

Legal Consequences of Marriage Agreements Separation of Property Against Calculations Income Tax

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ABSTRACT

This study aims to obtain results on the legal consequences of separation of assets in tax calculations and the principle of fairness for tax calculations in accordance with the provisions of the Director General of Taxes. The research method used is normative juridical by using testing techniques through a statutory approach as well as applicable legal theories, concepts and principles compared to the implementation in the field, especially about the method of calculating the separation of assets in accordance with the regulations of the Director General of Taxes and the calculation should be if in accordance with the marriage agreement for the separation of property. The research provides results if using the calculation method in accordance with tax regulations, the couple is still owed tax and / or greater even though each of them has been deducted from income tax and should be nil. And the principle of legal justice that should be obtained by the taxpayer of separation of property on the mechanism for determining taxable income by tax regulations is not to occur because with the deed of marriage agreement for separation of property made before a Notary which is an authentic deed, it should be from the beginning that from the beginning everything is separate including with his property, but for taxes it is not recognized the deed because the income is combined first.

Keywords: Marriage Agreement, Property Separation, Personal Income Tax

1. INTRODUCTION

Marriage as a legal act, then everything that is done by husband and wife, either jointly or individually, will have legal consequences or consequences for the marriage, including in this case the legal consequence is a third party if there is a legal relationship between the parties. third party with husband and/or wife(Juniawaty, 2017). One of the legal consequences arising from marriage is the existence of property in marriage, both movable and immovable property, where the property can be obtained before or during the marriage (Dwinopianti, 2017).

As with a written contract or bond involving assets, it also contains the risk of a dispute between the parties, which may result in the engagement being dissolved. In marriage, the risk of conflict or dispute is very large compared to a legal engagement in the form of a business, this is because in marriage it is not only about the body that is united but also spiritually as part of the engagement. Many factors can cause conflict in marriage, for example regarding rights and obligations, property, or about the family of origin and many more, where the conflict is at risk of breaking the marriage bond. There are many things that can be done to reduce the risk of the split, one of which is to make a marriage agreement whose contents are an agreement between husband and wife. The marriage agreement must meet the following criteria:

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1. Marriage cannot be carried out without a voluntary element from both parties;
2. Both parties (male and female) who bind the marriage agreement have the right to break the agreement based on existing legal provisions;
3. The marriage agreement regulates the legal boundaries regarding the rights and obligations of each party (Sudrajat, 2011).

Initially, marriage agreements were rarely made in Indonesia, this was probably due to the strong kinship between the prospective husband and wife, and the influence of customary law which was still very strong. Marriage agreements are regulated in Chapter VII of the Civil Code (KUHPerdata), starting from Articles 139 to 154. Specifically regarding the time of making a marriage agreement, it is regulated in Articles 147 to 149.

Article 139 of the Civil Code states that "By entering into a marriage agreement, the two prospective husband and wife are entitled to prepare some deviations from the laws and regulations regarding the unity of assets, provided that the agreement does not violate good morals or general rules and as long as it is respected (Nichols, 2011)."

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The type of marriage agreement, related to property, can be regarding the union of property or the separation of property between husband and wife. In the case of union, the assets obtained by the husband and wife during the marriage will be counted as one, while for the separation of assets, the assets obtained by the husband and wife will be separated so that the husband and wife will each have their own assets. In this study, the researcher focused on the



marriage agreement with the separation method of property, so that the agreement resulted in the law that what was obtained by the husband or wife during the marriage period were the rights and obligations of each. So that if the couple separates, each is only responsible for his own property and cannot claim his partner's property to make payments for his obligations.

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One of the legal consequences of a separate marriage agreement, when viewed from the tax law, each party (husband and wife) is obliged to report their assets separately and fill in the Annual Income Tax Return (SPT) separately and for that husband and wife must have their own Taxpayer Identification Number (NPWP). Based on Article 8 paragraphs (2) and (3) of Law no. 36 of 2008 concerning Income Tax states that the calculation of the income tax of a husband and wife who enters into a separation agreement (PH) after marriage or as desired by his wife who chooses to exercise their own tax rights and obligations, is calculated based on the comparison of the net income earned by the couple (Suherman, 2020).

The tax calculation method for taxpayers who enter into a separate marriage agreement is to combine the net income of husband and wife which is then deducted by non-taxable income (PTKP) as taxable income. The amount of tax on husband and wife is based on the percentage comparison between personal net income and combined net income. That the focus of this research is on the use of the combined net income of husband and wife to obtain income tax figures payable, so that civilly the husband and wife have separated their assets including the income received.

