

Establishment of Income Tax in the Transfer of Rights to Land and/or Buildings through a Joint Rights Division Deed Due to Inheritance

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Abstract

This study aims to examine the application of Income Tax (PPh) on the transfer of rights to land/buildings through a Joint Rights Division Deed (APHB) due to inheritance, focusing on the injustices arising from the Circular Letter of the Directorate General of Taxes 20/PJ/2015. Although Indonesian tax law stipulates that inheritance is not subject to tax, Circular Letter 20/PJ/2015 exempts tax liability only for heirs in a direct bloodline. This research employs a normative legal approach with an analytical perspective. The findings indicate that Circular Letter 20/PJ/2015 contradicts the principle of justice outlined in the Income Tax Law (UU PPh) as amended by the Harmonization of Tax Regulations Law (UU HPP), wherein all heirs should be entitled to PPh exemption without discrimination. This distinction not only leads to legal uncertainty but also creates administrative discrimination that can disadvantage heirs who are not in a direct bloodline

Keywords: Income Tax (PPh), Inheritance, Joint Rights Division Deed (APHB)

INTRODUCTION

Indonesia has national objectives outlined in the Preamble to the 1945 Constitution, which are to protect all the people and the territory of Indonesia, promote the welfare of the society, educate the nation, and contribute to world order based on the principles of independence, perpetual peace, and social justice (Karsayuda et al., 2023). In order to achieve the common welfare, sustainable development is undertaken, primarily funded by the tax sector, which has now become the main source of revenue for the State Budget (APBN). Taxes have become a fundamental pillar of development, with taxpayers serving as significant contributors to the state, supported by the role of tax authorities (the fiscal authority) in collecting the necessary funds (Hendarto, 2019). The transfer of rights to land and/or buildings through a joint rights division deed due to inheritance results in significant legal implications in the determination of income tax (PPh). This encompasses aspects of justice and regulatory consistency for the heirs.

It is important to note that the inheritance law applicable in Indonesia has not achieved legal unification, resulting in differences in the applicability of laws for various groups of residents during the implementation of inheritance. This classification of residents dates back to the Dutch colonial period, specifically in the (Wet op de Staatsinrichting van Ned. Indie or Indische Staats Regeling) (hereinafter referred to as IS) S. 1855-2 jo. 1, which follows the (Reglement op het beleid der Regeering van Ned. Indie) (RR). Articles 131 and 161 of the IS distinguish the Indonesian population into three categories: 1) the European population and those treated as such; 2) Indigenous Indonesians (bumiputera); and 3) Foreign Orientals (Hartono, 1991). This classification of residents serves as a reference in the application of inheritance law. In addition to this categorization, specific regulations establish that Indonesian citizens who adhere to Islam are subject to Islamic law. Thus, there are currently three legal foundations for inheritance that apply in Indonesia: Civil Law, Customary Law, and Islamic Law (Nasution, 2019).

Furthermore, the relationship between inheritance and taxation is inherently intertwined. This can be observed in the inheritance of rights to land and/or buildings, which may include inheritance, joint rights division, division of inheritance rights, and testamentary gifts. Legislation requires that any taxes owed from the transfer of rights to land and/or buildings resulting from inheritance must be paid by the heirs managing the property. Taxes owed in the transfer of land rights include the Rural and Urban Land and Building Tax and the Transfer Duty for Rights to Land and/or Buildings. In the case of inheritance of rights to land and/or buildings, the recipient of the inherited property is generally not subject to Income Tax, unlike typical transfers of rights. However, heirs are often required to pay Income Tax on income derived from the transfer of rights to land and/or buildings due to inheritance.

This article specifically discusses Income Tax (hereinafter referred to as PPh), which is a tax imposed on every increase in economic capacity received by taxpayers, whether from domestic or foreign sources, that can be used for consumption or to augment wealth (Oktario & Oktarina, 2019). According to tax regulations, Indonesia implements a self-assessment system, whereby taxpayers independently register, calculate, pay, and report their taxes. The Directorate General of Taxes is responsible for supervising the implementation of this self-assessment in accordance with its authority under tax law (Tarmudi et al., 2024). Public understanding of Income Tax (PPh) is crucial, given that it is governed by Law Number 7 of 1983 concerning Income Tax, as amended by Law Number 7 of 1991, the second amendment in Law Number 10 of 1994, the third amendment in Law Number 17 of 2000, and the fourth amendment in Law Number 36 of 2008 (hereinafter referred to as the “Income Tax Law”). The Income Tax Law was last amended by Law Number 7 of 2021 concerning Tax Harmonization (hereinafter referred to as the “HPP Law”).

