



Legal Uncertainty of Golf Game as Sports and Entertainment Branch in Local Tax Imposition

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Abstract

The imposition of a golf tax actually raises legal issues related to the status of golf in connection with the imposition of regional taxes. The object of this research is the status of golf as entertainment or a sport and the implications of legal uncertainty related to the imposition of regional taxes. This research is a normative legal study with a historical, legislative, and case approach. The legal materials used include primary legal materials in the form of legislation and court decisions, secondary legal materials in the form of research results such as journal articles and relevant books, as well as non-legal materials such as language dictionaries. The technique for collecting legal materials is conducted through library research by gathering legal materials from libraries as well as collecting legal materials through national and international journal article websites. The analysis of legal materials is conducted prescriptively, emphasizing legal prescriptions or solutions as answers to legal issues in this research. The findings of this research emphasize that the legal uncertainty regarding the status of golf as entertainment and a sport in relation to local tax imposition implies that golf, as a sport, can only be subject to VAT and therefore cannot be subject to local tax. The recommendation from this research is that there needs to be a revision of the legislation in the field of taxation and a clarification that golf can be subject to regional taxes. This research is expected to contribute to the thinking and practice related to the development of tax imposition on golf facilities.

Keywords:

Golf; Legal Certainty; Local Taxes.

A. INTRODUCTION

Sports in its development has relevance to aspects of taxation. The relevance between sports and taxation is increasingly massive when in its development sports are not just

organising sports, but in the modern era and in the 21st century sports also cover industrial aspects so that they are related to taxation aspects.¹ Revenues and economic turnover related to the sports industry are also increasing, which in

¹ Congyao Hu, Sicong Wang, and Chang Chen, "Research on Referential Tax Policy of Sports and Health Service Industry," *Frontiers in Business, Economics and Management* 7, No. 2 (2023): 71-73, <https://doi.org/10.54097/fbem.v7i2.4795>, p. 72.

2022 there was an economic turnover from the aspect of sports around the world reaching 487 billion US dollars.² In the 2023, the economic turnover of sports worldwide increased to more than 512 Billion US Dollars and in 2027 the economic turnover of sports worldwide is predicted to increase to 623 Billion US Dollars.³

The trend of increasing economic turnover from the sports aspect also actually occurs in Indonesia even though there is no specific and special data related to economic turnover from the sports aspect in Indonesia. This can be seen from the football industry in Indonesia, where in 2023 the broadcast rights of the Indonesian national team have reached Rp. 56 billion.⁴ Broadcast rights to League 1 in Indonesia (BRI Liga 1) also reached Rp. 75 billion until 2024.⁵ The existence of massive economic turnover in the sports industry certainly has a relationship with the taxation aspect. Taxation is conceptually understood as a form of citizen contribution to pay a

sum of money in accordance with the provisions of laws and regulations to become state revenue in order to carry out national development and policies.⁶ The massive economic turnover in the sports industry in this case has an influence on the taxation aspect.

In its development in Indonesia, the imposition of taxes for several aspects of sports is also regulated in various laws and regulations. Articles 52 and 53 of Law No. 11 of 2022 on Sports (hereinafter referred to as the Sports Law) actually confirm that several aspects of sports that are taxed, including: technical requirements of the branch, health, safety, local provisions, security, public order, and public interest that are taxed refer to the provisions contained in the legislation in the field of taxation. This confirms that although there has been a Sports Law, but related to taxation still refers to the legislation in the field of taxation so that the legislation in the field of taxation is *lex specialis* in relation to taxation in the field of sports.⁷

² Statista, "Pendapatan Industri Olahraga Di Seluruh Dunia Tahun 2022, dan Perkiraan Untuk Tahun 2023 Dan 2027," 2023, https://www-statista-com.translate.goog/statistics/370560/worldwide-sports-market-revenue/?_x_tr_sl=en&_x_tr_tl=id&_x_tr_hl=id&_x_tr_pto=tc, Accessed on March 24, 2024.

³ *Ibid.*

⁴ CNN Indonesia, "Nilai Kontrak Hak Siar Timnas Indonesia Selama 2023 Capai Rp56 Miliar," 2023, <https://www.cnnindonesia.com/olahraga/20230607192427-142-958962/nilai-kontrak-hak-siar-timnas-indonesia-selama-2023-capai-rp56-miliar>, Accessed on March 27, 2024.

