



Conceptual Analysis on the Potential Regulation of Income Tax Incentives for Floating Hospital's Financing by State-Owned Enterprises

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Abstract

This study aims to explore the possibility of tax facility to encourage financing of floating hospitals in Indonesia by state-owned enterprises. This research combines juridical and empirical methods by using data collected from questionnaire, interview, and literature studies. This study finds that income tax facility in the form of deduction of donation made for floating hospitals from taxable income of state-owned enterprises could increase their interests in financing operating expenses of floating hospitals. In formulating the facility, the Ministry of Health should communicate with the Ministry of Finance to expand the scope of tax allowance to include floating hospitals as social infrastructure or to qualify donations made specifically to improve accessibility of health facilities in certain regions.

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A. Introduction

One of the Sustainable Development Goals (SDGs) targets is to ensure “(...) *healthy lives and promote well-being for all at all ages,*” which could be found on Goal 3. Furthermore, one of the Goal 3 targets, which is Goal 3.8, is to broaden “(...) *access to quality essential health-care services and access to safe, effective, quality and affordable essential medicines and vaccines for all.*” To achieve it, participation from the wider community is necessary, both in the providing services or financing.

The geographical conditions of Indonesia, which consists of more than 17,000 islands, certainly provide challenges in achieving this target. Access to health is not only provided for those who live within the large islands, but also for those who live in archipelagic areas. Efforts to expand health access have been carried out by the Ministry of Health of the Republic of Indonesia (*Kemenkes*), including by issuing the Minister of Health

Regulation Number 21 of 2020 on The Strategic Plan of the Ministry of Health 2020-2024. One of the national strategies for health development established by the Ministry of Health is to strengthen the health system, including through expanding mobile health services (flying and floating health care) to people living in various island groups. In line with this strategy, the Ministry of Health has also set a target that by 2024, all first-level health facilities and hospitals will be accredited.

To ensure the achievement of these targets, the Appendix to the *a quo* Regulation of The Minister of Health has emphasized the need for “guaranteed health financing in the state budget (APBN) and regional budget (APBD) as well as adequate financing balance” for the Individual Health Efforts (UKP) and Public Health Efforts (UKM).¹ There are many efforts that can be made to ensure the achievement of this target, namely by providing an easy source of financing for the mobile

¹ Appendix to Regulation of the Minister of Health of the Republic of Indonesia Number 21 of 2010 concerning the

Strategic Plan of the Ministry of Health for 2020-2024, p. 27

health services, one of them being the floating hospital (hereinafter referred to as floating hospitals). Based on pre-research that has been carried out, currently there are at least two floating hospitals operators in Indonesia, namely the *Dokter Peduli* Foundation, or better known as *doctorSHARE* (DS), and the *Ksatria Airlangga* Floating Hospital (RSTKA). These two health service providers have a similar mission, namely providing access to health services for people who do not have access to proper health assistance in underdeveloped areas, borders, and islands. However, based on the information on the webpages of the two floating hospitals, the grand scheme of financing operation through donations characterizes floating hospitals as a philanthropic activity and is still outside the state financial system, even though the existence of floating hospitals can help the government in achieving its duties in health sector.

The financing of floating hospitals' operation is becoming urgent, because, floating hospitals are commonly recognized as an industrial operators, rather than as a health service provider/hospital. This directly affects the cost that needs to be paid. For example, to operate the ships to provide health services, floating hospitals are subjected to industrial fuel prices. Similar categorization also applies to port fees, pharmacies, and the travel expense for the medical personnel to and from the location.

In order to anticipate such problems, there needs to be a cross-sectors regulation framework. According to the President's instruction,² health financing could be obtained from various sources, namely the central government, regional governments, private sectors, community organizations, and the society in general. One of the financing opportunities to provide floating hospitals services is

² Appendix to Presidential Regulation of the Republic of Indonesia Number 72 of 2012 concerning the National Healthcare

System tentang (Perpres 72/2012), sub-system Healthcare Funding, paragraph 112

obtained from corporate social responsibility funds, including State-Owned Enterprises (*BUMN*). The *BUMN* Service Program (*Program Bakti BUMN*), which was launched by the Ministry of *BUMN* as an implementation of *BUMN* Social and Environmental Responsibility (*TJSL*), has the potential to be synergized with operation to expand health services for the community through the implementation of floating hospitals. On the *BUMN* Ministry website, the program is oriented towards SDGs³ and thus related to the Goal 3.8 as explained at the beginning of the article. Normatively, *TJSL BUMN* can be realized through “providing assistance and/or other activities, including coaching.”⁴ The focus of *TJSL BUMN 2023* is education, the environment, and the development of micro and small businesses.⁵

However, it does not rule out the possibility of healthcare services, including floating hospitals, to be covered as one of the sectors that could be financed by *TJSL BUMN*.

Granting Income Tax facilities in the form of cost reductions for individual or corporate taxpayers who make donations to fund the provision of floating hospitals health services can support efforts to integrate floating hospitals into the state financial system, specifically taxation. Currently, philanthropic operation that may apply for Income Tax facilities (i.e., tax allowance) only covered donation made to national disaster relief, research and development operation carried out in Indonesia, (providing) educational facilities, and sports coaching.⁶

It is hoped that by expanding the scope of the Income Tax facility as to include donations made to

³ Kementerian Badan Usaha Milik Negara Republik Indonesia, “Bakti BUMN,” accessed July 1, 2023, <https://www.bumn.go.id/prioritas/prioritas/Bakti%20BUMN>.