The provisions regarding inheritances exempt from Income Tax (PPh) in the Income Tax Law, as amended by the HPP Law, do not specify which inheritances are exempt from PPh. Therefore, it can be interpreted that all inheritances are not subject to tax and are exempt from income tax. This applies equally to the transfer of rights to land and/or buildings due to inheritance. The transfer of rights to land and/or buildings is further regulated by Government Regulation Number 34 of 2016 concerning Income Tax on Income from the Transfer of Rights to Land and/or Buildings and the Sale and Purchase Agreement for Land and/or Buildings and their amendments (hereinafter referred to as “PP 34/2016”). Article 6(d) of PP 34/2016 stipulates that the transfer of assets in the form of land and/or buildings due to inheritance is exempt from the obligation to pay/withhold PPh. In accordance with the provisions in PP 34/2016, Article 10(1)(d) of the Minister of Finance Regulation Number 261/PMK.03/2016, which implements the provisions of Article 9 of PP 34/2016, states that the transfer of assets in the form of land and/or buildings due to inheritance is exempt from PPh payment. Furthermore, according to Article 16(b) of Circular Letter Number PER-8/PJ/2023 regarding the Procedures for Exemption from Income Tax on Income from the Transfer of Rights to Land and/or Buildings or Sale and Purchase Agreements for Land and/or Buildings and their Amendments, as well as Exemptions from Income Tax Collection on the Sale of Luxury Residences or Dwellings in Special Economic Zones for Tourism (hereinafter referred to as “PERDJP 8/2023”), this article contains provisions for a Certificate of Exemption from PPh.

The issuance of the Certificate of Exemption from Income Tax (SKB PPh) due to inheritance is specifically regulated in Circular Letter Number 20/PJ/2015 concerning the Issuance of Certificates of Exemption from Income Tax on Income from the Transfer of Rights to Land and/or Buildings due to Inheritance (hereinafter referred to as “SE DJP 20/PJ/2015”). The SE DJP 20/PJ/2015, which remains in effect to this day, provides provisions for the transfer of rights to land and/or buildings due to inheritance to be exempt from the obligation to pay PPh on income from such rights through the issuance of an SKB PPh. However, in the material of

point 2(b)(3)(a) of SE DJP 20/PJ/2015, it states that in cases where the transfer of rights to land and/or buildings due to inheritance involves a Joint Rights Division Deed (APHB), if the division of rights involves the transfer of some joint rights to land and/or buildings from one heir to another heir who does not have a blood relation in a direct lineage of one degree with the transferor, then the transfer of such rights is subject to PPh on the transfer of rights to land and/or buildings at a rate of 5% of the gross value of the transfer. Furthermore, in the subsequent regulation in point 2(b)(3)(b) of SE DJP 20/PJ/2015, it is stated that in the case where, at the time of the Joint Rights Division of inherited assets, some joint rights to land and/or buildings are transferred from one heir to another heir, if the receiving heir is a blood relative in a direct lineage of one degree and meets the provisions of Article 6(b) of PP 34/2016, then the transfer of such rights is considered a gift that is exempt from the obligation to pay PPh on income from the transfer of rights to land and/or buildings.

Referring to the material in point 2(b)(3)(a) and (b) of SE DJP 20/PJ/2015, it is evident that there exists a point of injustice applied to heirs who have a blood relationship in a direct lineage of one degree compared to those who do not. In cases of inheritance of rights to land and/or buildings conducted through a joint rights division, SE DJP 20/PJ/2015 differentiates that certain heirs are exempt from PPh while others are subject to it. This represents an inconsistency in the legal norms between Circular Letter Number 20/PJ/2015 from the Directorate General of Taxes and the Income Tax Law, as well as subordinate regulations, which clearly state that inheritance is not a taxable object. This inconsistency also constitutes a form of discrimination against heirs who do not have a blood relationship in a direct lineage of one degree. Meanwhile, the Income Tax Law and its subordinate regulations do not provide explanations or provisions regarding which heirs are entitled to PPh exemption. Therefore, it can be interpreted that if a person is legally designated as an heir, there should be no difference in tax treatment between one heir and another, including in terms of exemption from Income Tax on income derived from the transfer of rights to land and/or buildings through a joint rights division due to inheritance events.