⁵ PSSI, "Pengumuman Hasil Tender Hak Siar PSSI 2024," 2024, <https://www.pssi.org/news/pengumuman-hasil-tender-hak-siar-2024>, Accessed on April 1, 2024.

⁶ Muh Ali Masnun, "Menggagas Perlindungan Hukum Bagi Usaha Mikro Kecil Dan Menengah Atas Hak Desain Industri Di Indonesia," *Dialogia Iuridica* 11, No. 2 (2020): 16-24, <https://doi.org/10.28932/di.v11i2.2208>, p. 18.

⁷ Angger Sigit Pramukti and Fuady Primaharsya, *Pokok-Pokok Hukum Perpajakan*, 1st ed. (Yogyakarta: Medpress Digital, 2018), pp. 1-3.

Taxation in general is regulated by Law No. 7 of 2021 concerning Harmonisation of Tax Regulations (hereinafter referred to as the HPP Law) which is a legal product that accommodates the omnibus law method which aims to harmonise various tax provisions that previously had problems such as: overlapping regulations to conflict of rules in the field of taxation.⁸ In relation to taxes in the aspect of sports, the HPP Law specifically regulates three aspects, namely: (i) services in the field of sports that are categorised as services in the field of social services (Elucidation of number 3 letter f of the Harmonisation of Tax Regulations Law (*Undang-Undang Harmonisasi Peraturan Perpajakan/HPP Law*), (ii) prize arrangements related to sports competitions (Amendment to Article 3, Number 1, Article 4, Paragraph (1) letter b of the HPP Law), and (iii) taxes related to donations in the field of sports (Article 6 yat (1) letter m).

Further arrangements related to taxes in the field of sports are also regulated in Article 50 letter e in conjunction with Article 55 letter I of Law No. 1 of 2022 concerning Financial Relations Between the Central Government and Regional Governments (hereinafter referred to

as the Central and Regional Financial Relations Law) which confirms that sports are part of arts and entertainment services which are the object of Specific Goods and Services Tax (hereinafter abbreviated as PBJT) which is actually a tax paid by the final consumer for the consumption of goods and/or services.⁹ In particular, the regulation related to the imposition of sports tax is interesting especially related to certain sports such as golf. As generally known, besides being a sport, golf is also often a form of public prestige because it is only played by certain parties who tend to have financial strength.¹⁰ The perception that golf is a game of rich “people” has juridically become one of the legal problems that later through the Constitutional Court Decision No. 52/PUU-IX/2012 affirmed that the Constitutional Court affirmed that golf is double taxed, namely subject to Value Added Tax (VAT) and subject to local retribution tax creates legal uncertainty because the imposition of local retribution tax related to golf is more based on economic considerations that golf is played by rich people, whereas the imposition of local retribution tax must refer to aspects of legal certainty and justice. Referring to the Constitutional

⁸ Agus P. Priyono and Henry DP Sinaga, “Is Administrative Justice A Problem-Solving Of Tax Dispute?,” *Journal of Tax Law and Policy* 1, No. 7 (2022): 63-70, <https://doi.org/10.56282/jtlt.v1i1.63>, p. 66.

⁹ Arvie Johan and Dahliana Hasan, “Menyoal Penerapan Judicial Pragmatism Pada Kasus Penentuan Harga Transfer Di Pengadilan Pajak,” *Refleksi Hukum: Jurnal Ilmu Hukum* 6, No. 2 (2022): 143-160, <https://doi.org/10.24246/jrh.2022.v6.i2.p143-160>, p. 153.

¹⁰ Fitri Yuliana, Eri Barlian, dan Fadli, “Perkembangan Stigma Olahraga Golf Sebagai Olahraga Kaum Elite Di Indonesia Dari Perspektif Pendidikan,” *Jurnal Lingkar Pendidikan (JLP)* 2, No. 1 (2023): 14-23, p. 19.

Court Decision No. 52/PUU-IX/2012 above, the Court affirmed that golf is exempted from the imposition of local retribution tax.