⁴ Article 20 section (1) letter b Regulation of Minister of State-Owned Enterprise of the Republic of Indonesia Number PER-1/MBU/03/2023 concerning Special Assignments and Social and Environmental Responsibility Programs

for State-Owned Enterprises (Permen BUMN 1/2023)

⁵ Article 20 section (3) Permen BUMN 1/2023

⁶ Article 6 section (1) letter i, j, and l Law Number 7 of 1983 concerning Income Tax as last amended by Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation (UU Income Tax).

finance floating hospitals' operation will attract BUMN's interests in contributing to this activity. Through this facility, the taxable income of the BUMN donor can be reduced, so that the Income Tax payable is also reduced and ultimately resulted in tax savings. BUMNs will also benefit from increasing its good name (good will) in society. For the government, a multiplier effect is obtained through implementing new floating hospitals which can reach communities in marginalized, frontier, and archipelagic areas.

Some of the previous research can be used as a reference to give rationalizations regarding the importance of tax facilities to philanthropic activities in general. Research conducted by Saptono and Purwanto shows that in carrying out their tax obligations, and to realize good corporate

governance, BUMN needs to have tax data integration.⁷ In line with this research, Cui found that imposing taxes on BUMN is needed in order to achieve equal distribution of income through distribution of BUMN dividends.⁸ To strengthen tax compliance by BUMN, a pull factor in the form of Income Tax facilities is needed.

In this case, research conducted by Rosdiana, Murwendah, and Inayati in 2019 entitled "Tax Incentives for Indonesian Philanthropy: The Balance of Effectiveness of Pull Factor and The Role of the State" shows that tax policy for philanthropic activities in Indonesia still presents uncertainty for donors and donees in terms of tax treatment and tax facilities that they are entitled to, so that it cannot yet be a pull factor to foster more public participation

⁷ Prianto Budi Saptono and Dwi Purwanto, "Implementation of Taxation Data Integration in State Owned Enterprises to Strengthen Good Corporate Governance," *Jurnal Inovasi Bisnis* 9 (2023): 101–109.

⁸ Wei Cui, "Taxing State-Owned Enterprises: Understanding a Basic Taxing State-Owned Enterprises:

Understanding a Basic Institution of State Capitalism Institution of State Capitalism," *Osgoode Hall Law Journal* 52, no. 3 (2015): 775–818, accessed November 27, 2023, <https://doi.org/10.60082/2817-5069.2956>.

towards philanthropic activities. Differently, this research focuses on Income Tax facilities for philanthropic activities in the context of *TJSL* by *BUMN* which is directed at financing floating hospitals' operation.

Based on the above, the legal issues to be answered in this article are first, how does the national health system currently recognize floating hospitals? second, what is the role of State-Owned Enterprises (*BUMN*) in financing floating hospitals' operation? and third, how can the government regulate on Income Tax facilities for *BUMN* in financing floating hospitals' operation?

It is hoped that the results of the research for writing this article can become a basis for policy makers in formulating Income Tax facility that would support for the expansion of the reach of floating hospitals, which in turn supports the achievement of SDGs Goal 3 in Indonesia and the implementation of the Ministry of Health's Strategic Plan 2020 – 2024 related to expanding access to health services society in Indonesia.

B. Method

This article is written based on research that combines normative method with empirical one. The former method is done through literature studies on primary and secondary sources. Primary sources comprise of tax and health laws and regulations which are relevant to analyzing the potential regulation of Income Tax facilities for *BUMN* performing *TJSL* program by financing for floating hospitals' operation. Meanwhile, secondary sources comprise of books, journal articles, and other documents that may enlighten the authors in investigating the potential regulation on Income Tax facilities for *BUMN* performing *TJSL* program by financing for floating hospitals' operation.

In addition, empirical research is done through in-depth interviews and questionnaires. Resource persons in this research comprise of tax experts, officials at the Fiscal Policy Agency of the Ministry of Finance, and high-rank authorities at floating hospitals' operators, namely DS and RSTKA.

The latter persons are eligible to become resource persons, because currently, floating hospitals are not subjects to corporations' financing to which Income Tax facilities pleaded by this article is addressed. From these persons, information on financing schemes of floating hospitals may be validated.

Meanwhile, questionnaires were done to 29 *BUMN*, which were selected on a random basis. The objective is to identify whether the granting of Income Tax facilities would attract these *BUMN* to channel its *TJSL* funds to finance floating hospitals' operation.

C. Results and Discussion

1. Recognition of Floating Hospitals in the National Health System

Currently, formal recognition of floating hospitals by the government can be found in the enactment of Minister of Health Regulation Number 33 of 2023 on

Floating Hospital (MoH Regulation 33/2023). In that regulation, the government acknowledges the role of floating hospital in providing health services in "remote, extremely remote, marginalized, frontier, and archipelagic area, as well as areas with limited capacity to provide hospital services" (General Elucidation of MoH Regulation 33/2023). The enactment of this regulation represents the government's recognition on the role of floating hospitals within the national health system.