One example of this inequitable regulation can be found in Decision Number 3/G/PTUN.SBY, where the judge relied on SE DJP 20/PJ/2015 as the legal basis for ruling in the case. This decision resulted in the rejection of the application for the name transfer of the certificate due to an inheritance executed through a Joint Rights Division Deed (APHB), where Heir 1 transferred their share to another heir, namely the child from the deceased husband's first marriage. In this instance, the child receiving the transfer of inheritance rights was unable to proceed with the name transfer of the certificate because, according to the head of the BPN office in Surabaya, the interested heir had not fulfilled their tax payment obligations, which can be interpreted to mean that in cases of APhB due to inheritance, PPh payment is required.

Previous research conducted by (Oktario, 2019) found that the imposition of Income Tax on inheritance and gifts in the transfer of rights to land and/or buildings in Padang City can be exempted from tax collection by submitting a Certificate of Exemption (SKB) for Income Tax for inheritances and gifts among blood relatives in a direct lineage. Challenges in the imposition of Income Tax on inheritance and gifts in the transfer of rights to land and/or buildings in Padang City include the existence of taxpayers who have a Tax Identification Number (NPWP) but do not report their Annual Tax Returns, as well as taxpayers who are not registered with the Tax Office and do not possess an NPWP, which results in their SKB applications being rejected or denied. Previous research was also conducted by (Munir, 2021) whose findings indicate that the policy requiring the Certificate of Exemption from Income Tax (SKB PPh) enforced by the Polewali Mandar Land Office is in accordance with applicable legal provisions. This is in light of Law Number 30 of 2014 concerning Government Administration, which stipulates that heads/bodies or agencies must exercise their authority based on the powers granted to them,

while also considering the relevant legal provisions and the general principles of good governance. Consequently, there are legal repercussions, including the potential imposition of light administrative sanctions on government officials at the Majene Land Office. Furthermore, certificates issued by the Land Office that do not require SKB PPh cannot be annulled unless another party claims to be aggrieved and files a lawsuit in court.

In essence, a Circular Letter is a legal product that serves merely as a guideline or announcement, the content of which does not alter, add to, or annul the regulations it addresses; however, Circular Letters do not fall within the hierarchy of legal regulations. The Circular Letter from the Directorate General of Taxes (DJP) is a communication from the DJP to taxpayers or its subordinate officials that explains or further clarifies the implementation of legal provisions. Nevertheless, the position of this Circular Letter is significant because it serves as a guideline for both the internal operations of the DJP and its subordinate agencies in applying and implementing legal regulations. SE DJP 20/PJ/2015 was created as a follow-up to the numerous inquiries regarding the issuance of the Certificate of Exemption from Income Tax (SKB PPh) on income from the transfer of rights to land and/or buildings due to inheritance. This Circular Letter plays an important role, as it serves as a guideline for the Tax Service Offices (KPP), which are authorized to approve or reject SKB PPh applications submitted by heirs.

Based on this, as well as several previous studies, the objectives of this research are to analyze two main aspects. First, to understand the concept of Income Tax assessment on the transfer of rights to land and/or buildings that occurs through a Joint Rights Division Deed (APHB) due to inheritance, considering the inconsistencies in the application of the tax. Second, this research aims to identify fair legal regulations in the application of Income Tax in cases of inheritance, so that every heir receives equitable treatment in accordance with the law, without discrimination based on familial relationships or irrelevant administrative requirements.

RESEARCH METHODS

This research is conducted using a juridical-normative legal study approach, aimed at obtaining comprehensive data as a foundation for writing scholarly works, or what can be referred to as legal studies in literature (Supranto, 2003). The juridical-normative research aims to produce arguments and theories (new concepts) as prescriptions for addressing the issues at hand (Marzuki, 2019). The approach employed in this research includes a Legislative Approach, which is utilized to examine both formally and materially by studying and analyzing in depth the regulations regarding the exemption from income tax in the transfer of rights to land and/or buildings through a Joint Rights Division Deed (APHB) due to inheritance. Additionally, a Conceptual Approach is used to analyze the general concepts of inheritance and the exemption from income tax due to inheritance.

