

JURIDICAL ANALYSIS OF VIRTUAL OFFICE COMPANY DOMICILE AND THE IMPLICATIONS TOWARD TAXBEARER IMPOSITION

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Abstract-Actually the office choice in the form of virtual office is not merely matter of land limitations and the impact of information and communication technology development. Juridical problem of virtual office for the company is matter of the company domicile that regulated in the Law on Limited Liability Company and domicile of the company as taxbearer set forth in the General Taxation Provision. The Limited Liability Company Law does not prohibit the use of virtual office as the domicile of the company, but in terms of taxation the domicile of the company is determined "according to the actual circumstances", while the domicile of virtual office is the virtual domicile so the use of virtual office does not indicate the company domicile according to the actual circumstances which are not in accordance with Article 2 (6) of the Law Number 36 of 2008. So it can be concluded, that the two rules governing the company domicile, namely the Limited Liability Company Law (Law Number 40 of 2007) and the Law Number 36 of 2008 concerning the Fourth Amendment to Law Number 7 of 1983 concerning Income Tax, there are asynchronous provisions regarding the use of virtual office as the company domicile.

Keyword: domicile; virtual office; tax bearer.

1. INTRODUCTION

According to data presented by the Minister of Cooperatives and SMEs, in 2014 the number of entrepreneurs in Indonesia was only 1.67%, three years later in 2017 the number of entrepreneurs increased to 3.1%, (Jakarta Newspaper, 8 January 2018). This means that in three years there was an increase of 1,43 %. Despite the small increase, from the total population of Indonesia which is 225 million people, it is not inferior to Malaysia, which is 6% of the total population of 32.6 million people (7 times of Indonesian population). It is indirectly bring about increase in the fulfillment of land needs where the business is domiciled. The company domicile with choice of virtual office is increasingly becoming the choice now adays.

Actually the office choice in the form of virtual office is not solely matter of land limitations and increase in the number of entrepreneurs from year to year, the impact of rapid

development in information and communication technology is also one of the factors for leasing of virtual office. Virtual office transactions cannot be separated from the use of internet technology, so they are included in e-commerce transactions. The convenience provided by the use of information technology makes humans more efficient in transactions. E-commerce transaction is legal relationship conducted electronically by networking computer-based information system with communication system based on telecommunications-based networks and services which is further facilitated by the existence of global internet computer network (network of networks).[1]

E-commerce transactions are usually preceded by bidding electronically through web sites on the internet or by posting on mailing lists and newsgroups or through invitations to customers through the business to customer model, in which the parties can only communicate through the internet media. It can be said that e-commerce transactions are one form of modern business that is non-face, non-sign, paperless, and borderless which refers to all forms of transactions based on the electronic process of data transmission electronic. Nai Wen and An Yi Liu also stressed, "If the consumers exchange information by Website's group or interpersonal relationship could help creating connection actively then the great interrelationship will be exist. Though some group's activities could add additive values".[2]

The development of companies that use virtual office as company domicile is due to the increasing price of land and buildings in the office or business zone. Strategic land in big cities is increasingly limited while companies that need more land, this is what makes the development of the company's office with virtual office model.

Unwittingly, the development of virtual office bring impacts not only land but the problem is also virtual office domicile because of its virtual position. Whether the domicile of virtual office company that is not place of business which in fact does not contradict the Limited Liability Company Law

(Law No. 40 of 2007)? then the domicile contained in the virtual office it can not be separated with the registered address of business entity taxbearer in fulfilling its obligations as taxbearer.

Based on the description above, then a legal problem can be formulated namely:

1. Is the use of virtual domicile justified under the Limited Liability Company Law?
2. What is the legal implications for taxbearer that use company virtual office according to the taxation regulation?

2. Virtual Office Concepts and Regulations

Virtual Office is basically an office that is not real. Wikipedia translates it as a 'workspace' located in the internet world, where an individual can complete the tasks required to carry out his professional or personal business without having a 'physical' business location. Virtual office is a form of office service application in a virtual format that works online.

A newly established company and in startup phase preferred way of on line in the form of virtual office as business office choice, because some advantages as compared with the nonvirtual office, as said by Takumi Shimizu, Yusuke Takada and Takashi Iba, that there are results that become add value due to technological innovation, As result dynamic changes of economy are caused by competition among them as they change their routine through technological innovation.[3] Virtual offices are usually in the form of renting office space (physical) just to carry out administrative and secretarial functions of the office.