Constitutional Court Decision No. 52/PUU-IX/2011 even though it has confirmed that golf is exempted from the imposition of local retribution tax, it still raises problems related to the legal uncertainty of golf as a sport or as entertainment. If it refers to the imposition of local tax for golf, it is actually based on the view that golf is qualified as a means of entertainment and can be imposed as a local retribution tax. In the Constitutional Court Decision No. 52/PUU-IX/2011, especially in the ratio decidendi of the judge, there is no in-depth consideration regarding the position of golf as a sport or as entertainment. The discussion related to the importance of orientation to distinguish golf as a sport or as an entertainment is precisely contained in the dissenting opinion of judge Achmad Sodiki who principally asserts that the lack of clarity in qualifying golf as a sport or as an entertainment is the main base of the problem related to the imposition of local retribution tax on golf. It is also confirmed that Judge Achmad Sodiki's dissenting opinion emphasises that the problem in Constitutional Court Decision No. 52/PUU-IX/2011 is at the level of legality and not constitutionality.

Legal uncertainty related to the regulation of golf as entertainment or sports when referring to the Central and Regional Financial Relations Act does not specifically confirm that golf is part of the local tax object. Specific arrangements related to the imposition of golf in Value Added Tax (VAT) are referring to Article 5 paragraph (2) and (3) of the Minister of Finance Regulation No. 70 of 2022 concerning Arts and Entertainment Services (hereinafter referred to as PMK 70/2022) which can be subject to VAT is "the provision of services of place, space, and/or equipment or equipment to play golf". This provision, although it has specifically confirmed that the provision of services of place, room, and/or equipment or supplies to play golf is subject to VAT, has not specifically explained the legal position of golf whether as entertainment or sports so that it still creates legal uncertainty, especially in relation to the imposition of local taxes.

Research related to taxes in the aspect of sports has actually been conducted by previous researchers, including: first, research conducted by Benny Gunawan Ardiansyah (2017) which specifically discusses the implications of the Constitutional Court Decision related to golf tax.¹¹ The novelty in this research is that it confirms that the imposition of taxes on an object of entertainment and

¹¹ Benny Gunawan Ardiansyah, "Implikasi Putusan Mahkamah Konstitusi Terhadap Pajak Daerah (Studi Kasus Pajak Golf)," *Jurnal Pajak Indonesia* 1, No. 1 (2017): p. 60.

sports must guarantee legal certainty, which in this case aims to avoid dualism in tax imposition. Second, research conducted by I Gede Herry Budikusuma, Anak Agung Sagung Laksmi Dewi, dan Luh Putu Suryani (2022) which focuses on analyses related to tax evasion related to P3SON.¹² The novelty of this research is that criminal law enforcement related to P3SON tax evasion is needed because in this case the elements of a criminal offence have been fulfilled. Third, research conducted by Bindas, et al. (2023) which discusses the potential imposition of taxes for sports and fitness games.¹³ Novelty of this research is that the imposition of taxes for sports and fitness games needs to pay attention to various aspects, such as the provisions of the laws and regulations above it while accommodating the aspirations and participation of the community related to the imposition of taxes for sports and fitness games.

From the three previous studies above, in general, the discussion of the legal uncertainty of golf as entertainment or sports in tax imposition has not been studied and analysed by the three previous studies so that this research is

an original research. This research aims to determine the legal implications of the status of golf in the imposition of regional taxes, as well as future solutions related to the taxation of golf facilities. The urgency of this research is to formulate the legal position of golf precisely as a sport and lifestyle or entertainment for people with middle to upper economic levels, so that golf can be subject to VAT and Local Taxes.

B. RESEARCH METHODS

The specification of this research is a legal study. Legal research is research aimed at addressing legal issues. The type of this research is a normative legal research that focuses on analysing primary legal materials by referring to legal concepts, principles, and theories related to legal issues. The approaches used in this research are historical, statutory, and case approaches. Primary legal materials in this research are: Sports Law, HPP Law, Central and Regional Financial Relations Law, and PMK 70/2022. Secondary legal materials used are books, journal articles, and research results related to sports law,

¹² I Gede Herry Budikusuma, Anak Agung Sagung Laksmi Dewi, dan Luh Putu Suryani, "Penggelapan Pajak Terhadap Pusat Pendidikan Pelatihan dan Sekolah Olahraga Nasional (P3SON)," *Analogi Hukum* 4, No. 1 (2022): 55-59, <https://doi.org/10.22225/ah.4.1.2022.55-59>, pp. 55-56.