The legal materials consist of two types: Primary Legal Materials, which are the main materials researched and obtained from literature studies and the applicable laws and regulations in Indonesia. These include Law Number 7 of 1983 concerning Income Tax, as amended by Law Number 7 of 1991, Law Number 10 of 1994, Law Number 17 of 2000, Law Number 36 of 2008, and Law Number 7 of 2021 concerning the Harmonization of Tax Regulations. Additionally, Government Regulation Number 34 of 2016 concerning Income Tax on Income from the Transfer of Rights to Land and/or Buildings and the Sale and Purchase Agreement of Land and/or Buildings and its amendments, Minister of Finance Regulation Number 261/PMK.03/2016, Directorate General of Taxes Regulation Number PER-8/PJ/2023, and Directorate General of Taxes Circular Letter Number SE-20/PJ/2015. Secondary Legal Materials consist of relevant publications related to the primary legal materials.

These legal materials will be analyzed using a perspective analysis technique, employing the method of Grammatical Interpretation, which emphasizes the meaning of a text within a legal rule according to everyday language usage or commonly accepted technical-legal meanings. Systematic Interpretation aims to determine a legal structure by interpreting and considering other legal products. When interpreting a provision in a law, related provisions in other regulations serve as a reference to determine further meaning.

RESULT AND DISCUSSION

1. The Concept of Income Tax Assessment on the Transfer of Rights to Land and/or Buildings Through a Joint Rights Division Deed Due to Inheritance

Under the Income Tax Law (Law No. 7 of 1983 as amended by the Harmonization of Tax Regulations Law), it has been established that inheritance is not subject to taxation. With this exemption, Indonesia's tax policy implicitly aims to prevent double taxation and support the preservation of family wealth across generations (Hadi & Permana, 2022). Government Regulation No. 34 of 2016 and Minister of Finance Regulation No. 261/PMK.03/2016 reinforce this exemption, particularly in the transfer of land or buildings obtained through inheritance. These regulations affirm that inheritance in the form of asset transfer is not considered income and therefore should not be subject to income tax.

However, the issuance of Directorate General of Taxes Circular Letter No. 20/PJ/2015 (SE DJP 20/PJ/2015) introduces differential treatment for heirs based on kinship relationships. According to SE DJP 20/PJ/2015, the transfer of assets through a Joint Rights Division Deed (APHB) is subject to income tax at a rate of 5% if the transfer occurs between heirs who do not share a direct bloodline relationship within one degree with the receiving heir. This means that only heirs within a direct lineage (parents and children) are exempt from income tax, while other familial relationships, such as between siblings or heirs from different lines, remain subject to tax (Husodo et al., 2017). This provision raises several issues:

- 1.1. Inconsistency with the Income Tax Law: The Income Tax Law and its implementing regulations do not explicitly state that the inheritance tax exemption applies solely to heirs with direct lineage relationships. However, SE DJP 20/PJ/2015 restricts this exemption, leading to inconsistencies and confusion in the tax rules for taxpayers
- 1.2. Discrimination Against Heirs: This provision treats heirs within a direct lineage differently from those outside it. This is considered unjust, as all designated heirs in a will have equal rights to the inherited assets, regardless of their kinship relationships.

In principle, tax law aims to create justice and equality for all citizens (Shanti Wulandari & Alfiana, 2024). The differentiation in income tax exemptions based on lineage is inconsistent with the principles of justice, especially when all heirs meet the legal requirements as recipients of inheritance. This differential treatment lacks legal support and seems to assign different values to the status of heirs. In inheritance law, legitimate heirs should have equal rights to tax exemptions without exception.

The application of SE DJP 20/PJ/2015 in practice also poses several challenges. Cases like Decision No. 3/G/PTUN.SBY illustrates that heirs are unable to transfer certificate ownership due to differences in kinship status, which is deemed as not fulfilling tax obligations in accordance with the provisions of the SE DJP. This situation indicates that the SE DJP not only creates administrative barriers but also leads to legal uncertainty, where heirs must comply with stipulations that are not explicitly detailed in the Income Tax Law as amended by the Harmonization of Tax Regulations Law.