The combination of husband and wife's income is legally not in accordance with the requirements of the situation where the husband and wife have chosen to separate assets, the mechanism should be that the calculation must be separate so that it is in accordance with the principle of consistency.

In accordance with the above explanation, the researcher in this study is interested in discussing the use of income tax calculations for taxpayers who separate assets when viewed from



the principles of fairness and consistency, so that this study takes the title Due To The Law Of Marriage Agreements Of Separate Assets To Calculation Of Income Tax.

2. RESEARCH METHODS

In this study using a normative juridical research method using a research approach in the form of a statutory approach (Statue Approach) and a Conceptual Approach (Conceptual Approach).

3. RESULT AND DISCUSSION

Property in Marriage

Law Number 1 of 1974 concerning Marriage (Marriage Law) specifically regulates marital property where in marriage it is known as innate property, joint property and property of a married couple in the event of a divorce, including if there are certain agreements between married couples regarding the arrangement his treasure

The regulation of marital property according to law are as follows:

a. According to the Civil Code

From the day the marriage occurs, according to law, there is a mixing of assets (*gemeenschap van goederen*). The mixture applies unanimously without questioning each other's innate. All inheritance, both from the husband and wife's inheritance, are automatically a joint property in the family as joint property of husband and wife, except before marriage they enter into a marriage agreement (*huwelijks voorwaarden*) which contains the provision that with marriage there will be no mixing of wealth. Or the mixing is only limited to the mixing of what is obtained during the marriage (Yahya, 2017 : 116). This means that civil law views that marriage unites two individuals who are different in all respects so that this includes property, culture, family

In the Civil Code if the husband and wife at the time of marriage do not enter into a separation agreement between them, "the result of the marriage is the mixing of the wealth of the husband and wife into one, the wealth of the joint property and the share of each in the joint property is half".(Wiryo, 1996 : 14) "This half portion is an inseparable part (*onverdeeld aandell*) meaning that it is impossible for each husband or wife to ask for the distribution of the property, unless the marriage itself is broken, or if a divorce is made from the table and bed or a divorce of property (*scheiding van goedern*)".(Martiman, 2011 : 39)

b. According to Islamic Law



Islamic law considers the wealth of the prospective husband and wife to be separate from each other. The property belonging to each party at the time the marriage begins (runs) remains their respective property. Likewise, all the things that each of them obtained or obtained during the marriage were not mixed but separated from one another; This means that on property belonging to the husband, the prospective wife has no rights, and on the property belonging to the prospective wife, the prospective husband has no rights. This means that the prospective husband cannot use or use the property of the prospective wife and vice versa, but this use is based on a loan agreement between the prospective husband and wife. This agreement is not carried out expressly but quietly (Voena, 2015)

As a consequence, in Islamic law the status of a wife's property does not change with the marriage. The property of a wife does not become joint property between husband and wife because of marriage. The wife has full rights to her property, may sell, pawn, donate her property regardless of the power of others, including her own husband. The husband may not act on his wife's property, even though they are married, even the husband is obliged to take care and maintain it, but it is not the right for the husband to act legally on her (Prodjohamidjojo, 2011).

In Islamic law there is no known institution of joint property (gezifaverinogen). If the provisions of origin are considered, basically the assets of husband and wife are separate, both their respective assets or assets obtained by one of the parties on their own business or assets obtained by one of them because of gifts or grants or inheritance after they are bound in a relationship. Marriage.

c. According to customary law

That what is meant by "marital assets are all assets controlled by husband and wife as long as they are bound in marital bonds, both property of relatives controlled, as well as individual assets originating from inheritance, grant assets, own income assets, joint livelihood assets of husband and wife, and gifts."(Hilman, 2003 : 156) Everything is influenced by the local kinship principles and the form of marriage that applies to the prospective husband and wife concerned.

"Marriage assets are all assets controlled by husband and wife in the marriage bond, both assets brought into marriage and those obtained during marriage" (Salmon, 1982). "The assets or goods include both inherited items or gifts received by each husband or wife before and after the marriage, as well as items obtained due to the efforts or efforts of husband and wife together during the marriage."(Doss et al., 2012).

The position of marital property as capital wealth to finance the household life of husband and wife, then the marital property can be classified into several types, as follows:

1. Assets acquired/controlled by a husband or wife before marriage, namely inherited assets.
2. Assets acquired/controlled by a husband or wife individually before or after marriage are income assets.
3. Assets acquired/controlled by husband and wife jointly during marriage are livelihood assets.
4. The assets obtained by husband and wife jointly during the marriage ceremony as a gift are marriage gifts (Adjie, 2021).

The classification above concludes that marital property can be classified into two groups, namely the property of the husband and wife and the joint property of the husband and wife.

The regulation of marital property in the Marriage Law is regulated in Article 35 paragraph (2) regarding inherited assets in the form of gifts, inheritance and joint property, as well as in Article 35 paragraph (1) regarding assets acquired in marriage. For innate property, the Marriage Law states that each party is legally entitled to own and manage the property so that the property is not included as joint property in the marriage. As for joint property, the husband and wife are responsible for jointly and in balance so that one party cannot leave the other party in carrying out legal actions on the joint property.

Marriage Agreement

A marriage agreement (*huwelijksvoorwaarden*) is an agreement made by a prospective husband and wife authentically before a notary where the article in it states that they have agreed and agreed to make rules for the marriage to be held, especially regarding the assets and income brought and accepted by each individual. Whereas according to the laws and regulations, marriage agreements are generally made before the marriage takes place so that once the marriage has been carried out, the rules in the marriage agreement automatically apply and for assets, income and debts are the property of each individually.

The marriage agreement is regulated in the provisions of Articles 139-154 of the Civil Code. In Article 139 it is stated that by entering into a marriage agreement, both prospective husband and wife are entitled to prepare some deviations from the laws and regulations regarding the union of assets, provided that the agreement does not violate good morals or general rules and as long as all provisions that have been made are obeyed.

It is said to be a deviation, basically the assets obtained during the marriage period are considered one or as joint property where this is in accordance with Article 119 of the Civil Code which states: "From the moment the marriage takes place, according to the law there is a total joint



property between husband and wife, as long as there are no other provisions in the marriage agreement. The joint property, as long as the marriage is ongoing, may not be abolished or changed with an agreement between husband and wife”.

According to the article, marriage is basically a union both individually and the things that accompany it, including in this case property. Unless previously there has been an agreement between husband and wife regarding the arrangement of their property. Whereas the Marriage Law has divided marital property into original/congenital property and marital property wherein the original/innate property becomes the control of each individual unless there is a certain agreement on its control, while for assets acquired during the marriage it is declared as joint property.

Basically the legal rules regarding marital property states that what is called marital property is property obtained by a husband and wife during marriage and the rule is that such property is treated as joint property so that its use must be approved by both parties. So if there is an agreement between the two so that the property does not need the approval of both parties, so long as it does not violate legal norms and other norms and there is agreement and witnesses, then it is legal if it is implemented.

And why henceforth, a deviation can be legalized? This is related to the reason for the control of assets belonging to the Indonesian people, where initially this marriage agreement was made by a prospective partner of different nationality where an Indonesian citizen (WNI) will marry a foreign citizen (WNA) so that his property is not lost due to loss of WNI status. Indonesian law prohibits the possession of indigenous assets by WNA, primarily for:

1. Landrights

Land law in Indonesia adheres to the principle of prohibition of alienation of land (gronds verpoding verbood) which means prohibiting land in Indonesia from being owned by people who are not WNI. Therefore, based on Article 26 paragraph (3) of Law Number 5 of 1960 concerning Agrarian Principles, it is stated that in the event that a person due to marriage, inheritance or other means loses Indonesian citizenship, within 1 year he must transfer land to a third party or the land falls to the state.

2. Shares in Indonesian Company

One of the requirements to own shares in an Indonesian Company is that the person concerned must be an WNI so that the Company is still an Indonesian Company (PMDN), if there are foreign elements in the shares, the Company must change its status to a Foreign Investment Company (PMA).



So in this case, when it is associated with the principle of nationalism, the most relevant thing about legalization of a deviation is that a married couple can make a marriage agreement with the separation of assets during the marriage, because each party has their own assets and income.