¹³ Edi Susanto, Khairul Ihwan, dan Asniati Bindas, "Tinjauan Teknis Sumber Potensi Pendapatan Asli Daerah (Pad) Pada Pajak Olahraga Permainan Dan Kebugaran," *Selodang Mayang: Jurnal Ilmiah Badan Perencanaan Pembangunan Daerah Kabupaten Indragiri Hilir* 9, No. 2 (2023): 103-110, <https://doi.org/10.47521/selodangmayang.v9i2.319>, p. 105.

Golf, and administrative law, especially related to tax law, and Constitutional Court Decision No. 52/PUU-IX/2011. Tertiary legal materials in this research are language dictionaries. This research also puts forward an interdisciplinary interpretation that uses various fields in one scientific family where this research uses the fields of sports law and tax law as part of the analysis process to answer legal issues. The collection of legal materials is carried out by gathering legal materials in the library as well as through online searches to then be adjusted to the legal issues and problem formulation in this research. The analysis of legal materials is conducted qualitatively-descriptively, which involves describing the existing legal materials and then analyzing them based on legal theories and concepts.

C. RESULTS AND DISCUSSIONS

1. Legal Issues The Status of Golf in the Imposition of Regional Taxes from the Perspective of Sports Law

Generally, golf is understood as one of the sports.¹⁴ Historically, golf was known even before the modern game of golf. A game that is “similar” to Golf is

historically traced in documents in the Song Dynasty era (960-1279) in China which according to *Dōngxuān* records there was a game called *chuiwan* which literally means hitting the ball.¹⁵ The game in the Song Dynasty era was carried out by ten types of sticks where some of the names of the sticks, including: *danshaobang*, *cuanbang*, and *pubang*.¹⁶ The practice of *chuiwan* games in the Song Dynasty was also carried out with gold and jade levels so that it was identified as a game of Chinese aristocrats in that era.¹⁷ This is also based on the record that one of the Southern Tang Dynasty taught his son to put the ball in with a stick which only royal officials were then prevalent in playing the game.¹⁸ If referring to the practice in China, then the identification that the game of *chuiwan* which is similar to the game of Golf in the modern era is a game for the elite and the nobility can actually be justified.

Another view related to the history of the game besides the assertion that golf originated from China, there is another view which states that golf originated from Mongolia which then spread to mainland Europe and specifically in medieval times began to develop

¹⁴ Rony M Rizal, “Pengaruh Endurance Terhadap Keterampilan Bermain Golf,” *Jurnal Master Penjas & Olahraga* 4, No. 1 (2023): 304-312, <https://doi.org/10.37742/jmpo.v4i1.86>, p. 309.

¹⁵ Fitri Yuliana, Eri Barlian, dan Fadli, *op.cit.*, p. 16.

¹⁶ *Ibid.*, p. 17.

¹⁷ Rony M Rizal, *op.cit.*, p. 307.

¹⁸ Fitri Yuliana, Eri Barlian, dan Fadli, *op.cit.*, p. 17.

and become famous in Scotland.¹⁹ In connection with the various views on the history of golf above, it can be seen a statement from the Royal and Ancient Golf club of St. Andrews through its spokes person who substantively stated that in principle a game similar to modern golf has actually been done by various previous civilizations, but the modern golf game with clubs, special holes, and certain rules (rules of the game) has been done by various civilizations before.²⁰ Andrews through its spokesperson who substantively stated that in principle a game similar to modern golf has actually been done by various civilizations before, but the modern golf game with clubs, special holes, and certain rules (rules of the game) only existed and developed massively in the 18th century, especially in Scotland.²¹

The view that golf as a modern sport was introduced and developed in Scotland can actually be seen in several aspects, including: first, the oldest golf course in the world is in Scotland, especially The Old Links at Musselburgh Racecourse. Based on the historical record that in 1672 a golf game was held on the course, even in 1567 Queen Mary also played golf on the course.²²

Second, the rules of the game or specific regulations related to the game of golf were also first formulated in Scotland as official regulations governing the practice of the game of golf. Third, official tournaments related to golf are also officially organised in Scotland. From the three arguments above, it can be concluded that the modern game of golf was first developed in Scotland.