Referring to legal certainty according to Utrecht, it encompasses two meanings: 1) the existence of general rules enables individuals to know what actions are permissible or impermissible, and 2) it provides legal security for individuals against governmental arbitrariness, as these general rules allow individuals to understand what may be imposed or done by the state against them (Nurhayati, 2020). Utrecht argues that law is enacted to ensure legal certainty, meaning that the law contains clear rules that are known to all, defining which behaviors are permitted and which are prohibited. Therefore, legal certainty is about providing assurance regarding governmental actions, thereby ensuring security for individuals. Based on Utrecht's notion of certainty, it can be stated that:

- 1) **General Rules:** The existence of general rules allows individuals or taxpayers to understand what actions are permissible or impermissible, including in tax matters related to inheritance. In this context, the provision that inheritance is exempt from taxation, as stipulated in the Income Tax Law as amended by the Harmonization of Tax Regulations Law and Government Regulation No. 34 of 2016, which states that income from the transfer of assets in the form of land and/or buildings due to inheritance is exempt from income tax obligations, should provide certainty that all asset transfers due to inheritance are tax-free. However, the provision in Directorate General of Taxes Circular Letter No. 20/PJ/2015 (SE DJP 20/PJ/2015), which limits the exemption to heirs in a direct lineage, contradicts this principle by treating similar cases—namely, asset transfers due to inheritance—differently. This creates legal uncertainty, leading to inconsistencies between SE DJP and the Income Tax Law: The inconsistency in SE DJP 20/PJ/2015 results in heirs receiving joint rights transfers through APHB from heirs of a non-direct lineage being subject to a 5% income tax, while the Income Tax Law does not differentiate between heirs regarding the exemption for asset transfers due to inheritance. This uncertainty contradicts the principle of legal certainty by leaving heirs unsure of their entitlement to tax exemptions.
- 2) **Legal Protection Against Governmental Arbitrary Actions:** Legal certainty provides protection for individuals against arbitrary governmental actions. The government, through the Tax Service Office (KPP), has the authority to issue or deny applications for tax exemption certificates (SKB PPh) submitted by heirs, using PERDJP 8/2023 and SE DJP 20/PJ/2015 as guidelines for issuing SKB PPh. SE DJP 20/PJ/2015 creates uncertainty and potentially violates the principle of legal security by introducing exemptions not provided for in the Income Tax Law as amended by the Harmonization of Tax Regulations Law. When SE DJP limits exemptions to certain heirs, this regulation risks creating uncertainty that may be perceived as arbitrary by taxpayers who, according to the law, should be exempt from income tax but are subject to it due to inconsistent rules. This situation reflects legal uncertainty and discrimination in the application of law: This provision creates discrimination not outlined in the law, treating heirs differently even though they possess equal legal rights. The principle of legal certainty according to Utrecht demands general and equal rules for all parties in equivalent positions. By introducing exemptions not specified in the Income Tax Law, the government is perceived as treating taxpayers inequitably and introducing an element of uncertainty that is potentially arbitrary.

This is further supported by Lon Fuller's theory of legal certainty, which posits that legal certainty is achieved when eight principles are fulfilled by the law: 1) a legal system consists of rules; 2) these rules are publicly announced; 3) the rules do not apply retroactively; 4) they are formulated in a manner that is understandable to the general public; 5) the rules must not contradict one another; 6) the rules must not demand actions

beyond what is possible; 7) the rules must not be frequently changed; and 8) there must be consistency between the rules and daily practices. In this context, the SE DJP plays a role in conveying the content of income tax regulations, which serves as a guideline for the implementation of legal rules in daily operations by the Directorate General of Taxes (DJP) and the Tax Service Office (KPP), which are the authorities responsible for granting or denying applications for tax exemption certificates (SKB PPh) due to inheritance.

