (1952) was the first to develop such a rationale.

This theory explains that environmental taxes carry out their function as regularend functions

where taxes are allocated by the government to achieve certain goals, namely changing people's behavior. A good environmental tax requirement must meet several criteria, namely the administration fee for collection is cheap, does not cause interference or deviate from economic activity, the tax must be fair, and can improve the impact of negative externalities caused. Clarke expressed this opinion in the journal entitled *Green Taxes are Good Taxes*:

A good tax is cheap to administer; a good tax does not distort economic activity; a good tax is fair. Another sort of good tax corrects an externality—a cost imposed by one set of economic players on another. Green taxes fall into that category. (K, 1996)

In collecting environmental taxes, there must be a balance between environmental protection and economic growth in the context of sustainable development, each company or individual can calculate the benefits of environmentally friendly behavior. As the tax concept put forward by Herrera in a journal quoted by Fernandez entitled *Global and European Environmental Taxation System*:

Environmental tax should achieve a balance between environmental protection and economic growth like sustainable development. The economic advantage of fiscal measures compared to direct regulations is in their flexibility. Each company or individual can calculate the profitability of a more environmental-friendly behavior.

As a result, the overall pollution would be reduced with lower cost, to the desired level. Environmental tax tries environmental earmarking because the revenues are used to finance environmental protection. (Fernandes, M. L, 2005)

Environmental taxes must pay attention to the balance of environmental protection with economic growth as a steady increase. These economic gains are measured in regulatory measures regarding taxes. Everyone can calculate more benefits from using environmental taxes. As a result, environmental pollution can be reduced at a minimum cost and tax revenues can be used to finance environmental protection. This cannot run without public participation in the effort to implement earmarking tax in groundwater tax as explained as follows:

Participation refers to public participation to be directly involved in the process of determination of government expenditure from earmarking tax. This involvement is important since it makes people believe that the tax revenue will result in public benefit. Participation will also help the process of identification of the expenditure types financed by particular tax revenue. In this process, the people involved will learn that the paid tax will result in public benefits instead of individual benefits. Participation may increase public trust in the government, and therefore, it will improve the taxation performance in local government. In the context of earmarking tax in local tax, participation is an important instrument to obtain public aspiration, which is in line with local autonomy's objective of providing public services based on local needs (Rosdiana, 2018). (Participation refers to public participation to be directly involved in the process of determining government spending from earmarking taxes. This involvement is very important because it makes people believe that tax revenues will provide benefits to the community. Community participation will also assist the process of identifying the types of expenditures financed by certain tax revenues. In this process, people will know that the taxes paid will generate public benefits, not individual benefits. Participation can increase public confidence in the government so that it will improve tax performance in local governments. In the context of allocating local taxes, participation is an important instrument to obtain people's aspirations, which are in line with the objectives of regional autonomy, namely providing public services based on regional needs).

Earmarking in groundwater tax is the authority of regional autonomy to obtain sufficient funds for efforts to overcome environmental damage and can realize an environmental tax. Through earmarking, the regular function of taxes can be implemented optimally.

CONCLUSION

Environmental conservation matters are the scope of the local government, which must be regulated in the policy of taxation in the local government through the regulation of groundwater tax collection for the conservation of water resources. This is urgently done to

maintain the availability of water in the present and the future. The use of these economic instruments is one of the important principles in efforts to overcome environmental damage because in this principle there is the responsibility of unwise water managers (not only producers) to bear the costs of pollution and damage that occurs, which must be realized through conservation of water resources. In earmarking, there is a relationship between taxpayers and the benefits obtained from these taxpayers. It can overcome environmental damage and benefit taxpayers through earmarking groundwater tax on water resource conservation. It is hoped that the local government will make regulations regarding the collection of groundwater taxes for the water resources conservation and increase the groundwater tax budget to restore environmental damage and restore the groundwater's surface to its original condition.

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