With their vast reach, floating hospitals play an important role in providing access to health services for people living in remote area. This is true, as floating hospitals usually dock their ships at archipelagic coastlines, as to ease people in need of health services to get medication without ferrying away from the island that they live in.⁹ In 2022, more than 50,000 people received medical treatment

⁹ Meysa Atika Puteri, "Floating Hospital in Pangkep Islands," *Riset Sains dan Teknologi Kelautan* 5, no. 1 (June 22,

2022): 9–12, accessed July 1, 2023, <https://journal.unhas.ac.id/index.php/SENSISTEK/article/view/19370>. p. 1

provided by DS.¹⁰ Meanwhile, within the span of five years, floating RS had conducted more than 1,600 surgeries in 86 islands, involving around 2,200 volunteers.¹¹ To put in a context, floating hospitals have complemented the 2,522 general hospitals and 520 specialized hospitals¹² built in 416 regencies¹³ in Indonesia. In an interview conducted on 14 June 2023, Tutuk Utomo Nuradhy, the Director of doctorShare Foundation, informed the authors that during one of its operations, DS provided primary health services and pharmacy services for 150 to 200 people in one of their barges, and 800 to 1,000 patients in their *Pinisi* ship, within only five days.¹⁴

Apart from the above services, floating hospitals also play an important role in controlling the spread of endemic diseases, such as Tuberculosis and Malaria.¹⁵ Data provided in the 2021 Indonesian Health Profile show that the average coverage of Tuberculosis treatment in Indonesia only reached 47.1%—significantly lower than the national strategic plan target of more than 85%, with the largest number of identified cases in Papua, which reached 268 Tuberculosis cases in every 100,000 residences.¹⁶ Through its Tuberculosis Management Program, DS had in 2020 been able to provide Tuberculosis identification and treatment services for more than 1,000

¹⁰ Natalia, “Resmikan Kantor Dan Klinik, Para Tenaga Kesehatan DoctorSHARE Siap Melayani Masyarakat,” *Jpnn.Com*, June 16, 2023, accessed August 1, 2023, <https://www.jpnn.com/news/resmikan-kantor-dan-klinik-para-tenaga-kesehatan-doctorshare-siap-melayani-masyarakat?page=2>.

¹¹ Willi Irawan, “floating RS Unair Berlayar Ke 86 Pulau Di Indonesia Selama Lima Tahun,” *ANTARA News*, February 13, 2023, accessed August 1, 2023, <https://www.antaranews.com/berita/3393621/rstka-unair-berlayar-ke-86-pulau-di-indonesia-selama-lima-tahun>.

¹² Kementerian Kesehatan Republik Indonesia, *Profil Kesehatan Indonesia Tahun 2021* (Jakarta: Kementerian Kesehatan RI, 2022). p. 41

¹³ Excerpted from Decree of the Minister of Home Affairs of the Republic of Indonesia Number 050-145 of 2022 concerning Providing and Updating Codes, Data on Government Administrative Areas and Islands in 2021

¹⁴ Interview with Tutuk Utomo Nuradhy on 14 June 2023

¹⁵ *Ibid.*

¹⁶ Kementerian Kesehatan Republik Indonesia, *Profil Kesehatan Indonesia Tahun 2021.*, Op. cit., p. 175

patients living in 25 villages surrounding Sentani Lake.¹⁷ Simultaneously, DS also implemented a Malaria eradication program, which aims to eradicate Malaria in regencies in Papua and West Papua provinces, including in Asmat, Yapen, and Waropen.¹⁸

Meanwhile, floating RSTKA focuses its services on maternal and child health, including congenital heart disease and prevention and treatment of stunting.¹⁹ Within the period of 2017-2022, floating RS had conducted more than 60 Caesarian Sections in various islands in Indonesia.²⁰ With sailing destination reaches as far as *Maluku* islands and *Nusa Tenggara Timur* in Eastern Indonesia, floating RS expects to expand their maternal services as to reach

the national strategic plan's maternal coverage target of more than 90%.²¹ Meanwhile, floating RS's focus on congenital heart disease is expected to reduce heart-related fetal deaths, which account for 3% of all fetal deaths (12-59 months old) in Indonesia.²²

Based on the above elaboration it can be concluded that floating hospitals have, in a way, performed the government's duties in people's healthcare, specifically in providing access to health services and eradication of endemic diseases. Recognizing the importance of floating hospitals, the government has provided floating hospitals with opportunities to receive financing from national and regional budgets, as conferred in Article 30 of the MoH Regulation 33/2023.

¹⁷ Yayasan doctorShare, *Annual Report 2020: Serving in a Pandemic*, 2021, accessed August 1, 2023, <https://www.doctorshare.org/wp-content/uploads/2021/11/Annual-report-2020-eng.pdf>.

¹⁸ *Ibid.* p. 226. Data in the 2021 Health Profile notes that not a single district in Papua and West Papua provinces is free from Malaria, with the morbidity rate in Papua reaching more than 80 people per 1,000 population, the largest in Indonesia. See: Ministry of Health of the

Republic of Indonesia, 2021 Health Profile

¹⁹ Interview with dr. Agus Harianto on 27 Juni 2023

²⁰ Rumah Sakit Terapung Ksatria Airlangga, "Membantu Kelahiran Bayi Di Kepulauan," accessed August 1, 2023, <https://rstka.id/>.

²¹ Kementerian Kesehatan Republik Indonesia, *Profil Kesehatan Indonesia Tahun 2021*.

²² *Ibid.*, p. 132

As a moving facility that reach patients located in remote islands, floating hospitals incur expenses that other types of hospitals might not. Specifically, high mobility across the archipelago will affect costs related to fuel, skippers, and seaman. These costs don't exist in land hospitals. In detail, floating hospitals incur:²³

1. fuel costs, with category of industries fuel user;
2. air and land travel fare for, volunteers to and from docking points;
3. consumables, such as medicine and acquisition of medical devices;
4. logistics costs for medicine, calculated based on proximity to docking points;
5. docking costs at various quays and harbors; and
6. management and administration costs.

Prior to the enactment of MoH Regulation 33/2023, DS and floating RS had to recover the above expenses through donations and grants, whether from individuals or corporations.