Therefore, the importance of legal certainty in the context of inheritance tax is to provide protection to the public against changes in interpretation or additional administrative requirements that are not stipulated in the law. The SE DJP 20/PJ/2015 introduces additional administrative conditions that require heirs from non-linear lines of descent to pay income tax, despite the law clearly stating that inheritance is not a taxable object. This inconsistency risks undermining public trust in the stability and reliability of the law, which should be clear and provide certainty (Safa'at, 2011). Thus, based on the theory of legal certainty, the provisions in SE DJP 20/PJ/2015 are in conflict with the principles of legal certainty advocated by Utrecht and Lon Fuller. In this context, SE DJP 20/PJ/2015 generates legal uncertainty by introducing provisions that contradict existing laws, creating the potential for government arbitrariness through the Tax Service Office (KPP) to impose income tax that should not be collected from heirs.

2. Legal Framework for Fair Regulation of Income Tax Assessment on the Transfer of Rights to Land and/or Buildings Through Deeds of Joint Property Division Due to Inheritance

The Income Tax Law, as amended by the Tax Harmonization Law, affirms that inheritance is not subject to tax, which means that the transfer of assets due to inheritance should not be subject to income tax. However, the provisions of Circular Letter of the Directorate General of Taxes (DJP) 20/PJ/2015 introduce an additional requirement that only heirs in a direct line of descent are exempt from income tax. This contradicts the principle that all inheritances should be free from income tax, as stipulated in the Income Tax Law as amended by the Tax Harmonization Law. It has been stated earlier that income tax must be paid by individuals or entities receiving or obtaining income from the transfer of rights to land and/or buildings. This tax may also be collected by the treasurer or officials conducting payments, or officials approving exchanges when the transfer of rights to land and/or buildings is made to the government (Hendarto, 2019). However, there are exceptions to the obligation to pay or collect income tax on income derived from rights to land and/or buildings, which include:

- 2.1. Individuals with income below the Non-Taxable Income threshold who transfer rights to land and/or buildings with a gross transfer amount of less than Rp 60,000,000.00 (sixty million rupiah), provided it is not a fragmented amount;
- 2.2. Individuals or entities receiving income from the transfer of rights to land and/or buildings to the government for public interest development that requires special conditions;
- 2.3. Individuals transferring land and/or buildings by way of a gift to close blood relatives in a direct line of descent, religious bodies, educational institutions, social organizations including foundations, cooperatives, or individuals running micro and small enterprises, as further regulated by Minister of Finance regulations, provided that the gift is not related to any business, occupation, ownership, or control between the parties involved;
- 2.4. Entities transferring land and/or buildings by way of a gift to religious bodies, educational institutions, social organizations including foundations, cooperatives, or

individuals running micro and small enterprises, as further regulated by Minister of Finance regulations, provided that the gift is not related to any business, occupation, ownership, or control between the parties involved; or

2.5. The transfer of rights to land and/or buildings due to inheritance.

Exemptions from the obligation to pay or collect income tax on income derived from the transfer of rights to land and/or buildings, aside from those requiring special conditions and not subject to tax, are granted through the issuance of a Tax Exemption Certificate (SKB) for income tax on income from the transfer of rights to land and/or buildings (Arifuddin et al., 2017). The issuance of the SKB for income from the transfer of rights to land and/or buildings due to inheritance involves several important aspects, namely:

2.1. Application for the SKB for income from the transfer of rights to land and/or buildings due to inheritance. When the testator has passed away, the application for the SKB for income from the transfer of rights to land and/or buildings must be submitted by the heirs to the Tax Service Office (KPP) where the testator is registered or resides, as the party transferring the rights to the land and/or buildings.

2.2. The transfer of rights to land and/or buildings due to inheritance is related to the Deed of Division of Joint Rights (APHB). The division of joint rights over inherited assets based on the APHB becomes the individual rights of each heir, falling within the definition of the transfer of rights to land and/or buildings due to inheritance.

2.3. The SKB for income from the transfer of rights to land and/or buildings is only granted if the land and/or buildings that are the subject of inheritance have been reported in the annual income tax return of the testator, unless the testator has income below the Non-Taxable Income threshold (PTKP).