The purpose of businesses doers by using virtual offices is to have prestigious office address but do not have to buy or rent office space physically as in general. In the virtual office various facilities are available that not only have the operator in charge of receiving and sending back (forward) administrative needs of correspondence for tenants, but also has a meeting room that can be used at any time when holding company meetings or with clients. In essence, the virtual office is intended to reduce the cost of purchasing or leasing an office, but can still have an address for corporate correspondence activities in strategic areas. So that the Virtual office acts as a cost reduction, because Virtual Office users, as entrepreneurs, cannot be separated from the economic principle, namely efficiency.

It is known three rental concepts of virtual office, namely: administration virtual office, serviced office, and co working space. All the three have different concept, namely:

- 1) Administration virtual office is a network office service that functions as an administrative representation of company. One virtual office address can be used by several companies as official correspondence destination. Usually the manager of this virtual office also provides reception facilities as telephone recipients and handling correspondence. However, there are four business sectors that are not permitted to use room rentals with this

concept, namely: e-commerce, construction, tourism, and property.

- 2) Serviced office, the agency that provides services with a more complete facilities such as furniture, computer supplies, reception, internet connection, even waitress. This service office can be rented daily, monthly, or even annually. The price is affordable and not as expensive as conventional office rental costs become more value for this concept. Service offices can be a solution for business people who are not allowed to use virtual offices. With this concept, entrepreneurs will get licenses for five years, certainly it will be more profitable when compared to a virtual administration office that is only given a business license for one year.
- 3) Co-working space. Unlike the concept of virtual offices and service offices aimed at corporate-shaped corporate segments, the concept of joint offices is targeting freelancers and creative industry workers. In that place they can meet and share one room with work desks, the internet, and even meeting rooms that can be rented complete with multimedia devices.

The definition of virtual office appears in the Minister of Finance Regulation (PMK) Number 147 / PMK.03 / 2017 Regarding the Procedures for Taxpayer Registration and the Elimination of Taxbearer Identification Numbers and the Inauguration and Revocation of Inauguration of Taxable Entrepreneurs (PKP). Article 1 number 22 states that:

"Virtual Office or Co-working Space, hereinafter referred to as Virtual Office, is an office that has physical space and is equipped with office support services provided by the Virtual Office manager to be used as a domicile, place business activities, or joint correspondence by 2 (two) or more Entrepreneurs for which the utilization of the said office is in any form of payment, excluding building rental services and serviced office services."

Moreover, in the Minister of Finance Regulation Number 147 / PMK.03 / 2017, there is one of the conditions the fulfillment of conditions, namely virtual office manager must provide physical space as place of business for prospective PKP.

Until now there are no other definitions in the legislation, other than in the taxation regulations and the Jakarta Regional Regulation. The DKI Jakarta Regional Government has approved the legality of the virtual office as notified by the Circular of One-Stop Integrated Service Agency (BPTSP) Number 06 / SE / 2016 Regarding the Issuance of Domicile Certificate and Further Permits for Virtual Office Users. The Circular contains the following rules:

Certificate of Domicile of the company / business entity / company / individual / cooperative having virtual office and subsequent business licenses (for example SIUP, TOP, TDUP, IUJK, etc.) can be given to business users of virtual office users who are:

- a. Business entities that already have offices or locations of business activities that are in accordance with the zoning and must be proven with valid documents such as SKDBU or Business License that lists the office location or location of the business activity.
- b. Business entity / individual company that is active in residential or non-permanent location (such as co-working spaces or other non-permanent pub spaces) that meets the following criteria:
 - i. Does not change the function of the residence.
 - ii. Do not use the road shoulder as a place of business or parking area.
 - iii. Does not cause water, air, or noise pollution beyond the household scale.
 - iv. Do not use equipment or machinery that are automatic in the production process.
 - v. Does not interfere with environmental order.

So the use of Virtual Office as office address is entrepreneurstrategy to reduce office rental costs in strategic office areas.