Unfortunately, these donations are usually incidental, thus cannot become sustainable financing sources.²⁴ In its 2019 annual report, DS recorded 45% of its total revenue from individual donations, whereas 42% from community groups, and only 13% were received from corporations.²⁵

Based on the elaboration in this section it can be concluded that the existence of floating hospitals has been strengthened by the enactment of MoH Regulation 33/2023. In the future, central and regional governments are responsible to allocate state and regional budgets to fund for floating hospitals' activities. The Regulation also allows for financing from other legal sources, such as those provided by corporations. Therefore, financing schemes can be designed as to create a public and private partnership. In this regard, an opportunity emerges as to obtain financing from *BUMN*). In

²³ Interviews with Tutuk Utomo Nuradhy and dr. Agus Harianto, *loc. cit.*

²⁴ Interviews with Tutuk Utomo Nuradhy and dr. Agus Harianto, *loc. cit.*

²⁵ Yayasan doctorShare, *Annual Report 2019: 10 Years Reaching The Nation*,

2020, accessed August 1, 2023, <https://www.doctorshare.org/wp-content/uploads/2021/10/Annual-Report-10-Years-Reaching-The-Nation.pdf>.

the future, floating hospitals may expect their operations to be financed by *BUMN TJSL* programs.

2. The Role of BUMN in Financing Floating Hospitals' Operation

As a sub-system of the national health system, health financing is an important aspect in attaining the goal of realizing "primary, secondary, and tertiary health efforts for the poor and vulnerable, people living in remote areas and frontiers regions which are not attractive to private sectors, including health promoting programs conducted to improve people's welfare."²⁶ Specifically for primary health services, financing shall be endeavored collaboratively between the central and local governments, and community groups, including private sectors.²⁷ Participation of private sectors are also mandated by Law Number 36 of 2009 on Health as amended

lastly by Law Number of 1 of 2023 on the Penal Code (2009 Health Law). Article 170 (3) of the 2009 Health Law confers that health financing shall be sourced from central government, local governments, private sectors, and other legal sources.²⁸ Participation of private sectors has been reiterated in Article 407 of Law Number 17 of 2023 on Health (2023 Health Law). Nevertheless, this participation is restricted to financing through the national social security and health insurance systems.²⁹

Such restriction has put an obstacle against the mobilization of *BUMN's TJSL* programs for financing health services. This kind of obstacle has been identified by Vest et al., who argued that legal issues, in whichever form they arise, have created barriers towards patients' health and welfare.³⁰ Article 22 *juncto* Article

²⁶ Appendix of Perpres 72/2012, p. 47, paragraph 264

²⁷ Appendix of Perpres 72/2012, p 35, paragraph 182

²⁸ Article 170 article (3) 2009 Health Law

²⁹ Article 173 article (1) 2009 Health Law

³⁰ Joshua R. Vest, Rachel J. Hinrichs, and Heidi Hosler, "How Legal Problems Are Conceptualized and Measured in

23 of Law Number 40 of 2004 on Nasional Social Security System (*Sistem Jaminan Sosial Nasional*, or SJSN) as amended by Law Number 4 of 2023 on Financial Sector Omnibus Law (SJSN Law) confers that health benefits in the form of "individual health services comprising of promotive, preventive, curative and rehabilitative services, including medication and health devices" may only be financed if afforded for by public or private hospitals. Similar provision is also governed in Article 67 (3) of Presidential Regulation Number 82 of 2018 on Health Security. These regulations have provided a legal framework for the enhancement of private sectors participation in health financing, not as financing source, but rather financing channels.

The enlargement of financing channels as to encompass non-governmental institutions is an

important component in the national health system reform endeavored by the Ministry of National Development Planning/National Development Planning Agency (*Bappenas*).³¹ In its 2022 White Book on National Health System Reform, the agency emphasizes the importance of intersectoral collaboration in strengthening the national health system, including enhancing *BUMN's* participation in health financing through direct procurement of medicine, vaccines, and health devices.³²

As for the record, *BUMN* has participated in financing floating hospitals through donations of health devices and cash money.³³ During the Covid-19 pandemic, *BUMN* distributed in-kind donations, namely Personal Protective Equipment to medical workers.³⁴ Nevertheless, these donations are, once again,

Healthcare Settings: A Systematic Review," *Health & Justice* 11, no. 1 (November 18, 2023).

³¹ Kementerian PPN/Bappenas Republik Indonesia, *Buku Putih: Reformasi Sistem Kesehatan Nasional* (Jakarta: Direktorat Kesehatan dan Gizi Masyarakat Kedeputian Pembangunan Manusia, Masyarakat, dan Kebudayaan,

Kementerian PPN/Bappenas, 2022). p. 40

³² *Ibid.*, p. 44

³³ Interviews with Tutuk Utomo Nuradhy and dr. Agus Harianto, *loc. cit.*

³⁴ Yayasan doctorShare, *Annual Report 2020: Serving in a Pandemic*. Op. cit., p. 50

incidental, thus cannot be a sustainable financing source.

The strengthening of *BUMN*'s role in financing floating hospitals through *TJSL* programs has found some rationales. In the above *Bappenas* White Book, *Bappenas* recommends for innovation on health financing as to attract more private corporations in providing primary health services.³⁵ Ideally, these corporations, along with *BUMN*, may improve their participation in the national health system reform through constructions of hospitals or other health facilities. Nevertheless, until then, these parties can still participate through financing of floating hospitals' activities. This can be realized through *TJSL* programs.

Normatively, *TJSL* programs, or often referred to as *Corporate Social Responsibility* (CSR), is a corporation's commitment to participate in sustainable

economic development for the improvement the quality of life and the environment which is beneficial to the corporation itself, local people, and the people in general (Article 1 number 3 of Law Number 40 of 2007 on Corporations as amended by Government Regulation in Lieu of the Law Number 2022 on Job Creation (Corporation Law). Conceptually, *TJSL* may be seen from different perspectives, among which is the real entity view. Supporters of this view suggests that corporations are entities that are separated from their shareholders, and the government,³⁶ thus CSR should not be seen as compensation to any impact caused by the corporation's activities, but rather as delivering benefits to the wider society. Consequently, *TJSL* should not be obliged, but rather considered as praiseworthy and needs to be encouraged.³⁷ The channeling of *TJSL* funds to finance floating

³⁵ Kementerian PPN/Bappenas Republik Indonesia, *Buku Putih: Reformasi Sistem Kesehatan Nasional*.

³⁶ Reuven S. Avi-Yonah, "Corporate Taxation and Corporate Social

Responsibility," *N.Y.U.J.L. Bus* 11, no. 11 (2014).

³⁷ *Ibid*.

hospitals' operation tend to follow this view, as it emphasizes on the benefits aspects of *TJSL*. The real entity view is also in line with the argument that both *TJSL* funds and taxes are costs of doing business that have a similar goal, namely to establish people's welfare through procurement of public goods and services.³⁸

Specifically for *BUMN*, the obligation to perform *TJSL* is governed in Article 2 of the Minister of State Owned Enterprise Number PER-6/MBU/09/2022 on the Amendment to Minister of State Owned Enterprise Number PER-05/MBU/04/2021 on *TJSL* (MoSOE *TJSL* Regulation). There are two implementations of *TJSL* by *BUMN*, namely: (1) financing of micro and small enterprises; and (2) other types of financing, including nurturing (of certain activities) (Article 10 (1) MoSOE *TJSL* Regulation). Moreover, other types of financing shall focus on education, environment,

development of micro and small enterprises, and other sectors determined by the Minister (Article 10 (3) of MoSOE *TJSL* Regulation). The phrase "determined by the Minister" open a possibility to channel *TJSL* funds to finance floating hospitals' operation.

Having identified costs related to floating hospitals' activities, *BUMN* can channel their *TJSL* funds to finance:

1. fuel procurement or subsidies by downstream oil and gas *BUMN*;
2. procurement or financing of travel fare for volunteers to and from docking points by air and land carrier *BUMN*;
3. procurement of consumables (i.e., medicine and health devices) by pharmaceutical *BUMN*;
4. procurement of logistic services by transportation *BUMN*;
5. procurement of docking facilities by harbor operator *BUMN*; and

³⁸ Kholid Hidayat, Alres P. Ompusunggu, and Suratno, "Pengaruh Corporate Social Responsibility Terhadap Agresivitas Pajak Dengan Insentif Pajak Sebagai Pemoderasi (Studi Pada

Perusahaan Pertambangan Yang Terdaftar Di BEI)," *JIAFE (Jurnal Ilmiah Akuntansi Fakultas Ekonomi)* 2, no. 2 (March 12, 2018): 39–58.

6. financing of operational costs by banking or other financial services *BUMN*.

In line with the national health system reform proposed by *Bappenas*, these *BUMN* must be incentivized to strengthen its contribution to health financing. One way of doing so is to grant them with Income Tax facilities.

3. The Potential Regulation of Income Tax Facilities for BUMN Participating in Financing Floating Hospitals' Activities

a. Conceptual Framework on Income Tax Facilities

In an interview conducted on 27 June 2023, Syarif Ibrahim, fiscal policy analyst from the Center for State Revenue Policy of the Indonesian Fiscal Policy Agency, Ministry of Finance of the Republic of Indonesia, informed the authors that, conceptually, there are three fiscal policy

components that may affect a state's economy, namely spending, revenue (i.e., taxes and non-tax state revenues), and financing.³⁹ These components may also be used to provide *ratio legis* in formulating Income Tax facilities. Nevertheless, taxes tend to affect the economy only indirectly—they stimulate people to do certain activities, whereas spending and financing have direct impact on the economy.⁴⁰ As a stimulant, tax facilities follow a "push and pull factor"⁴¹ concept by which tax facilities—the pull factor—is expected to direct its recipient's behavior as to act in accordance with the underlying policy of the facilities (e.g., to engage in pioneer industries, or in philanthropic activities)—the push factor. This is in line with the OECD Guidance Note of CRM, which proposed for two approaches in increasing tax compliance, namely economic and behavioral approaches.⁴² In this

³⁹ Interview with Syarif Ibrahim, on 27 June 2023.

⁴⁰ Interview with Syarif Ibrahim, *loc. cit.*

⁴¹ Interview with Haula Rosdiana on 29 June 2023.

⁴² Yotasa Raidah Khairiyah and Muhammad Heru Akhmadi, "Studi Kualitatif: Dampak Kebijakan Insentif Pajak Usaha Kecil Dan Menengah

regard, income tax facilities serve as a tool in implementing the economic approach.⁴³

Discussions on Income Tax facilities often take place on finding a balance between the amount of revenues forgone by the state, and the multiplier effect that the facility can create (e.g., job hiring, creation of competition). Therefore, a proposal for an Income Tax facility must be preceded by a cost and benefit analysis⁴⁴ whereby the "cost" component represents the "lost revenue from investments that would have been made anyway", as well as indirect costs, whereas the "benefit" component represents the "revenue and economic rise", as well as social benefits obtained through the increasing number of investments. Using the analysis, an Income Tax facility may only be granted if the benefits outweigh the costs, as such that the lost revenues are justified by the multiplying effect of

the facility. In this regard, Lennihan observed that in formulating a tax facility, tax policy makers tend to underassess the weight of the cost component, due to uncertainty arising from inaccuracy in estimating costs.⁴⁵