Thus, the Tax Exemption Certificate (SKB) is necessary to prove that no tax is owed on the transfer. The issuance of Circular Letter DJP 20/PJ/2015 regarding the provision of the SKB for Income Tax (PPh) on rights to land and buildings due to inheritance is expected to be easily understood by taxpayers. However, there are issues concerning the requirement that the inherited assets must have been reported in the annual income tax return of the testator (unless the testator has income below the Non-Taxable Income threshold, PTKP). As mentioned earlier, the context of inheritance tax is to provide protection to the public against changes in interpretation or additional administrative requirements that are not stipulated in the law. The SE DJP 20/PJ/2015 introduces additional administrative requirements that compel heirs from non-linear relationships to pay PPh, even though the law explicitly states that inheritance is not subject to tax (Silalahi, 2020).

From the perspective of Aristotle's concept of justice, which divides justice into two forms distributive justice and corrective justice this situation can be analyzed further (Kelsen, 2018). Corrective justice, synonymous with commutative justice, or rectificatory justice, concerns the equivalence between benefits and counter-benefits, where services are valued equally to their remuneration. Distributive justice, on the other hand, focuses on the equitable allocation of resources and rights based on individual contributions and needs. It demands that everyone receives what is rightfully theirs, which is the principle of distributive justice—proportional equality. Thus, something is considered fair when everyone receives their due in a proportional manner. Corrective or commutative justice emphasizes transactions and interactions between individuals, prioritizing balance in social relationships. This has implications for ensuring that no party is disadvantaged in transactions, including in the transfer of inheritance rights.

If inheritance is considered a taxable object, imposing Income Tax (PPh) differently based on lineage, as stipulated in SE DJP 20/PJ/2015, may be deemed unjust. This aligns with Aristotle's view on justice, which asserts that all heirs, regardless of blood relation, should be treated equally. Tax obligations should not burden heirs without blood ties, as all individuals have an equal right to inherit. By treating all heirs equally, this regulation supports distributive justice. All heirs should have the same rights to receive their inheritance without being subjected to different taxes solely based on familial relationships. If taxes are imposed only on heirs without blood relations, it creates injustice. Therefore, eliminating differential treatment in inheritance tax aligns with the principle of commutative justice, which ensures that no party is disadvantaged in the transaction of transferring rights (Benni et al., 2019).

Based on the above, the legal certainty expected from tax regulations must reflect justice. Laws that provide certainty and clarity regarding taxes imposed on inheritances without discrimination represent a step toward greater equity. This ensures that all individuals understand their rights and obligations concerning inheritance tax (PPh Waris). Legal regulations should eliminate discrimination. Justice not only means equal treatment but also equal protection for every individual. Therefore, tax rules that differentiate treatment among heirs based on lineage should be amended to create justice for all, in accordance with the provisions of the Income Tax Law as amended by the Harmonization of Tax Regulations Law (UU HPP), Government Regulation Number 34 of 2016, Minister of Finance Regulation Number 261/PMK.03/2016, and the Director General of Tax Regulation Number PER-8/PJ/2023, which clearly state that inheritances are not subject to tax.

CONCLUSION

The concept of imposing Income Tax (PPh) on the transfer of rights to land and/or buildings through the Deed of Division of Joint Rights (APHB) due to inheritance presents several challenges in its implementation. The legal framework governing income tax (PPh) on the transfer of land and buildings due to inheritance ideally should support justice by ensuring that all heirs receive equal treatment without discrimination based on lineage. The Income Tax Law, as amended by the Harmonization of Tax Regulations Law (UU HPP), explicitly states that inheritance is not a taxable object, meaning that transfers due to inheritance should not be subject to PPh. However, the provisions of Director General of Taxes Circular Letter 20/PJ/2015 restrict this exemption by stating that, in cases of transferring property in the form of land and/or buildings through an APHB, the exemption applies only to heirs in a direct lineage. This implies that heirs outside of the direct line must pay a 5% tax on their share of the inheritance. This provision creates inequality, as the tax burden varies despite the Income Tax Law not differentiating tax treatment for heirs based on their familial relationships. A fair tax regulation should eliminate discrimination, uphold the principles of clarity and legal certainty, and protect the rights of each heir without distinction. In this context, Circular Letter 20/PJ/2015 needs to be reviewed and potentially revised to align with the Income Tax Law as amended by the Harmonization of Tax Regulations Law (UU HPP), so that the tax objectives of creating justice and legal certainty for society can be achieved.

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