3. Essence of Company Domicile According to the Company Law

As subject of the law in general, always has domicile is the term for an individual legal subject or domicile is legal entity subjects is essential because it is one identity for legal subjects, it is important when:

- a) a place where one must get married (78 BW);
- b) address of someone when summoned by the court (BW 1393);
- c) a person dealing with relevant authorized court (207 BW)

So the domicile is very important for people and legal entities.

Domicile is one of the elements required to be owned by each company, as the domicile is what will be the identity of a company at the time of operation beside the company name, domicile should also be mentioned in a written in the articles of association. Conditions requirements that need to be considered regarding the domicile as mentioned in Article 5 of Law of Limited Liability Company as follows:

- 1) The Company has a name and domicile in the territory of the Republic of Indonesia determined in the articles of association.
- 2) The Company has a complete address in accordance with its domicile.
- 3) In correspondence, announcements issued by the Company, printed matter, and deeds in case the Company becomes a party must state the full name and address of the Company.

In the explanation of Article 5 of the Limited Company Law, it is further explained that:

- a. The domicile of the Company as well as the headquarters of the Company.
- b. The Company must have an address in accordance with its domicile, which must be mentioned, among other

things in correspondence and through this address the Company can be contacted.

Furthermore, in the context of the application for ratification of the company's legal entity, it is affirmed in Article 9 paragraph (1) letter a of the Company Law, that the application for ratification of the company's legal entity shall at least contain the Name and Location of the Limited Company and the Address of the company (Article 9 paragraph (1) letter e). In this Article 9, it appears that there is a different meaning in the terms of ratification in letters a and e, in addition to listing the company's domicile, it must also include the company's address, meaning that the address and place of domicile have a different meaning.

According to M. YahyaHarahap, essence of domicile contain various juridical meaning, among others:

1. The domicile is the legal domicile of the Company
2. The domicile is legal jurisdiction for the Company to conduct business activities
3. The domicile, is commercial domicile for the Company to conduct commercial activities
4. The domicile, is the principal place for the Company to regulate the implementation of the aims and objectives and the Company business activities.[4]

Article 15 paragraph (1) also mentions the domicile, that the Articles of Association (AD) contain at least the Company's Name and Domicile. Expanded in Article 17 paragraph (1) that the Company has a domicile in the city or regency in the territory of the Republic of Indonesia as determined in AD. In Article 17 paragraph (2) it is stated that the Domicile mentioned in paragraph (1) is also the company's head office.

Based on the above explanation, the use of virtual office as the address of the company did not violate the law (Limited Liability Company Law) because it can be considered as the basis for the Company's commercial domicile. The domicile of the company mentioned in AD is considered as the principal place which is the main place or office center of the company as stipulated in Article 17 paragraph (2) of the Law of Limited Liability Company.

When the company will make changes to the AD related to changes in the Name and Place of the Company is change in certain AD, then several conditions must be met in accordance with the provisions of the Limited Liability Company Law, namely:

- a. must get the approval of Minister (Article 21 paragraph (2));
- b. stated in notarial deed in Indonesian language (Article 21 paragraph (4) and
- c. the request for amendment is submitted to the Minister within 30 days from the date of the notarial deed containing the amendment.

So related to changes in the company's domicile is change that must be approved by the Minister whose nature must get written response whether the application is accepted or rejected, not merely a one-sided notification from the applicant.

From the description of several articles of the Limited Liability Company Law above it can be concluded that, there is no prohibition on the use of Virtual Office domicile to be included in the company's AD. The domicile listed in AD is the company's head office. The company's address must be in accordance with its domicile. In the elucidation of article it is not explained what if the company's address does not match the domicile of the company. The mention of the term address in the Limited Liability Company Law is only contained in Article 5, while the mention of a Domicile is contained in four articles, namely Article 9, Article 5, Article 17 and Article 21.

4. Implications of Using Virtual Office Addresses for Taxbearer Imposition

The company must have complete address in accordance with its domicile, and the company administration must state the complete address of the company in AD. The Limited Company Law does not provide certain requirements for the company when determining its domicile or address other than the conditions under Article 5. While there is Article 2 paragraph (6) of Law Number 36 of 2008 concerning the Fourth Amendment to Law Number 7 of 1983 concerning Income Tax, states "the place of domicile of the body is determined by the Director General of Tax according to the actual situation".

