



## IMPROVING TAX COMPLIANCE OF THE CONSTRUCTION SECTOR IN INDONESIA: A JURIDICAL PERSPECTIVE \*)

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Article	Abstract
<p><b>Keywords:</b> <i>Tax; Construction; Tax Compliance</i></p> <p><b>History of Article</b> Received: 11 August 2022; Reviewed: August 15, 2022; Accepted: 18 August 2022; Published: 21 August 2022;</p>	<p>Data in the form of summary statistics of construction companies, the number of individual construction businesses, the occurrence of fictitious subcontractors and/or borrow-to-use companies, and other potential frauds that can occur in the construction services sector can create tax potentials that can have a double effect on tax revenue in Indonesia. Based on normative juridical studies, two main conclusions are drawn. First, the tax regulation in the construction services business sector has not yet synergized the KUP Law, the Income Tax Law, the VAT Law, and the Construction Services Law. Second, efforts to improve construction services must be carried out through understanding the occurrence of several modes, such as fictitious or borrowing subcontractors and litigation and non-litigation disputes in the construction services sector, which are synergized at least with the KUP Law, Income Tax Law, the VAT Law, and the Construction Services Law. It is recommended that the Tax Authority actively use Article 35 A of the KUP Law in requesting data on information from litigation and non-litigation agencies related to the construction services sector, proving Fictitious or loan-use Subcontractors, and carefully applying positive corrections to costs following Article 6 paragraph (1) letter The Income Tax Law simultaneously imposes Article 23 Income Tax Objects on gifts in any name and form for transactions related to Fictitious Subcontractors or saving-use companies if Government Regulation Number 9 of 2022 is not yet enacted.</p>

### 1. INTRODUCTION

The construction sector plays a vital role as a catalyst that can spur the growth of several other economic sectors in the era of globalization and the industrial revolution 4.0.<sup>1</sup>

**\*Disclaimer:** This article is a private scientific study of the researcher and does not reflect the institution's opinion/policy.

<sup>1</sup> Badan Pusat Statistik (1), Statistka Konstruksi 2020, (Jakarta: Badan Pusat Statistik, 2020), p. 3

The results of construction activities can be seen from the physical construction results, including buildings, roads, bridges, rail and railway bridges, tunnels, water and drainage buildings, sanitation buildings, airports, ports, electrical and communication buildings, and the installation of construction activities—remarkable, and so on.<sup>2</sup>

In Indonesia, the construction sector is one of five business fields with a high contribution to Gross Domestic Product (GDP), which in 2021 has reached 10.44% of GDP or Rp. 1,771, 7 trillion.<sup>3</sup> This shows that the construction sector is one of the most important sectors in increasing economic growth, including as one of the pillars of tax revenue. This is evidenced by the growth and development of the construction services business that has had a significant impact on the country's economy, employment, and income of construction workers, a summary of the data is presented in Table 1 below.

Table 1  
Summary of Statistics of Construction Companies in Indonesia 2016-2019

No.	Description	2016 <sup>4</sup>	2017 <sup>5</sup>	2018 <sup>6</sup>	2019 <sup>7</sup>	2020 <sup>8</sup>
1.	Number of Companies (company unit)	142.852	158.016	Not available	168.868	159.308
2.	Number of Permanent Workers and Construction Contracts (unit of person)	979.772	1.001.251	1.287.225	1.162.297	1.133.290
3.	Construction Worker Remuneration and Wages (units of million rupiahs)	181.334.043	201.965.356	319.583.722	251.466.912	213.506.699
2.	Income (in a million rupiah)	938.362.018	1.042.030.878	1.745.031.032	1.655.027.418	1.362.059.226
3.	Expenditure (in a million rupiah)	485.792.384	538.991.200	1.035.096.583	1.006.110.341	828.120.804

Then, for 2020 data, individual construction businesses spread across 3495 districts/cities in Indonesia have reached 23,247 firms in 2020.<sup>9</sup>

The increase in the gross income of construction companies in Indonesia in recent years has undoubtedly had a double effect on tax revenues, considering that the rise has also increased the amount of compensation and wages for construction workers

<sup>2</sup> Ibid., p. 4.

<sup>3</sup> Badan Pusat Statistik (2), *Pendapatan Nasional Indonesia 2017-2021*, (Jakarta: Badan Pusat Statistik, 2021), p. 3 p. 41.

<sup>4</sup> Badan Pusat Statistik (3), *Statistik Indonesia 2018*, (Jakarta: Badan Pusat Statistik, 2018), p. 356.

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

<sup>6</sup> Badan Pusat Statistik (4), *Statistik Indonesia 2021*, (Jakarta: Badan Pusat Statistik, 2021), p. 385.

<sup>7</sup> Badan Pusat Statistik (5), *Statistik Indonesia 2022*, (Jakarta: Badan Pusat Statistik, 2022), p. 405.

<sup>8</sup> Loc.cit.

<sup>9</sup> Badan Pusat Statistik (6), *Profil Usaha Konstruksi Perorangan 2020*. Jakarta: Badan Pusat Statistik, 2020.

who are the object of Income Tax (PPH) Article 21, increased PPh and Value Added Tax (VAT). ) on the value of the construction service contract and potential income tax on profits or profits received by the supplier/supplier on the total gross expenditure of the construction business. The summary of tax revenues based on the Construction Business Field Classification (KLU) for 2016-2020 is presented in Table 2 below.<sup>10</sup>

Table 2

## KLU Construction tax receipts for 2016-2020

No.	Year	Amount (in billion Rupiah)
1.	2020	51.074,58
2.	2019	66.631,70
3.	2018	64.495,98
4.	2017	60.831,95
5.	2016	57.079,11

However, the potential for fraud in construction services will lead to tax avoidance and tax evasion. This can be seen from the potential tax that the state should receive from construction services before the enactment of the Final PPh rules following Government Regulation Number 9 of 2022 concerning the Second Amendment to Government Regulation Number 51 of 2008 concerning Income Tax on Income from Construction Services Business, considering the benchmark foreign construction companies in Indonesia have an average profit percentage of 28.9% for building construction, 32.5% for civil construction, 24.47% for unique structure.<sup>11</sup> Several other facts can be seen from the variety of illegal acts in the construction sector, such as the use of fictitious subcontractors or the borrowing of a subcontractor company by unscrupulous employees of one of the State-Owned Enterprises (BUMN), which has caused state financial losses with the mode of providing a fee of 1.5%- 2% of the contract value,<sup>12</sup> alleged bribery practices that often arise during the tender process for goods and services,<sup>13</sup> complex nature involving many different parties, large flows of public money, lack of transparency in tenders, and political interference,<sup>14</sup> and the fact that the majority of cases handled by the Corruption Eradication Commission (KPK) are related to corruption in the construction sector.<sup>15</sup> Thus, it is essential to conduct a juridical study of the current tax laws and regulations related to construction services to minimize the space for tax avoidance and tax evasion in the construction services sector in Indonesia. The scope of this study is focused on normative juridical studies of tax law whose problem limits are related to laws and regulations

<sup>10</sup> Direktorat Jenderal Pajak, Laporan Tahunan DJP 2020, Jakarta: Direktorat Jenderal Pajak, 2021, p. 187, available at <https://pajak.go.id/sites/default/files/2021-10/Laporan%20Tahunan%20DJP%202020%20-%20Bahasa.pdf>, accessed on June 7, 2022.

<sup>11</sup> Badan Pusat Statistik (7), Profil Perusahaan Konstruksi Asing 2020. Jakarta: Badan Pusat Statistik, 2020, p. 19.

<sup>12</sup> Kompas, "Lima Terdakwa Kasus Dugaan Proyek Fiktif Waskita Didakwa Rugikan Negara Rp 202 Miliar", available at <https://nasional.kompas.com/read/2020/12/10/16185831/lima-terdakwa-kasus-dugaan-proyek-fiktif-waskita-didakwa-rugikan-negara-rp?page=all>, accessed on June 2, 2022.

<sup>13</sup> Koran Tempo, "Godaan Korupsi di Sektor Konstruksi", available at <https://koran.tempo.co/read/berita-utama/461931/pelaku-usaha-beberkan-godaan-korupsi-di-sektor-konstruksi>, accessed on June 3, 2022.

<sup>14</sup> Murat Gunduz and Oytun Onder, Corruption and Internal Fraud in the Turkish Construction Industry, *Science and Engineering Ethics*, Vol. 19, 2013, pp. 506-507.

<sup>15</sup> iNews, "Korupsi di Bidang Konstruksi Paling Banyak Ditangani KPK", available at <https://www.inews.id/news/nasional/korupsi-di-bidang-konstruksi-paling-banyak-ditangani-kpk>, accessed on June 5, 2022.

related to pertaining number 6 of 1983 concerning General Provisions and Tax Procedures as amended several times, most recently by Law Number 7 2021 concerning Harmonization of Tax Regulations (UU KUP), Law 7 of 1983 concerning Income Tax as amended several times, most recently by Law Number 7 of 2021 concerning Harmonization of Tax Regulations (UU PPh), and Law No. Law Number 8 of 1983 concerning Value Added Tax of Goods and Services and Sales Tax on Luxury Goods as amended several times, most recently by Law Number 7 of 2021 concerning Harmonization of Tax Regulations (Law on PPN/PPnBM). Based on this background, two formulations of the problems that will be answered in this study are formulated. First, do the tax arrangements currently apply to the construction service business sector? Second, what are the outstanding efforts to increase tax compliance for construction services in Indonesia?

## 2. METHODS

It is necessary to answer the two existing problem formulations by understanding and studying the law (rules) rationally or using an approach that idealizes deductive thinking in getting the truth of legal thought.<sup>16</sup> A rational rule of law will try to explain the situation or symptoms and then provide suggestions on what to do to overcome the existing problems.<sup>17</sup> So, in revealing the current issues, this study must process them according to the scientific method, which in this case is adequate, the normative juridical method, also known as the dogmatic legal method. Furthermore, Sidharta explained that legal dogmatics is a scientific activity that includes an inventory, presentation, interpretation, systematization, and evaluation of specific applicable laws and regulations, which are directed at finding legal solutions to existing legal problems (rules).<sup>18</sup>

The data used in this juridical normative or dogmatic legal method uses secondary data, namely data ready to be made and not limited by time or place.<sup>19</sup> The secondary data is based on three legal materials, namely primary legal materials, secondary legal materials, and tertiary legal materials.<sup>20</sup> Primary legal materials are binding materials, which in this paper, among others, use the 1945 Constitution, the KUP Law, the Income Tax Law, the VAT Law, the Civil Code, Law Number 2 of 2017 concerning Construction Services Regulations Government Number 40 of 2009 concerning Amendments to Government Regulation Number 51 of 2008 concerning Income Tax on Income from Construction Services Business, Government Regulation Number 9 of 2022, and applicable laws and regulations relating to the construction services sector in Indonesia. Secondary legal materials are legal materials that can explain primary legal materials, which in this paper include books, research results, and articles. At the same time, tertiary

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<sup>16</sup>Alfonsus Herry Susanto, dan Rono, Soedjono. Analisis Perbedaan Pengakuan Pendapatan Menggunakan Metode Kontrak Selesai dan Metode Persentase Penyelesaian. *BIP's*, Vol. 8, No. 1, 2016, p. 7.

<sup>17</sup>Soerjono Soekanto. 2010. *Pengantar Penelitian Hukum*. Jakarta: Penerbit Universitas Indonesia, p. 10.

<sup>18</sup>Bernard A. Sidharta, 2009. Penelitian Hukum Normatif: Analisis Penelitian Filosofikal dan Dogmatikal, dalam S. Irianto & Sidharta (Ed.), *Metode Penelitian Hukum: Konstelasi dan Refleksi*, Jakarta, Yayasan Obor Indonesia, p. 142.

<sup>19</sup> Soerjono Soekanto, Op.cit., p. 12.

<sup>20</sup> Ibid., p. 52.

legal materials are legal materials that can explain primary and secondary legal materials, which in this paper include using dictionaries, encyclopedias, web sites.

### 3. ANALYSIS AND DISCUSSION

#### A. Overview of Construction Services and General Tax Provisions

Construction is an activity whose result is a building/construction integrated with the land located, including special construction activities (such as land preparation, electrical installation, building completion, etc.).<sup>21</sup> According to the Indonesian Standard Classification of Business Fields (KBLI), construction is a new work activity, repairs, additions, and changes, the erection of prefabricated buildings or structures at the project site, as well as temporary construction in the fields of building works, civil installations, and construction especially whose products are attached to the land or its position.<sup>22</sup>

Furthermore, based on Regulation Number 3 of 2019 concerning Construction Service Development Agencies (LPJK), construction companies are grouped based on their qualifications based on the level/depth of competence of a construction company's business capabilities. This qualification is also based on the company's ability to carry out work based on risk criteria, and/or technology use criteria, and/or cost measures.<sup>23</sup> Qualifications: The construction companies are grouped into 9 (nine) individuals, K1, K2, K3, M1, M2, B1, B2, and non-qualified. Sole proprietorships have a maximum work limit of IDR 300 million. Small-scale companies are qualified for K1, K2, and K3, with a maximum work limit of IDR 1 billion, IDR 1.75 billion, and IDR 2.5 billion, respectively. Medium-scale companies are qualified to be M1 and M2, with a maximum work value limit of Rp. 10 billion and Rp. 50 billion, respectively. Large-scale companies are qualified to be B1 and B2, with a maximum work value limit of IDR 250 billion and unlimited. The companies not registered with the LPJKN are grouped into non-qualified companies.<sup>24</sup> A summary of the company's scale and qualifications are listed in the table above.<sup>25</sup>

Table 3

A summary of the company's scale and qualifications

No.	Business Scale	Qualification	Limit of Work Value (Rp.)
1	Un-incorporated	Un-incorporated	Up to 300 million
2	Small	K1	Up to 1 billion
		K2	Up to 1.75 billion
		K3	Up to 2.5 billion
3	Medium	M1	Up to 10 billion
		M2	Up to 50 billion
4	Large	B1	Up to 250 billion
		B2	Unlimited
5	Non-qualification	Not registered at LPJK	

<sup>21</sup> Badan Pusat Statistik (1), Op.cit, p. 4.

<sup>22</sup> Ibid., p. 3.

<sup>23</sup> Badan Pusat Statistik, *Konstruksi Dalam Angka 2021*, Jakarta: Badan Pusat Statistik, 2021, p. 7.

<sup>24</sup> Ibid., pp. 7-8.

<sup>25</sup> Ibid., p. 7.

An understanding of the definition of construction services can also be added from the two laws and regulations in Indonesia. First, Article 1 number (1) of Law (UU) Number 2 of 2017 concerning Construction Services (UU Construction Services) defines construction services as construction consulting services and/or construction works. Second, Article 1 point (2) of Government Regulation Number 2022 represents that construction services are “construction consulting services and construction works. Furthermore, Article 1 point 2 of the Construction Services Law defines consultancy as a service in whole or in part for activities that include assessment, planning, design, supervision, and management of the implementation of the construction of a building, while Article 1 point 3 of the Construction Services Law defines construction work as a whole or part of activities that includes the construction, operation, maintenance, demolition and rebuilding of a building.

The definition of construction services implies that the services sector involves various appropriate materials, people, and equipment to meet customer requirements. The parties involved in a construction project, among others, are the building owner or employer or client, building contractor, architect or engineer (which may be employed by the building owner or building contractor), subcontractors, suppliers, and consultants. This shows that a physical construction project cannot be separated from a contractual relationship, especially a large one.

Sometimes, the contractor designs and builds the work or subcontracts a construction project to a specialist firm. Generally, a subcontractor has a contract with the main contractor and does not have an agreement with the building owner unless the subcontractor provides a guarantee to the building owner, such as quality of work. Suppliers are parties who supply materials and components to contractors. The relationship between the contractor and each of its suppliers is a contractual relationship for the sale of goods.<sup>26</sup>

Considering the complexity of the construction service business related to law, tax, management, and business, the main concern for the construction service business must refer to several main things, such as the revenue from construction services does not exceed the cost, the fulfillment of the demand for construction services, the completion of financial resources in the construction services sector. Finance the project until payment terms are received from the customer, skilled labor is met, and overhead costs meet the projected workload.<sup>27</sup>

Every construction service business sector must be a tax subject in its taxation rights and obligations. As regulated in Article 1 paragraph (2) of the KUP Law, tax subjects state that taxpayers who are individuals or entities include taxpayers, tax cutters, and tax collectors who have tax rights and obligations following tax laws and regulations. Then, if every field of construction services business has met the subjective and objective requirements, following Article 4 of the KUP Law, the Taxpayer obliges the Taxpayer to

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<sup>26</sup> Michael F. James, *Construction Law*, (London: The Macmillan Press Ltd, 1994), hlm. 3.

<sup>27</sup> John Schaufelberger, *Construction Business Management*, (New Jersey: Pearson Education, Inc., 2009), hlm. 1.

fill out and submit the Tax Return (SPT) correctly, ultimately, clearly, and signed by the Taxpayer or an attorney with a letter of extraordinary power.

Fulfillment of subjective and objective requirements as a Taxpayer, then the tax liability of each construction service business sector that must carry out its tax rights and obligations must comply with the provisions of Article 32, paragraph (1) and paragraph (2) of the KUP Law which has confirmed that the representative of the Taxpayer is responsible severally for the payment of the tax payable, for example in the case of the entity being carried out by the management. Joint responsibility in taxes is explained in the elucidation of Article 32 paragraph (2) of the KUP Law, which regulates the exclusion of joint and multiple liabilities at the representative of the Taxpayer can prove and ensure that in his position, according to fairness and decency, it is impossible to be held accountable. What is meant as management is a person who has the authority to determine policies and/or make decisions in the context of carrying out company activities, for example, the authority to sign contracts with third parties, sign checks, and so on, even though the person is not listed in the composition of the management in the deed of establishment or amendments, as explained in the Elucidation of Article 32 paragraph (4) of the KUP Law.

### **B. Construction Contracts in the Tax Framework**

Article 1 point 8 of the Construction Services Law has defined a Construction Work Contract as the entire contract document that regulates the legal relationship between the Service User and the Service Provider in the implementation of Construction Services. This article emphasizes that a construction contract is a joint agreement between the parties in a legally binding contract so that it cannot be easily set aside once it has been made. According to the Canadian Construction Document Committee, a construction contract is “an undertaking or agreement by two or more parties to perform their respective duties, responsibilities, and obligations as prescribed in the Contract Documents and represents the agreement between the parties.” This shows that the Contract Documents attached or stated in the agreement are an inseparable part of the contract.<sup>28</sup>

The forms of construction contracts vary widely. This is also emphasized in Article 46 of the Construction Services Law, which has noted that the working relationship between service users and service providers must be stated in a Construction Work Contract, the form of which can follow the development of needs and is carried out following the provisions of the legislation in force in Indonesia.

Formulating a construction contract in Indonesia that must be implemented following the provisions of the prevailing laws and regulations in Indonesia shows explicitly that a construction contract must not ignore Article 1320 of the Civil Code (KUH Civil Law) and tax laws and regulations. Article 1320 of the Civil Code has emphasized that a contract must fulfill four conditions for the validity of an agreement: the competence of the parties, the understanding of the parties, the existence of a sure thing or object, and a lawful cause.

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<sup>28</sup>Surahyo, Akhtar. 2018. *Understanding Construction Contracts: Canadian and International Conventions*. Cham: Springer International Publishing AG, p. 2.

Furthermore, Surahyo emphasized that in making a construction contract that can be implemented and binding, it must meet five critical elements, namely: Offer and acceptance, Mutual intent, Consideration, Capacity to contract, and Legality.<sup>29</sup> An offer is a promise made by one party who agrees to perform specific tasks following certain terms and conditions. Although bids can be made verbally, it is preferable to document them in writing as most construction contracts are written using one of the standard formats. At any time before acceptance, an offer may be revoked by notification unless an irrevocable clause binds the offeror. Offers may also expire once the acceptance deadline has passed. Then, when the offer has been accepted and/or signed by the related party, it will become a binding contract. Thus, acceptance of the offer must be transparent, unambiguous, and unconditional. Otherwise, it will not be treated as a binding offer or acceptance. Mutual intent means that the parties involved must meet and decide that they agree to do the things stated in the contract. Usually, a letter of intent (LoI) is issued, which expresses an interest in continuing contract negotiations, which is an informal and non-binding acceptance of the contract until an official "letter of acceptance" is issued.<sup>30</sup> Consideration is something of value that the contracting parties exchange. Consideration can be in the payment of money, execution of work, provision of some goods, and others. Consideration is an essential requirement of a contract, indicating that each party must get something in return for their promise. If there is no consideration, then there is no valid contract. In addition, consideration must not conflict with the law and must not be related to past events.<sup>31</sup> Then, agreements can only be made by parties with the ability and capacity according to the law. The contract can be considered to have no power if the signatory has a mental disorder (crazy) or a minor, and a corporate contract will also not have legal force if it is outside the stated control of the corporation. Even if a contract is made with the free consent of all parties (not caused by coercion or lawful influence, such as fraud or threats), the agreement must not violate applicable laws and regulations and/or cannot be executed if it is unilateral (where the terms the conditions are unreasonable because it benefits one party) and/or must be free from immoral or criminal purposes and must not contain clauses that are contrary to public policy.<sup>32</sup>

Article 88 of the Construction Services Law stipulates that the settlement of a Construction Work Contract dispute must begin with the basic principle of deliberation to reach a consensus. Still, suppose this principle is not achieved. In that case, the parties will take the stages of dispute resolution as stated in the Construction Work Contract, which can be in the form of mediation, conciliation, and arbitration, where the settlement of each of these processes can be terminated if the previous stages of the dispute have been resolved. Then, Article 93 paragraph (3) - paragraph (5) of Government Regulation Number 22 of 2020 stipulates that in addition to efforts to resolve disputes through Mediation and Conciliation, the parties may appoint a Dispute Council.

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<sup>29</sup> Loc.cit.

<sup>30</sup> Ibid., p. 4.

<sup>31</sup> Loc.cit.

<sup>32</sup> Ibid., pp. 4-5.



### C. Regulation of PPh on Construction Services in Indonesia

Before Government Regulation Number 2022 came into effect since its promulgation on February 21, 2022, the imposition of PPh on Construction Services in Indonesia was based on Government Regulation Number 40 of 2009. On income received or earned by domestic Taxpayers and BUT from businesses in the service sector. Construction will be subject to final income tax for those who meet the qualifications as small businesses, and the procurement value is a maximum of Rp. 1 billion. For non-final income tax, for non-small business taxpayers and/or the procurement is more remarkable than Rp. 1 billion.

Income from construction services that is final is subject to withholding tax at the time of payment of advances and terms or is subject to final tax by self-payment of income tax payable at the time of receipt of advance and term payments. The amount of income tax payable must be deducted by the service user or paid by the service provider Taxpayer is 4% of the gross amount, which is received by the Taxpayer of the construction planning service provider, 2% of the gross amount, which is received by the Taxpayer of the construction implementation service provider or 4% of the gross amount received by the Taxpayer providing construction supervision services. Then, Article 10 letter (a) number 1 and letter (b) Government Regulation Number 40 of 2009 confirms that non-final income tax on income from business in the construction service sector, namely: a) income received or earned by domestic taxpayers and BUT are subject to withholding tax based on the provisions of Article 23 of the Income Tax Law by service users if the service user is a Government entity, domestic subject of corporate tax, BUT, or an individual as a resident Taxpayer appointed by the Director General of Taxes as the withholding of Article 23 PPh in at the time of payment of advances and terms, b) imposed based on the provisions of Article 25 of the Income Tax Law if the income provider is another service user other than as referred to in letter (a). Non-final PPh rates for construction service businesses are 4% for Construction Implementation carried out by Service Providers who do not have business qualifications and 3% for Construction Implementation carried out by Service Providers other than those carried out by Service Providers who have minor business qualifications. Service Providers who do not have business qualifications, 4% for Construction Planning or Construction Supervision carried out by Service Providers who have business qualifications, and 6% for Construction Planning or Construction Supervision carried out by Service Providers who do not have business qualifications.

Then since Government Regulation Number 2022 comes into force, income from the construction services business is subject to Final Income Tax, including foreign exchange gains or losses from construction services business activities which are part of the calculation of the value of the construction service contract. However, based on Article 10D of Government Regulation Number 2022, the implementation of the final PPh provisions will be evaluated after 3 (three) Fiscal Years from the date of promulgation on February 21, 2022, where based on the evaluation results, income from the Construction Services business can be subject to income tax by the general provisions of Article 17 of the Income Tax Law. As for the payment of a contract or part of a contract before the enactment of Government Regulation Number 2022, the imposition of PPh is carried out based on Government Regulation Number 51 of 2008, while for payment of a contract or part of a contract starting from the enactment of Government Regulation Number 2022, the imposition of PPh is carried out based on Government Regulation Number 2022.

#### **D. Regulation of VAT on Construction Services in Indonesia**

VAT payable on Construction Services is related to each service delivery in the customs area, as Article 11 of the PPN/PPnBM Law stipulates that when VAT becomes due, it occurs at the time of taxable services (JKP), which is when the payment is made. Further explanation regarding the determination of the time of submission of JKP has been regulated in Article 17, paragraph (1) letter c, and paragraph (5) of Government Regulation Number 1 of 2012 concerning the Implementation of the VAT Law, which confirms that the VAT payable occurs at the time of submission of the JKP, which appears at the time of delivery. : (a) the price for the delivery of JKP is recognized as receivable or income, or when a sales invoice is issued by the Taxable Entrepreneur (PKP), following generally accepted accounting principles and consistently applied, (b) a contract or agreement is signed, if the time as referred to in letter a is not known, or (c) the availability of facilities or facilities for actual use, either partially or entirely, in the case of free provision or personal use of JKP.

The provisions in the PPN/PPnBM Law and Government Regulation Number 1 of 2012 show that the determination of the imposition of VAT on the delivery of construction services refers to whichever is earlier, namely the recording of receivables or income and the issuance of sales invoices. The delay may be subject to sanctions as a Tax Collection Letter (STP) on interest.

#### **E. Potential Tax on Construction Services**

The construction industry, considered 'one of the most corrupt sectors, will affect non-compliance with tax obligations. It is necessary to improve compliance with tax obligations on construction services, both in the supervision and consultation arrangements as well as in the tax audit order, considering that there are still loopholes in the implementation of applicable laws and regulations, including in the taxation sector. Some are still rampant modes, such as fictitious subcontractors and/or company loans and/or breaking up the sub-contractors into small business scale companies.<sup>33</sup>

The mode of fictitious subcontractors or borrow-use companies can be further investigated, especially when tax audits are carried out, by studying the subcontractors who are rivals of the construction company by understanding the Construction Services Law. One of the "critical points" of every construction business is the obligation to comply with Article 47 of the Construction Services Law which stipulates that a Construction Work Contract must at least include, clear identities of the parties, a job formulation (which explains and details the scope of work, work value, unit price, lump sum, and implementation time limit), the implementation and maintenance period which is the responsibility of the Service Provider, equality of rights and obligations between the Service User and the Service Provider, the commitment to employ certified construction workers, payment methods, default, dispute resolution, termination of the Construction Work Contract , coercive circumstances, Building Failure, protection of workers, protection of third parties other than the parties and workers, environmental aspects, guarantees for risks that arise and legal responsibility to other parties in the

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<sup>33</sup> Henry D. P. Sinaga, Yudha Pramana, and Anis W. Hermawan, *Income Tax Reconstruction on Construction Services to Support Development in Indonesia*, *World Journal of Entrepreneurship, Management and Sustainable Development*, Vol. 18, No. 6, 2022.

implementation of Construction Works or as a result of Building Failures, and options for resolving construction disputes.

The obligation to comply with Article 47 of the Construction Services Law for every construction business indicates that proving a fictitious subcontractor or a loan-use company in a construction company; it can be done by establishing the following:

- a. Construction work contract, which at least contains Article 47 of the Construction Services Law for construction companies and all their subcontractors.
- b. Tracing the truth of the certificate of each subcontractor on the said Construction Services Taxpayer.
- c. Confirm the details of the Article 21 Periodic Income Tax Return for the existing subcontractors of the Construction Services Taxpayer.
- d. Require NPWP for construction workers required by the Construction Services Law to be certified to strengthen the DGT database in proving whether a subcontractor is valid or not, not fictitious or "borrowing flags."

By being able to prove a fictitious subcontractor or a loan-use company in a construction company, in addition to applying Article 6 paragraph (1) letter of the Income Tax Law, which regulates the costs that can be charged, it must have a direct or indirect relationship with business activities or in the context of moves to obtain, collect, and maintain income which is an object of tax. Thus, transactions with fictitious subcontractors or borrow-use companies can be corrected, and the expenditure can be subject to Article 23 Income Tax Objects for gifts in any name and form.<sup>34</sup>

A potential tax can still be extracted from the emergence of construction contract disputes. This is based on Article 88 and Article 93 paragraph (3) of the Construction Services Law, which stipulates that the settlement of a Construction Work Contract dispute, which must begin with the basic principles of deliberation to reach consensus, can be pursued further through non-litigation channels consisting of mediation, conciliation, Dispute Board, and arbitration. There is no data on construction service companies conducting the mediation, conciliation, or the Dispute Council. Still, the settlement of construction dispute cases through the Indonesian National Arbitration Board (BANI) during 2014-2016 has reached 26.9% of the approximately 955 subjects.<sup>35</sup> Then, regarding disputes over construction services through litigation, Hidayat and Gunawan's research shows that the parties must incur enormous costs for 330 litigation contractors of State-Owned Enterprises at the Supreme Court level in Indonesia.<sup>36</sup>

By understanding the Construction Services Law, construction work contracts, and litigation and non-litigation mechanisms in the construction sector, the DGT can improve taxpayer compliance by using the authority contained in Article 35 A of the KUP Law, which regulates the obligation to provide data and information to DGT. so that it can be used for the benefit of state revenues, and to prevent, detect and overcome deficiencies or incorrect reporting of Taxpayers' SPT in the construction services sector.

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<sup>34</sup> Henry D.P. Sinaga, dan Anis W. Hermawan, 2021. Tax Reorientation as Corruption Prevention on Investment in Indonesia. *Journal of Accounting and Finance*, Vol. 5, No. 1, p. 28.

<sup>35</sup> Joni Emirzon dan Henry D. P. Sinaga, Dispute Resolution Model of Construction Work Contract: A Case Study in Indonesia, *International Journal of Global Community*, Vol. 4, No. 2, 2021, pp. 163-176.

<sup>36</sup>C. G. F. Hidayat, 2013. Analisa Karakteristik Penyelesaian Sengketa pada Proyek Konstruksi di Tingkat Mahkamah Agung. *Konferensi Nasional Teknik Sipil 7 (KoNTekS 7)* in Surakarta.

#### 4. CONCLUSION

This study produces two conclusions. First, the current tax regulations in the construction services sector have not maximized the synergy between the KUP Law, Income Tax Law, VAT Law, and the Construction Services Law, thus potentially causing tax avoidance and tax evasion. This can be seen before Government Regulation No. 2022 was enacted, namely Government Regulation No. 40 of 2009, where the imposition of PPh was final and non-final. PPh that is final meets the qualifications as a small business, and the procurement value is a maximum of Rp. 1 billion. In contrast, for non-final income tax, non-small business taxpayers and/or the procurement is more significant than Rp. 1 billion is subject to the PPh rate. Article 17. Second, efforts to comply with a tax on construction services in Indonesia must synergize the KUP Law, Income Tax Law, VAT Law, and the Construction Services Law by narrowing the scope for fictitious subcontractor mode or loan-use companies and litigation and non-contractual disputes. - existing litigation in the construction services sector. Based on the conclusions presented above, the following suggestions can be made.

1. Actively use Article 35 A of the KUP Law in requesting data on information from litigation and non-litigation agencies related to the construction services sector.
2. In terms of proving a fictitious subcontractor or a loan-use company or dummy company, in-depth understanding of the construction work contract with the subcontractors, confirming the validity of the sub-contractor by requiring a company certificate and a construction worker certificate for the subcontractor (one of the proofs is through equalization with the list employee/worker in SPT Period PPh Article 21).
3. Require NPWP for construction workers required by the Construction Services Law to be certified.
4. Make positive corrections to fees following Article 6 paragraph (1) letter a of the Income Tax Law while at the same time imposing the Object of Article 23 Income Tax on gifts in any name and form to transactions related to Fictitious Subcontractors or loan-use companies in cases before Government Regulation Number year 2022 is enforced.

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