Golf development in Scotland then spread to various parts of the world, especially in Indonesia. In Indonesia, the game of golf entered and developed since the Dutch colonial era, especially in 1872 in Indonesia there was the first golf club in Indonesia called Batavia Golf club founded by Mr. A. Gray and Mr. T.C Wilson.²³ In its development, the dynamics that occurred in Batavia Golf club made this club inaugurated and took care of its Articles of Association on 16 September 1932 and inaugurated by the Dutch East Indies Government dated 28 August 1932 located in the Rawamangun area.²⁴ In the Japanese colonial era, Batavia Golf Club was then changed to Djakarta Golf Club. In general, it can be seen that the development of the game of golf in Indonesia is also elitist, which means it is dominated by respected

¹⁹ Douglas Lonnstrom, *The Handbook of Golf History* (Pennsylvania: Dorrance Publishing, 2018), pp. 43-44.

²⁰ Robert Browning, *A History of Golf: The Royal and Ancient Game* (Massachusetts: Dutton, 2018), p. 19.

²¹ *Ibid.*, p. 20.

²² *Ibid.*, p. 21.

²³ Sucipto, *Bermain Golf Untuk Pemula* (Bandung: Indonesia Emas Group, 2023), pp. 7-8.

²⁴ *Ibid.*, p. 7.

people and has a high position in the Dutch East Indies Government.

In the development, the management of Djakarta Golf Club began to be held by Indonesians, especially by Mr. Senu Abdul Rahman in 1959 who was the first Indonesian to become the management of the golf organization.²⁵ Despite having a board of Indonesians, the elitist existence of the golf game has not been lost, where Indonesians who become the board of the golf organisation are groups that have high positions such as employees of state institutions. This confirms that golf historically has an elitist character, which is a game of the upper middle class and not populist character, which means it can be played by various people or groups of people in general.²⁶ This for example can be distinguished from the game of Football which has a populist character, which means it is played by various layers or groups of society.²⁷

From the historical development of the development of golf above, it can be concluded that golf is more elitist or a game of middle to upper class groups

so that in addition to being a sport, golf tends to be a lifestyle that shows one's prestige. The position of golf whether as entertainment or sport needs to be seen or reviewed from sports law. Sports law is actually a field of law that specifically discusses and regulates related to all sports activities.²⁸ This includes that the discussion related to sports law has relevance to whether a game is a sport or not. Referring to Article 1 number 1 of the Sports Law, it is affirmed that in principle sports are all activities that involve the mind, soul, and body that are systematised to encourage and foster various physical, spiritual, cultural, and social potentials. Article 1 number 2 of the Sports Law specifically also confirms that sports is every aspect related to sports that requires training, coaching, regulation, training, development, improvement, supervision, and also includes evaluation. The legal aspect of sports refers to Article 1 number 2 of the Sports Law which is actually identical to the "regulatory" aspect related to sports. The regulatory aspect or in legal language

²⁵ *Ibid.*, p. 8.

²⁶ Stephanus Johannes Roos, Barend Johannes Steyn, and Re-An Müller, "Managing Psycho-Social Factors to Develop Junior Golf Players," *Journal of Contemporary Management* 19, No. 2 (2022): 378-399, <https://doi.org/10.35683/jcm21004.171>, p. 379.

²⁷ Sarthak Mondal, Daniel Plumley, and Rob Wilson, "The Other ISL: Analysing the Finances of the Indian Super League (Football) and Its Franchisees," *Managing Sport and Leisure* 28, No. 3 (2023): 302-321, <https://doi.org/10.1080/23750472.2022.2055625>, p. 306.

²⁸ Johan Lindholm, "What's Global Sports Law? The View from the Twittersphere," *Journal of Digital Social Research* 2, No. 2 (2020): 48-72, <https://doi.org/10.33621/jdsr.v2i2.47>, p. 56.

referred to as *regularend functie* is a regulatory function in which the state has an important role to regulate various legal aspects related to sports.²⁹

The status of golf whether as a sport or entertainment needs to first refer and see in the Sports Law. The Sports Law actually does not provide an authentic definition related to sports, but the Sports Law provides confirmation of the types of sports as in Article 17 of the Sports Law which confirms that sports include: educational, community, and achievement sports. Article 18 of the Sports Law confirms that educational sports are sports that are carried out at the education level both intracurricular and extracurricular in each educational institution. Article 19 of the Sports Law defines that community sports are related to sports activities carried out by the community or community groups to maintain body fitness, foster joy, and increase social harmonisation in the community. Achievement sports as per Article 20 of the Sports Law are sports that are oriented towards the development of achievements, especially to improve the nation's performance in regional and international events.