Further explanation of Article 2 paragraph (6) of Law 36/2008 is referred to among others:

- a. Determination of residence of individuals or domicile of the entity is important to determine which Tax Office that has taxation jurisdiction for the income received or obtained by the individual or entity.
- b. Essentially the place of personal residence or domicile of the entity is determined according to the actual situation. Thus the determination of residence or domicile is not only based on formal considerations, but rather based on reality.
- c. Several things that need to be considered by the Director General of Taxes in determining person's residence or domicile of the entity, include domicile, residential address, family residence, place for conducting the main business or other matters that need to be considered to facilitate the implementation of fulfilling tax obligations.

In taxation, the domicile of entity is determined according to the actual situation, so it is not formal, based more on the facts of actual business activities.

Based on Minister of Finance Regulation Nnumber 68 / PMK.03 / 2010 About Small Employers Limitation of Value Added Tax, Employers are obliged to report his business to be confirmed as the Taxable Entrepreneur, when up to a month in the fiscal year the amount of gross income and / or the gross revenue exceeds Rp. 600,000,000.00 (Article 4 PMK 68 / PMK.03 / 2010). PKP confirmation is given by DGT after verification. (Article 4 paragraph (3) PMK 73 / PMK.03 / 2012).

Verification (Article 9 PMK- 146 / PMK.03 / 2012) of Taxbearer in the framework of establishing PKP includes

testing activities to fulfill subjective and objective requirements, including testing the truth of the status of the entrepreneur, the truth of the address of the entrepreneur, and the truth of the existence of the entrepreneur concerned at the address These include maps of the location of business activities, and photos of places of business activities.

Based on the explanation of the PKP confirmation rules above, related to the use of Virtual Online, the PKP address used is the domicile address of the entrepreneur which is based on reality and is not allowed to use the virtual office address.

The conclusions that can be drawn based on the above explanation are as follows:

1. The use of virtual office to have company address don't violate the law (Limited Company Law) because it can be considered as the basis for the commercial domicile of the Company as one of the meanings of domicile, is the commercial domicile for the Company to conduct commercial activities. However, the address or domicile of the Company, including virtual online, must be stated in the articles of association (see Article 15 paragraph (1) letter a of the Limited Company Law), and must be stated in the application for ratification of legal entity status (Article 9 paragraph (1) letter e of the Company Law).
2. For taxbearer who are PKP, namely WP which has turnover exceeding Rp 600,000,000.00 in a year, the use of virtual offices is not permitted for tax purposes because in the PKP inauguration the verification is carried out including Testing the fulfillment of subjective and objective requirements including testing the correctness of status, the truth of entrepreneur address, and the truth of relevant entrepreneur existence at that address, including map of business activities location, and photos of the business place.
3. However, actually the use of virtual office for tax purposes is indeed not allowed for all taxbarer not only PKP. This is clearly stated in Article 2 paragraph (6) of the KUP Law and its explanation which essentially states that the domicile in terms of taxation is the individual residence or the entity domicile is determined according to the actual situation. Therefore, for the fulfillment of taxation rights and obligations for taxbearer who also use virtual office, the domicile is not the virtual office address but the individual domicile or the entity domicile is determined according to the actual situation.

5. CONCLUSION

Company domicile is essential because it is one of the company identities. Law Number. 40 of 2007 (Limited Liability Company Law) do not regulate and there are no restrictions these of virtual office as the company address, so do not violate the Limited Liability Company Law. Virtual office address usage can be considered as commercial domicile, company domicile in AD can be considered as the principal place which is the main place or headquarter of the company (Article 17 paragraph (2) of the Limited Liability Company Law).

Virtual office use for tax purposes is prohibited, because from the taxation side, the domicile is determined "according to actual circumstances", or the fact while the use of virtual office domicile as the company address do not indicate the company "according to the actual circumstances".(Article 2 paragraph (6) of Law Number 36 Year 2008.

So it can be concluded, that the two rules that govern the company domicile, namely the Limited Liability Company Law and the the Law Number 36 of 2008 concerning the Fourth Amendment to Law Number 7 of 1983 concerning Income Tax, there are asynchronous provisions regarding the use of virtual office as the company domicile.

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