Income Tax facility is commonly used as tool to attract foreign investment, although not the only one. The 2017/2018 Global Investment Competitiveness Report, as cited by Ibrahim, reported that low tax rates only come at seventh place in a list of factors affecting investment location, below other factors such as political stability and market size.⁴⁶ Nevertheless, Kleem and van Parys, as cited by Putri, found that Income Tax facilities, specifically tax holiday, is an effective tool in attracting foreign investments, and that developing states compete with each other in

Terhadap Kepatuhan Pajak Dan Penerimaan Negara," *Jurnal Manajemen Keuangan Publik* 3, no. 2 (December 10, 2019): 36–45. p. 39

⁴³ *Ibid.*

⁴⁴ Interview with Syarif Ibrahim, *loc. cit.*

⁴⁵ Joseph C. Lennihan, "What Is The Value of Estimating the Cost of Tax Incentives?," *Journal of Multistate Taxation and Incentives* 25 (August 2015).

⁴⁶ Interview with Syarif Ibrahim, *loc. cit.*

granting tax holidays more than in granting tax allowances.⁴⁷

Within the context of incentivizing *BUMN* for their participation in financing floating hospitals' operation, social benefits dominate the benefit component and must be thoroughly considered, because the higher revenue that such hospitals can generate, the higher scale of health services they can perform, thus the healthier the society. It is admitted, however, that revenue and economic rise might equal to zero, for floating hospital operators are not-for-profit entities.⁴⁸

In a social context, Income Tax facilities may direct people to do certain behavior.⁴⁹ In the case of incentivizing *BUMN* to allocate its *TJSL* funds for financing floating hospitals' operation, one can legitimately expect that more

BUMN will be motivated to channel their *TJSL* funds to finance floating hospitals' operation.

Having said that, it is essential to determine a proper type of Income Tax facility for *BUMN*. In this regard, Rosdiana argued that floating hospital financing may be classified as philanthropy, thus comparable to those activities facilitated by Article 6 (1) letter i, j, l and m of Law Number 7 of 1983 on Income Tax as amended by Government Regulation in Lieu of the Law on Job Creation (Income Tax Law). The provision grants corporations committing philanthropic activities with partial Income Tax facility, one of which is donation made during natural disasters. Tax allowances granted on philanthropic activities during these times are justified by the fact

⁴⁷ Wika Arsanti Putri, "Insentif Pajak Dalam Membentuk Keputusan Investasi," *Moneter - Jurnal Akuntansi dan Keuangan* 4, no. 2 (October 2, 2017): 132–138, accessed August 1, 2023, <https://doi.org/10.31294/moneter.v4i2.2445>. p. 135

⁴⁸ Interview with Syarif Ibrahim, *loc. cit.* In the context of Income Tax facility policies, benefits are not only in the form

of benefits that can be felt directly, but also indirectly in the form of long-term impacts, although this requires a separate calculation.

⁴⁹ Danny Septriadi and dan B Bawono Kristiaji, *Insentif Pajak Untuk Kegiatan Filantropi*, DDTC Working Paper, February 2017.

that the government has limited budget, so that the acceleration of recovery in post natural disaster time requires external financing, including donation.⁵⁰ While maintaining international best practices, the granting of such facility is expected to increase number of donations, which in turn is expected to encourage solidarity from other elements within the society.⁵¹ It must be kept in mind that any Income Tax facility granted in relation to philanthropic acts must be preceded with affirmative answers as to the question of whether the facility would actually increase donation, and whether tax facility is necessary to be implemented.⁵²

Based on the above elaboration it can be concluded that the government should seriously consider formulating Income Tax facility for *BUMN* performing *TJSL* program by financing for floating hospitals' operation. The policy would serve

as a push factor that would increase *BUMN*'s participation in health financing, as a form of social solidarity. As a multiplier effect, the channeling of *TJSL* funds to floating hospitals' operation would flourish more floating hospital initiatives. Ultimately, health services will become more accessible throughout the archipelago, thus the government will be able realize one of its main obligations to the people.

b. The Need of Intersectoral Coordination in Formulating Income Tax Incentive

Having justified the formulation of Income Tax facility for *BUMN* performing *TJSL* program by financing for floating hospitals' operation, it is necessary to identify phases through which the facility should be formulated. As health is a complex sector, shared responsibilities amongst relevant institutions will be

⁵⁰ Interview with Haula Rosdiana, *loc. cit.*

⁵¹ *Ibid.*

⁵² Kees D. Thompson, "A Penny for Your Clots? Examining Tax Incentives for

Whole Blood Donation under FDA Guidelines," *Food & Drug Law Journal* 75 (2020). p. 114

challenging, for sectors have their own targets and institutions have their own mandates, resulting in difficulties in performing multisectoral acts.⁵³

Having said that, the initiation to formulate an Income Tax facility for *BUMN* performing *TJSL* program by financing for floating hospitals' operation must be performed by the Minister of Health, as floating hospitals fall within its domain of supervision.⁵⁴ Specifically, the Minister of Health may supply information on the performance of health services in remote area, and the contribution of floating hospitals in fulfilling those services for people living in those area. As a leading institution in regulating health affairs, the Minister of Health will have a bird's eye view on the holding of the national health system, as such that overlaps amongst different ministries can be avoided.

In the context of non-fiscal facilities, the Minister of Health can push policy makers in different ministries to support floating hospital financing through spending policies (e.g., allocation of budget to finance for floating hospitals' operation). In this regard, the Minister of Health may coordinate with the Minister of Transportation of the Republic of Indonesia. Nuradhy⁵⁵ mentioned that the operationalization of hospital ships requires fulfilment of certain compliance procedure, including payments of docking fees—as a type of non-tax state levy, which are payable annually. Should the government decide to relax this payment, the Minister of Health should initially consult the Minister of Transportation, before consulting to the Minister of Finance for relaxation of such fees, particularly the Director General of State Budget.⁵⁶ Two issues should

⁵³ Viroj Tangcharoensathien et al., "Multisectoral Actions for Health: Challenges and Opportunities in Complex Policy Environments," *International Journal of Health Policy and*

Management 6, no. 7 (May 16, 2017): 359–363.

⁵⁴ Interview with Syarif Ibrahim, *loc. cit.*

⁵⁵ Interview with Tutuk Utomo Nuradhy, *loc. cit.*

⁵⁶ *Ibid.*

be addressed in this meeting, namely (1) whether floating hospitals acquire sufficient external financing (e.g., donations); and (2) whether floating hospitals should be granted with non-fiscal facilities, such as reduction or exemption of non-tax state levies, including docking fees.⁵⁷

Similar to the above procedure, formulation of Income Tax facility for *BUMN* performing *TJSL* program by financing for floating hospitals' operation must also be initiated by the Minister of Health, particularly because fiscal facilities are intersectoral and serve as last option after all other policies to support for the functioning of the government have been exhausted. In other words, as controller of the state budget, the Minister of Finance is not expected to initiate discussions on Income Tax facilities granted to certain sectors. Rosdiana illustrated that during the formulation of Income Tax allowance governed in Article 6

(1) letter i, j, l. and m of the Income Tax Law, supporters of the policy had conducted and published various research, as well as paying visits to various fora hold by the House of Representatives.⁵⁸

c. Potential Regulation of Income Tax Facilities for Floating Hospitals' Financing by BUMN

Currently, there are two types of Income Tax facilities enforceable in Indonesia. First, the tax holiday, which allows deduction of Income Tax for up to 100%; and second, the tax allowance, which is commonly granted by way of cost deductions (including social donations) which would not be allowed without the facility. Other than cost deductions, tax allowance may take form of reduced tax rates on business profits, accelerated depreciation, loss compensation, and special deduction schemes for research and development.⁵⁹ It should be

⁵⁷ *Ibid.*

⁵⁸ Interview with Haula Rosdiana, *loc. cit.*

⁵⁹ Nupur Jalan, "BEPS 2.0: Pillar 2, Tax Incentives and Its Interplay - Can

Subsidies Replace Tax Incentives," *Journal of International Taxation* 32 (October 2021). p. 44

reckoned that any Income Tax facility must be formulated as an exception to the general rule conferred in the Law.⁶⁰ The otherwise is not plausible, because the general paradigm of Income Tax Law is to confiscate some part of people's properties, and not granting fiscal facilities.

Comparative studies on Income Tax facilities for philanthropic acts in other states reveal that most states incentivize these acts with tax exemption and tax deduction.⁶¹ Furthermore, by granting Income Tax facilities, the government encourages the grantees to directly contribute towards the development of sectors they wish to fund.⁶² In doing so, the government would allow grantees to deduct those donations as costs in their financial

statements, and ultimately reduce the amount of taxable income and taxes payable.⁶³

The Income Tax facility governed in Article 6 (1) letter i, j, l, and m of the Income Tax Law is restricted to donations in specific sectors, namely education and research and development. Other sectors like health, gender mainstreaming, and climate change, are yet to be governed in the Law.⁶⁴ An opportunity to regulate floating hospital financing can be found in Article 6 letter k of the Income Tax Law—further governed in Government Regulation Number 93 of 2010 on Deductible Donations on National Disasters, Research and Development, Educational Facilities, Sports, and Social Infrastructure (GR 93/2010),

⁶⁰ Nathan Alstadt, "Ending the Economic War Among States," *Cleveland State Law Review* 70 (2022). p. 350

⁶¹ Tri Maruli Sidabutar, Poltak Maruli John Liberty Hutagaol, and Jasman Jasman, "Analisis Komparatif Kebijakan Perpajakan Atas Kegiatan Filantropi," *Journal of Applied Accounting and Taxation* 5, no. 2 (October 31, 2020): 175–184. p. 178

⁶² *Ibid.*

⁶³ Vicky Ramadhan and Suparna Wijaya, "Alternatif Sumbangan Penanggulangan

Bencana Sebagai Pengurang Penghasilan Bruto (Studi Kasus Gempa Lombok)," *Jurnal Pajak dan Keuangan Negara (PKN)* 2, no. 1 (September 30, 2020): 46–56. p. 51

⁶⁴ Haula Rosdiana, Murwendah Murwendah, and Inayati Inayati, "Tax Incentives for Indonesian Philanthropy: The Balance of Effectiveness of Pull Factor and The Role of State," *Al-Iqtishad: Jurnal Ilmu Ekonomi Syariah* 11, no. 2 (December 30, 2019). p. 258

which confers that expenses incurred for the construction of social infrastructure may be deducted against taxable income. Arguably, floating hospitals can be classified as social infrastructure, for Article 1 letter e of GR 93/2010 defines social infrastructure expenses as those incurred for the construction of facilities and infrastructures used for public interests and not for generating profits. Article 5 (2) of GR 93/2010 further emphasizes on the restriction to "facilities and infrastructures." This phrase is further elucidated as to include "prayer houses, art and culture galleries, and polyclinics." Analogically, floating hospitals can be classified as social infrastructures, just like polyclinics can.

The above classification is possible, as both the Income Tax Law and GR 93/2010 does not define social infrastructures. Nevertheless, for legal certainty purposes, one can apply for a ruling to the Director General of

Taxes as to determine the scope of "social infrastructures" within the income tax laws.⁶⁵

At this point, it is safe to say that the regulation of Income Tax facility for *BUMN* performing *TJSL* program by financing for floating hospitals' operation has a solid legal foundation. Nevertheless, empirical foundation is necessary in realizing this potential. To identify *BUMN*'s interests in financing floating hospitals' operation, the authors conducted a questionnaire to 29 *BUMN* corporate secretaries. A random sampling, by which any *BUMN* operating in Indonesia may become respondents, was deployed. The results show that only 1 respondent (3.3%) claimed to have received a request to finance floating hospitals' operation. This means that *BUMN* lacks interests in contributing to floating hospitals financing, let alone channeling its *TJSL* funds to cover their operation. This is in line with the fact that 50% of DS financing is received from grants.⁶⁶ In the case

⁶⁵ Interview with Syarif Ibrahim, *loc. cit.*

⁶⁶ Interview with Tutuk Utomo Nuradhy, *loc. cit.*

of RSTKA, grants cover for all operational expenses.⁶⁷

The only respondent that received request for financing provided cash financing through its *TJSL* program. This is in line with the information provided by DS and floating RS, which informed that financing received through corporate *TJSL* is incidental, and may be granted in kind (e.g., health devices, fuel) or cash. The questionnaire also shows that corporations' interests in contributing to floating hospitals' operation may be affected by the existence of Income Tax facilities.

With regards to regulation of Income Tax facilities for *BUMN* performing *TJSL* program by financing for floating hospitals' operation, the authors argue that although it has found solid legal and empirical foundation to be formulated, some legal issues must be addressed to provide more certainty within the laws. First, the Minister of State-Owned Enterprise needs to expand the scope of *TJSL*

financing channels as to include health financing. The restricted scope of *TJSL* program conferred in Article 10 of MoSoE *TJSL* Regulation has led to the lack of *BUMN*'s interests in financing floating hospitals' operation.

Second, the Minister of Finance needs to expand the scope of Income Tax facilities governed in Article 6 of GR 93/2010, as to include donations made in the construction of health facilities, including the operation of floating hospitals. The existing sectors of national disaster relief, research and development operation carried out in Indonesia, providing educational facilities, sports coaching, and social infrastructures have yet to attract *BUMN*'s interests in financing floating hospitals' operation.

Other issues that may need to be resolved before regulating Income Tax facilities for floating hospitals' financing by *BUMN* is the lack of *BUMN*'s knowledge on Income Tax facilities in any sector

⁶⁷ Interview with dr. Agus Harianto, *loc. cit.*

resulted from the lack of socialization of the facilities by the government.⁶⁸ To overcome this situation, the government needs to enact implementation regulations of GR 93/2010 and hold information sessions with corporations, including *BUMN*. Specifically, the Minister of Finance may further regulate on the definition of "social infrastructure" as to include health facilities like floating hospitals.

All the above efforts are necessary, as regulating Income Tax facilities for floating hospitals' financing by *BUMN* may reduce inequality resulted from geographical conditions. This is true, as floating hospitals can reach people living in various islands in Indonesia. Nevertheless, Layser reminded that geographical-based fiscal facilities must be followed with investments.⁶⁹ This means that the Income Tax facilities proposed in this article must not, although may

become a sustainable financing source, be a stand-alone policy. It must be complemented with other policies that would provide more sustainable solution to health accessibility for people living in remote, extremely remote, marginalized, frontier, and archipelagic area, as well as areas with limited capacity to provide hospital services.

D. Conclusion

Based on the elaboration in the previous sections, it can be concluded that floating hospitals have been recognized in the national health system since the enactment of MoH Regulation 33/2023. Such recognition is important in ensuring government financing, whether through national or local budget. Additionally, floating hospitals may also be financed by community groups, such as *BUMN*. Funding channeled through *BUMN*'s *TJSL* programs may become a

⁶⁸ Rosdiana, Murwendah, and Inayati, "Tax Incentives for Indonesian Philanthropy: The Balance of Effectiveness of Pull Factor and The Role of State." *Op. cit.*, p. 260

⁶⁹ Michelle Layser, "How Place-Based Tax Incentives Can Reduce Geographic Inequality," *Tax Law Review* 20 (2020).

sustainable source of financing floating hospitals' operation.

As a push factor to encourage *BUMN* to participate in financing floating hospitals' operation, policy makers should seriously consider granting *BUMN* with Income Tax facility. Two things must be performed by the government to make *BUMN*'s *TJSL* funds a sustainable source of financing floating hospitals' operation.

First, the Minister of Health, as a leading sector in governing health affairs, must establish communication with the Minister of State-Owned Enterprise to expand the focus sectors of *TJSL* financing as to include health sectors. Second, based on the affirmative response of the Minister of State-Owned Enterprise, the Minister of Health must then request the Minister of Finance to expand the scope of tax allowance governed in Article 6 (1) letters i, j, l, and m of the Income Tax Law *juncto* Article 1 letter e of GR 93/2010. This can be done through: 1) expanding the definition of social infrastructure in

the above provisions as to include floating hospitals; or 2) insert another letter in those provisions as to include donations made to health facilities provided in certain areas which encompass floating hospitals' operation.

The first option is more feasible, as it does not require changing the Income Tax Law which needs the parliament's approval. Interpretative regulation such as ministerial regulations are sufficient to provide legal grounds to grant Income Tax facilities for *BUMN* performing *TJSL* program by financing for floating hospitals'

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