In relation to the status of golf in relation to entertainment, the Sports

Law does not qualify the existence of entertainment sports. The Sports Law specifically only categorises sports in three aspects, namely: educational, community, and achievement sports. The term entertainment actually refers to the concept of tax law which refers to Article 4 number 1 of the HPP Law which amends Article 4a paragraph (3) letter h of Law Number 42 of 2009 concerning the Third Amendment to Law Number 8 of 1983 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods which confirms that entertainment and arts tax is a tax imposed by all arts and entertainment workers and is the object of local tax.³⁰ The affirmation that sports aspect is part of entertainment and arts that can be taxed authentically is emphasised in Article 50 letter e in conjunction with Article 55 letter I of the Law on Central and Regional Financial Relations which affirms that sports is part of arts and entertainment services which is the object of PBJT which is actually a tax paid by the final consumer for the consumption of goods and/or services.

The assertion that sports are part of arts and entertainment services, which are the object of PBJT, is actually problematic because it refers to the

²⁹ La Sensus Sensus, Oheo K. Haris, and Muhammad Nazar, "The Principle of Regulation of Mining Business License," *Yuridika* 36, No. 1 (2021): 121-139, <https://doi.org/10.20473/ydk.v36i1.23124>, p. 121.

³⁰ Ketut Nindy Rahayu Sugitha and I Gusti Ngurah Wairocana, "Implikasi Yudiris Putusan Mahkamah Konstitusi Nomor 52 Tahun 2011 Terhadap Objek Pajak Hiburan Olahraga Golf," *Kertha Negara* 6, No. 3 (2018): 10-14, <https://ojs.unud.ac.id/index.php/Kerthanegara/article/download/40736/24699>, p. 12.

principle of *noscitur a sociis* which specifically asserts that a term must refer to and be associated with its series.³¹ The term arts and entertainment based on the principle of *noscitur a sociis* refers to everything that creates a sense of beauty and there is an entertaining orientation. This is actually irrelevant to include sports as part of arts and entertainment because in general sports aim to maintain public fitness, unless the Sports Law regulates the types of sports that are specifically determined for the benefit of arts and entertainment. By referring to the principle of *titulus est lex*, *duprica ex lex*, the specific provisions in the Sports Law have an important role in determining whether sports are specifically relevant to be associated with arts and entertainment as affirmed in the perspective of tax law.³²

The principle of *eiusdem generis* which substantively confirms that the meaning of a thing is limited specifically to the group of terms, which is where the view of the types of sports specifically refers to the Sports Law

which limitatively confirms that the types of sports are limited to educational, community, and achievement sports.³³ This confirms that sports certainly have a different perception from arts and entertainment aspect. Even so, in fact in the community there are various sports that are not specifically intended for the purpose of educational, community, and achievement sports. One of these sports is golf.

Golf is actually a sport. This can be seen even though the Sports Law is not specifically stated about sports and their requirements, but refers to the principle of *lex sportiva* in sports law which states that the sports aspect has its own legal autonomy to determine and regulate a sport.³⁴ One of the implementations of the *lex sportiva* principle in sports law is the regulation by the Indonesian National Sports Committee (hereinafter referred to as KONI) regarding the requirements of a sport.³⁵

Referring to the provisions of KONI that the requirements to be recognised as a sport include: first, the sport concerned

³¹ Philipus M. Hardjon and Tatiek Srii Djatmiati Hadjon, *Argumentasi Hukum*, 5th ed., (Yogyakarta: Gadjah Mada University Press, 2011), p. 5.

³² Zainal Arifin Mochtar and Eddy O.S. Hiarij, *Dasar-Dasar Ilmu Hukum: Memahami Kaidah, Teori, Asas, dan Filsafat Hukum* 1st ed., (Depok: Rajawali Pers, 2021), p. 20.

³³ Jay Wexler, "Fun with Reverse Eiusdem Generis," *Arthropoda Selecta* 105, No. 1 (2020): 1-38, <https://doi.org/10.2139/ssrn.3473314>, pp. 8-10.

³⁴ Christiana Sri Murni, Fradhana Putra Disantara, and Dicky Eko Prasetyo, "Political Law In Settling Sports Disputes In Indonesia," *Kanun: Jurnal Ilmu Hukum* 25, No. 2 (2023): 316-331, <https://doi.org/10.24815/kanun.v25i2.31660>, p. 320.

³⁵ Dicky Eko Prasetyo and Zeidan Izza Al-farisi, "Lex Sportiva in Indonesian Sports Law : