



## UNDIVIDED INHERITANCE AS A UNIT IN LIEU OF THE BENEFICIARIES: A TAX FAIRNESS PERSPECTIVE

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Article	Abstract
<p><b>Keywords:</b> tax fairness, taxpayer, undivided inheritance</p> <p><b>History of Article</b> Received: April 1, 2022; Reviewed: April 11, 2022; Accepted: April 13, 2022; Published: April 14, 2022</p>	<p>The self-assessment system in Indonesia has not maximized the tax potential for inheritances that have not been divided as a unit replacing those entitled as income tax subjects. It is necessary to build tax provisions that apply to undivided inheritance in Indonesia to produce a fair legal concept for the potential of inheritance that has not been divided as a unit to replace the rightful in the future in Indonesia. The study yielded two conclusions based on normative juridical methods with a qualitative approach. First, the tax provisions that apply to undivided inheritance in Indonesia as stipulated in Article 2 paragraph (1) a number 2) and Article and explanation 2A paragraph (5) of the Income Tax Law, and Article 32 paragraph (1) letter (e) of the KUP Law still ignore tax fairness. Second, it is necessary to reformulate the law on undivided inheritance. It attaches propriety to act or do and decency not to act or not act to the taxpayer and the tax apparatus. It is recommended that there are rules and or procedures for cooperation in the form of data exchange between DGT and several related institutions, such as local government and heritage hall.</p>

### 1. INTRODUCTION

Article 2 paragraph (1) letter a number 2 of Law No. 7 of 1983 concerning Income Tax as amended several times recently by Law No. 7 of 2021 concerning Harmonization of Tax Regulations (PPh Law) has formulated that inheritance that has not been divided as one unit replaces those entitled to be subject to income tax (PPh).

The provisions in the Income Tax Law show that the principle of justice should be the fundamental building in treating all tax subjects who have exercised their rights and have fulfilled their tax obligations by applicable tax laws and regulations. In fulfilling tax justice in this society, tax authorities should enforce applicable laws (taxes) to create the exact tax compliance with all taxpayers in Indonesia. One of them can be done by establishing the actual tax owed if the self-assessment system is not run correctly and adequately until the inheritance is divided into legally valid heirs. The self-assessment system in force in Indonesia must be in line with the mandate of Article 23A of the Constitution of the Re-

public of Indonesia of 1945 (UUD NRI of 1945), which derivates directly from Law No. 6 of 1983 concerning General Provisions and Procedures of Taxation as amended several times last by Law No. 7 of 2021 concerning Harmonization of Tax Regulations (KUP Law), namely a tax collection system that requires taxpayers themselves to register themselves, fill out a Notification Letter (SPT) correctly, thoroughly, and clearly and sign and submit it to the tax office, and pay or deposit the taxes owed themselves<sup>1</sup>. Of course, the inheritance that has not been divided as one of the tax subjects in Indonesia cannot be separated from the consequences of the implementation of the self-assessment system, namely the authority of the tax authorities in Indonesia, in this case, the Directorate General of Taxes (DGT), to test compliance with the fulfillment of tax rights and obligations of each Taxpayer.

One form of taxpayer compliance testing determines the actual tax owed based on evidence as affirmed in Article 12 paragraph (3) and Explanation of Article 29 Paragraph 3 of the KUP Law. Of course, the testing of taxpayers' compliance with an inheritance that has not been divided as a unit in place of the rights must be done based on the principle of justice, in this case, tax fairness, whose legal evidence can begin with reasonable cooperation in the environment of government agencies, such as local governments that are authorized to issue death certificates and the Heritage Heritage Hall whose authority is to take care of unattended relics. Thus, this study seeks to answer two formulations of existing problems. First, how do the tax provisions that apply to inheritances that have not been divided as a unit replace those entitled in Indonesia? Second, how is the concept of tax fairness in arranging an undivided heritage as a unit replacing the rightful ones in the future in Indonesia?.

## 2. METHODS

In answering the two existing problem formulations, this study adequately uses normative juridical methods of doctrinal legal methods or black-letter. This method will produce a prescription, so it requires the adoption of a legalistic approach, considering that black-letter views law as an autonomous system of regulations, which tends to focus more on the law in books than law in action when it wants to achieve its goal of implementing or enforcing the rules of law in society or terms of political reform of the law<sup>2</sup>.

This normative juridical method uses a qualitative approach that can produce deductive research conclusions, considering that this study is carried out based on decisions and opinions, as an exploration of the reality of some instances through the use of theories that affect the qualitative analysis<sup>3</sup>.

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<sup>1</sup> Henry Dianto Pardamean Sinaga, "Loss (of Revenue) of State within Taxation", *Mimbar Hukum* 30, No. 1. Februari .2018: 148.

<sup>2</sup> Michael Salter dan Julie Mason, *Writing Law Dissertations: An Introduction and Guide to the Conduct of Legal Research*. Harlow: Pearson Education Limited, 2007.

<sup>3</sup> Ian Dobinson and Francis Johns, *Qualitative Legal Research*, dalam Mike McConville dan Wing Hong Chui, *Research Method for Law*, Edinburgh: Edinburgh University Press Ltd. 2007. hal. 21.

### 3. ANALYSIS AND DISCUSSION

#### a. Indonesian Prevailing Law of Undivided Inheritance as a Unit in Lieu of the Beneficiaries

Provisions on inheritance that have not been divided as a unit replacing those entitled as tax subjects in Indonesia have been regulated in several articles in the Income Tax Law and the KUP Law. Article 2 paragraph (1) letter a number 2) of the Income Tax Law affirmed that inheritance that has not been divided as a unit replaces the entitled is a tax subject. Explanation of Article 2 paragraph (1) letter a number 2) of the Income Tax Law further confirms that the inheritance that has not been divided is a unit as a replacement Tax Subject, namely replacing those who are entitled (heirs), so that, the designation of inheritance that has not been divided as a replacement Tax Subject is intended so that the imposition of taxes on income derived from the inheritance can still be implemented. Furthermore, in Article and explanation 2A paragraph (5) of the Income Tax Law, it is regulated that the subjective tax obligation of inheritance that has not been divided as intended in Article 2 paragraph (1) letter a number 2) of the Income Tax Law begins at the onset of the undivided inheritance and ends when the inheritance is completed. The personal tax liability of undivided inheritance starts at the time of the emergence of the undivided inheritance, that is, at the time of the heir's death. Since then, the fulfillment of its tax obligations has been attached to the inheritance. The inheritance's tax liability expires when the inheritance is divided into heirs. Since then, the fulfillment of his tax obligations has shifted to the heirs.

In essence, the subject of tax is a person or entity with rights and obligations, so it can be said that inheritance that has not been divided is also part of the legal subject related to one of the authorities of the Heritage Center in Indonesia.<sup>4</sup> So that if there is an inheritance that has not been divided as an unattended relic, the Heritage Center should manage the inheritance that has not been divided, including in its tax management<sup>5</sup>. This is in line with Article 32 paragraph (1) letter (e) of the Kup Law, which stipulates that in exercising rights and obligations by the provisions of tax laws and regulations, the Taxpayer is represented by the executor of his will or who takes care of his property in the case of an inheritance that has not been divided by one of his heirs.

#### b. Tax Fairness Reformulation for Undivided Inheritance as a Unit in Lieu of the Beneficiaries

The inheritance system has three potential components of tax revenue: the heir or person who inherits his property, the heir or party who received the inheritance, and the estate itself<sup>6</sup>. One of the authentic pieces of evidence that can be used in terms of inheritance is the Death Certificate obtained from one of the local government agencies, as

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<sup>4</sup> Hillary Febryna Rosalia, "Penyelesaian permasalahan utang pajak yang berasal dari warisan yang belum terbagi sebagai subjek pajak", accessed on March 29, 2022, <http://www.digilib.ui.ac.id/detail?id=20485393&lokasi=lokal>.

<sup>5</sup> Loc.cit.

<sup>6</sup> Rusdiono Consulting, "Apakah Ahli Waris Wajib Membayar Pajak Warisan?", December 11, 2020, accessed on March 31, 2022, <https://www.rusdionoconsulting.com/pajak-warisan/>.

stipulated in Article 44 of Law No. 24 of 2013 concerning Amendments to Law No. 23 of 2006 concerning Population Administration.

The imposition of a tax on inheritance that has not been divided as a unit replaces the entitled one based on the transfer of wealth from the donor's time of death until the heir receives the wealth. There is the possibility of an additional economic capability of the wealth transferred by the donor in that time frame. As for what is meant by other financial capabilities is terminology that refers to the object of tax as Article 4 paragraph (1) of the Income Tax Law formulates that the thing of tax is income, namely "any additional economic ability received or obtained by taxpayers, both from Indonesia and from outside Indonesia, which can be used for consumption or to increase the wealth of the taxpayer concerned, by name and in any form." Such additional economic capabilities could have significant distribution implications in terms of their tax potential, both in the short and long period, given the uncertain date of inheritance. Additional economic capabilities in this period have great potential as an arena of tax planning or tax avoidance given the existence of Article 4 paragraph (3) b of the Income Tax Law, which stipulates that inheritance is excluded from the object of income tax, and Article 9 paragraph (1) g of the Income Tax Law which stipulates that inheritance, as intended in Article 4 paragraph (3) b of the Income Tax Law, should not be deducted to determine the amount of taxable income for domestic taxpayers and permanent business forms (BUT).

The attempt to tax undivided inheritances is a fundamental principle against a government that must deal reasonably with the public at all levels and in all its manifestations<sup>7</sup>. Regarding fairness in tax laws and regulations, it is worth referring to tax fairness, which is attached to the etiquette to act or do and the decorum not to do or not work for the taxpayer and the tax apparatus<sup>8</sup>. The obligation due to propriety to do or act must meet some of the following criteria, namely:<sup>9</sup>

- a) conducted in good faith to fulfill its legal obligations unless it can be proven the state of force Majeure or coercion or anything else that makes it act otherwise,
- b) conducted due to danger or damage or loss that may be imminent and unavoidable,
- c) There is a better alternative, or if the action is not done, it will cause even more significant harm or damage or loss, and
- d) an act or deed is purely due to an accident.

While the obligation due to propriety to do not act or not act must meet the following four criteria: <sup>10</sup>

- a) is an act that has been regulated in the Law (*mala prohibita*),

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<sup>7</sup> Diane Longley dan Rhoda James, *Administrative Justice: Central Issues in UK and Euro-pean Administrative Law*, London: Cavendish Publishing Limited, 1999. hal 3.

<sup>8</sup> Benny R. P. Sinaga, Elvrida N. Sinaga, Leo B. Barus, Reny Y. Sinaga, & Henry D. P. Sinaga. 2020. Justice Recon-ception In Establishing Responsive Tax Law In Indonesia: A Rawlsian Perspective. *A Y E R JOURNAL*, Vol. 27, No. 3, p. 185, pp. 171 - 189.

<sup>9</sup> Henry D. P. Sinaga, and Benny R. P. Sinaga, *Rekonstruksi Model-Model Pertanggungjawaban di Bidang Perpajakan dan Kepabeanan*. Kanisius: Yogyakarta, 2018, pp. 103-104.

<sup>10</sup> *Loc.cit.*

- b) not within the scope of its capacity so that it cannot act according to its professional judgment,
- c) there are still some better alternative actions that do not violate the prevailing laws and regulations, and
- d) is an act/action that enriches oneself / group and/or other parties that cause financial losses to the state.

In this case, the DGT must exercise its legitimacy as an accountable public institution through one of its authorities to test the compliance of all taxpayers<sup>11</sup>. Based on the evidence of Article 12 paragraph (3) and Explanation of Article 29, Paragraph 3 of the KUP Law can tax the inheritance that has not been divided. Suppose the inheritance that meets Article 4 paragraph (3) b of the Income Tax Law is never reported in the tax return. In that case, the consequences must pay the Final Income Tax and be declared as property through a voluntary disclosure program by Law No. 7 of 2021 concerning Harmonization of Tax Regulations (HPP Law). The imposition of a tax on inheritance or the imposition of final income tax on inheritances that become property through a voluntary disclosure program is fair and provides legal certainty to improve the compliance of all taxpayers in Indonesia if Article 12 paragraph (3) and Explanation of Article 29 Paragraph 3 of the KUP Law are applied. In this case, the reformulation of rules and/or procedures for cooperation in the form of data exchange between DGT and several related institutions, such as the local government and the Heritage Center, is the first step in dealing with the problem of tax unfairness in terms of inheritance in Indonesia which has not been explored for tax potential. Tax fairness efforts carried out by the DGT are also in line with the implementation of its authority contained in Article 35 A of the KUP Law, which regulates the obligation to provide data and information to the DGT so that it can be used for the benefit of state revenue, and to prevent, detect and overcome the lack of untruths of reporting of taxpayer tax returns in terms of inheritance.

#### 4. CONCLUSION

The study yielded two conclusions. First, the tax provisions that apply to inheritances that have not been divided as a unit to replace those who are entitled in Indonesia have been regulated in Article 2 paragraph (1) letter a number 2) of the PPh Law, Article and explanation 2A paragraph (5) of the PPh Law, and Article 32 paragraph (1) letter (e) of the KUP Law. However, its tax potential has not been explored to the maximum to ignore tax fairness regarding equal tax compliance with all taxpayers in Indonesia. Second, it is necessary to reformulate the law on inheritance that has not been divided as a unit replacing the right in the future in Indonesia based on the concept of tax fairness, in which it attaches propriety to act or do and decency not to do or not act either to the taxpayer or the tax apparatus. It is recommended that there are rules and or procedures for cooperation in the form of data exchange between DGT and several related institutions, such as

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<sup>11</sup> Diane Longley dan Rhoda James, Ibid.

local government and heritage hall. One of them is to require a certificate from the tax office to the relevant agencies (in this case, the Local Government and the Heritage Center), which is also for the orderly administration of taxation (including the elimination of NPWP against taxpayers who have died).

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