The conclusion, the marriage agreement was made not with the aim of harming one of the parties but for the common interest because it comes from an agreement which is then realized in a written agreement

Purpose of Marriage Agreement

Basically, the reason for making a marriage agreement, there is an intention to save the property of each party so that there must be clear boundaries about who is entitled to the assets obtained before and during the marriage, including the purchase of tangible and intangible assets during the marriage and the impact of the use of these assets. As an impact, this marriage agreement also related to third parties who enter into financial relationships with husband and wife, for example business relationships, debts, investments and others.

While the purpose of making a marriage agreement stated in the notary deed, if summarized, is as follows:

1. Taking care the personal property

Making a marriage agreement results in the husband and wife only having the right to control and manage their own property obtained from the beginning of the marriage to the end.

2. Protects from the bad qualities of a partner

This is solely to anticipate the bad qualities of the couple who have not been known before (before the marriage) because it is feared that these bad traits will appear at the time of marriage and result in destroying the family including their property. For example, at the time of marriage, a spouse is cheating, likes to gamble or acts criminally, likes debt and is extravagant

3. The wishes of the husband and/or wife's family

Another purpose of making a marriage agreement is to facilitate the wishes of the couple's family, usually this happens because there is an imbalance in the wealth level of the husband and wife, the family of one partner is afraid that his family members will suffer economically after marriage and/or be used by the married couple for personal pleasure

4. Other goals outside of wealth

In several ethnic groups in Indonesia, heredity is the most important thing, mainly male offspring because men are considered as carriers of hereditary genes from the family, so that if the wife cannot give birth or cannot give birth to a son, If the husband is a man, then with the marriage agreement made, the husband has the right to remarry in order to fulfill the offspring expected by the family. Examples are in Chinese and Balinese culture



According to Wirjono Prodjodikoro, in accordance with the Civil Code which considers that if a husband and wife are to get married, they do not enter into any agreement between them, then the result of the marriage is the mixing of the wealth of the husband and wife into one wealth, belonging to the two of them together. equal, and each share in the common wealth is half. This half part is an inseparable part (*onverdeeld aandeel*), meaning: it is impossible for each husband or wife to ask for the distribution of the wealth, unless the marriage itself is broken, or if there is a divorce from the table and bed or a divorce of wealth (*scheiding van goederen*), which can only occur through a certain event, is contained in the Civil Code (Dja'is, n.d.).

The marriage agreement must be registered, to fulfill the publicity element of the marriage agreement in question, it is intended that third parties outside the husband and wife know and submit to the rules contained in the marriage agreement. If the agreement is not registered then the agreement is only binding and applies as law for the parties who made it (only the husband and wife pair). This is in accordance with Articles 1313, 1314 and 1340 of the Civil Code.

Calculation of Income Tax for Spouses Having a Separation of Marriage Agreement

The separation agreement is to provide information that husband and wife are agreed to save the property (assets and income) of each partner, and therefore each is fully responsible for its use and consequences for third parties. This also applies to taxation, where with the existence of this marriage agreement, the tax authorities also acknowledge the separation. Women taxpayers who are married (wife) and have their own income can choose to carry out their own tax obligations or carry out tax obligations with their husbands. This is regulated in Article 8 of Law no. 7 of 1983 and amended, most recently, by Law no. 11 of 2020 concerning Income Tax, which is stated as follows:

- (1) All income or losses for married women at the beginning of the tax year or at the beginning of the tax year, as well as losses from previous years that have not been compensated as referred to in Article 6 paragraph (2) shall be considered as income or losses. her husband, unless the income is solely received or obtained from 1 (one) employer which has been taxed under the provisions of Article 21 and the work has nothing to do with the business or independent work of the husband or other family members.
- (2) The income of husband and wife is taxed separately if:
 - a. Husband and wife have lived apart based on the judge's decision
 - b. Desired in writing by husband and wife based on an agreement on the separation of assets and income
 - c. Desired by a wife who chooses to carry out her own taxation rights and obligations



(3) The husband and wife's net income as referred to in paragraph (2) letter b and letter c is subject to tax based on the combined net income of husband and wife and the amount of tax that must be paid by each husband and wife is calculated according to the ratio of their net income.

Based on the information above, where husband and wife can carry out separate tax calculations if there is an agreement on the separation of assets and income, which means that a marriage agreement has been made to separate assets in the marriage. Therefore, each husband and wife are required to have a Taxpayer Identification Number (NPWP) and the consequence of this is that each has an obligation to make tax reporting to the State.

In this tax reporting, in addition to reporting taxable income, each spouse has their own list of assets and if each also maintains books of account, the expense of these assets (depreciation and amortization) can be included as a component of deducting taxable income.

The mechanism for calculating tax on segregation of assets is as follows:

1. Income of husband and wife combined as total family income;
2. Reduce with Non-Taxable Income (PTKP) to obtain tax payable;
3. Calculating the tax burden using the personal income tax rate (progressive);
4. Calculate each tax payable by using the composition of each income to total income

Legal Consequences of Using Separated Assets in Tax Calculation

Married couples who choose the method of separating assets in calculating and reporting taxes have the following consequences:

1. Each must make a separate record of income received during the tax year
2. Each spouse must collect evidence of withholding taxes on the income earned as a deduction from the tax expense.
3. Each must report the Annual Income Tax Return (SPT PPh) individually.
4. The amount of tax to be paid will be higher than using the normal method

Comparison of tax calculation for married couples who choose the method of separating assets and normal is that the tax payable resulting from the combination of assets is smaller than the separation of assets with the assumption that income and dependents are the same. why it can be happened? If an analysis of the calculation method is carried out, the result is that when the income is combined, in calculating the income tax, the income tax will be subject to a higher progressive rate, and only once calculated at a progressive rate even though at the beginning the couple has chosen to separate their assets and is willing to report an SPT PPh individually.

Legal Principles In Calculation Of Separate Income Tax Assets

Tax Theory

Based on the legal principle where taxation is considered as a legal theory, then tax collection is solely to create justice. The reasons for collecting taxes based on legal theory are divided into:

a. Collection of taxes for the benefit of the collector

The collection of taxes for this purpose is based on the theory of the Organ theory of Von Gierke where it is stated that a country is made up of state organs or institutions and citizens who are fully bound to each other. The state organ or institution that is tasked with giving life to citizens can burden each citizen with obligations to be able to support the implementation of their duties, one of these obligations is the obligation to pay taxes. The theory that discusses the obligations of the people to their government (state organs or institutions) is known as Bakti Theory, where in essence the state is a coercive organization, so that the government has the right to collect from its people for the benefit of the government.

WH. Van den Berge stated that the state as a *Groupsverband* (organization of groups) with due observance of the requirements of justice has the duty to carry out the public interest and therefore can and must take and take the necessary actions, including in this case collecting taxes from the people.

b. Tax collection for the benefit of the party being collected (tax payers)

Opinions for the benefit of taxpayers (the people) come from the notion of liberalism, where there is a clear separation between the interests of the people and the government, including in this case the search and use of funds. So if the funds are withdrawn from the people then it is purely for the benefit of the people. The government in this case works for its interests and the interests of the people.

From this understanding of liberalism then came theories:

1. Legal Entity Theory

This theory connects the nature of tax payments by the people as equal to the payment of dues by members of a general association/body. Where a general body or association is indeed tasked with serving the interests of members, it is natural that the general body or association withdraws dues from members for the sake of adequate service to members. Therefore, taxes can only be collected if it returns to the interests of the people themselves and the government cannot participate in enjoying.

2. Insurance Theory



That the nature of tax payment is the same as the payment of an insurance premium on an insurance agreement. This is based on the people paying taxes is solely aimed at covering the safety of themselves through the protection facilities offered and provided by the state government. This theory has its drawbacks, namely:

- a. There is no reimbursement for the risk of loss or loss from the taxpayer, this is different from an insurance agreement where reimbursement for the risk of loss or loss is one of the objects of the agreement.
- b. If the tax is considered to be the same as the insurance agreement, there is no coercion for the policyholder to pay the premium, because the premium is related to the insurance protection guarantee. As for taxes, there are imperatives and obligations for payment
- c. The payment of the tax is considered to be the same as the payment of the levy, while the nature of the levy and the tax are not the same. The levy is in the form of returns in the form of direct benefits while the benefits from taxes are not obtained directly

The above theory provides an unequivocal separation for the interests of the state and the people, where the state is obliged to give everything for the people so that whatever form of contribution the people must be returned to the people, the government must not participate in enjoying.

Collection of taxes for the benefit of the collector and collected

Based on this, the suitable theory is:

1. Purchasing Power Theory

The state distributes the advantages and disadvantages of its citizens to help the economy through the collection of taxes from able families to help other families so as to create common welfare and as a manifestation of the interests of the community. The collection is taken using the parameters of the purchasing ability of the community so that those who can afford to buy will be taxed and the taxation proceeds are distributed to the underprivileged community.

2. Dividend Theory

The state is considered as a company with the people being business actors and the government as shareholders, where business actors use company resources to obtain income for the company and therefore the government as a shareholder has the right to withdraw funds (taxes) as dividends for shareholders.

The theory above provides an affirmation that the tax levy is justifiable because it provides benefits for both the collector and the collected (the people and the government)

Tax Fairness Theory

The policy of collecting taxes has always aimed to create justice for society because taxes are the realization of people's sacrifices for society. Many theories about justice were contributed by experts, one of which was Aristotle's theory of justice which divided justice into:

a. Legal Justice

All persons or groups of people should be treated equally by the state before and under applicable law.

b. Computative justice

That in social interaction in society, each individual no one feels aggrieved for his rights and obligations. Justice of this form asks and demands that everyone to give, respect and guarantee what is the right of others.

c. Distributive Justice

This justice emphasizes the appropriate distribution of the economy and is considered fair by citizens

The theories about fairness in the imposition of taxes on citizens are as follows:

(1) **Leadership Theory**

The theory pays attention only to the division of the tax burden collected from the population entirely, based on the individual interests of each of them in government duties, including in this case the protection of the souls of people and the security of property. So to support these functions and duties, the community has the right to be taxed.

The tax charge is determined from the interests and activities of the state, so that the greater the type of activity and its interests, the greater the percentage of tax imposed. And in order to feel fairness, the amount of tax uses a proportional or comparable rate and often the amount is fixed if the interests and activities are felt to be no different

Although it is considered fair, this theory contains weaknesses, namely:

- a. It can only be imposed on indirect taxes, while for direct taxes it will be difficult to implement.
- b. Justice can only be achieved in a civil format only, since its payment is equated with the payment of a levy, meanwhile, taxes and levies are of different nature.
- c. It will be difficult if faced with the level of livelihood of the people related to the burden of the rich and the poor. Since the poor will definitely need government activities to help their lives while the rich will be able to support themselves, will the tax burden of the poor be more than the rich with this?

(2) **Theory of State Achievement**

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This theory puts forward the subjective economic ability of the state to list the activities (achievements) of the state, where if there are more state activities then the people will be willing to be burdened with more taxes and vice versa. The downside of this theory is the magnitude of the degree of willingness to shoulder the tax burden by the people which is difficult to measure because it is subjective in nature.

(3) The Theory of Shoulder Power

This theory states that the tax burden is divided based on the shoulderability of each taxpayer. The shoulder power in this case is the economic power of each citizen to take care of his economic needs.

Theory of Fairness in the Calculation of Property Separation Tax

As already presented in chapter II that in the mechanism of tax calculation and reporting, married and individually earned taxpayers have the option to report their income tax individually by using their TIN as the basis for reporting. This is one of the government's steps to impose an equitable tax burden, because the ability of the "shoulderability" of the taxpayer's spouse is different from other taxpayers so that it is feasible to be burdened with income tax separately.

However, when looking at the calculation method for the tax charge, there is an oddity where the income of the husband and wife who performed the Agreement for the separation of assets, are still combined into one, and the combined income is used as the basis for calculating the income tax payable by multiplying it by a progressive tax rate, which results in the tax borne by the couple being greater than the calculation using the merger of assets. Because henceforth the calculation of its tax is carried out in proportion to the combined income (Roesli et al., 2019).

The question is why does not the wife count on her own as a taxpayer? Because as a taxpayer who chooses to self-report then he is entitled to obtain a lower progressive tax rate facility and then the magnitude of the tax burden is the tax rate multiplied by his taxable income. However, in practice, the wife's income must be combined with the husband's income to be united. The loss of using the merger method results in the taxpayer who feels that the calculation has been completed because it is nil because the income tax has been deducted by the employer and obtains proof of withholding, with the new calculation most likely to become overpaid or become underpaid on the other hand. It is felt that there is an injustice to the tax compliance that has been carried out.

If it is based on the theory of justice, then tax collection must always maintain and uphold the principle of justice. Although it must be realized and believed that the so-called principle of justice is something abstract and subjective so that to achieve it must be made clear parameters and become a mutual agreement, in tax law that justice is interpreted as follows: "The principle of



fairness says that the tax must be fair and equitable whereby the tax imposed on private persons is proportional to his ability to pay the tax and also according to the benefits he receives from the state".

Adolf Wagner stated that the principle of fairness in taxes is about the same conditions between one taxpayer and another taxpayer, the amount of tax imposed is the same (treated equally). Meanwhile, justice itself according to Adam Smith will be realized if it meets the following 4 (four) conditions:

a. Equality and Equity

Under the same circumstances then the persons must be equally treated by the state and for certain things then justice is of a special treatment.

b. Certainty

For the existence of justice, there must be clarity about the rights and obligations of the law and its legal objects and subjects because it concerns legal certainty as one of the purposes of lawmaking.

c. Convenience of Payment

Taxes must be collected at the right time, that is, when the taxpayer has money or when it is close to the second of receipt of the income in question.

d. Economics of Collection

At the time of the formation of the new tax law, the drafters were obliged to consider that the cost of collection should be relatively smaller compared to the cash inflow.

How with the fairness of the wife to be able to self-report in relation to her right to obtain the same tax rate? That the purpose of the wife to self-report is to acquire her rights as a taxpayer and to account for the property that she owns herself because there has been a separation of property so that it should have obtained the same rights as the husband and there is no need to combine her income.

That the authentic deed made before the Notary, based on Articles 1868 and 1867 of the Civil Code is legal evidence that has perfect evidentiary power in the eyes of the law and the Notary is a general official who is authorized by the Law to make authentic deeds for the civil affairs of the community so that what should be produced by the Notary can be recognized by the applicable law because the Notary also works to provide certainty and legal protection. And the deed of marriage agreement for separation of property is one of the authentic forms of deed produced by the Notary in accordance with the Notary Office Act.



Based on the theory of fairness over taxation and tax collection above, it can be drawn the reason for the State to combine the income of husbands and wives which results in taxes owed greater that:

1. That husbands and wives who choose separate tax reporting are considered to have more economic ability than married couples whose tax reporting is combined. The economic ability in this case is not only a matter of rupiah but also the opportunity obtained by the couple to become stronger in its economic capabilities in the future.
2. In accordance with the theory of carrying power, the family's ability to carry the operational burden of the family is greater so that therefore it is deserving of a greater tax levy than others.
3. The establishment of a progressive tax rates in the taxation means that in order to be fair, taxpayers whose economic capabilities are stronger must be taxed by the Government by a greater amount than others (the weaker ones). And the Government assumes that the payment and reporting for the taxpayer of the separation of property is sought to obtain a greater yield than the subject of the wife's tax which participates in the husband's TIN (not separation of property) because it is considered that there is a double income. And this is considered to be in accordance with the purpose of obtaining tax justice for taxpayer.

4. CONCLUSIONS

The legal effect of a married couple who choose to do their own income tax calculations based on a property separation marriage agreement is that the husband and wife have their own TIN and are obliged to report their own taxes and for that each must collect proof of tax deductions obtained during the fiscal year as a deduction from the tax burden, and the last is the possibility of more or accrued taxes (owed taxes) becoming arising where it should be nil if the reporting is combined (for the wife who has her own income).

A married couple who has entered into a marriage agreement for separation of property has basically prepared to separate personal interests from each other's marriage ties, and it is protected by the Act by being granted the right in the form of a request for an authentic deed to be made to the Notary. A notary is a general official who is given the authority by the Law to represent the government in the management of some of the civil affairs of the community therefore the deed of marriage agreement for separation of property is an agreement protected by the state so that therefore the right to separation also applies in taxation. It is included in this case not to combine income with the husband in the calculation of personal income tax. Because in this case, civil affairs are already separate (there is a deed of Marriage Agreement for Separation of Property),



NPWP is also separate, finances are separate but why income tax calculations are mixed so as to show the inconsistency of the rule of law on the calculation of property separation.

Suggestion

Socialization to the public of the legal consequences of the property separation marriage agreement is that it is very likely that the tax burden to be paid is greater than that of people who do not enter into a property separation marriage agreement. So that if the marriage agreement for the separation of property is considered the best step to save the assets owned during the marriage from the obligation to share common property is to have tax consequences that must be greater than they should be.

That fairness is not equal to taste, but justice is the degree of benefit derived from each person and justice can be realized if there is a role of government to make it happen. In relation to the property separation agreement that has been made an authentic deed, the Government should respect the existence of the authentic deed by giving each spouse the right to calculate his own income tax without any merger on the part of the husband. So as to create harmony between the existing rules of law

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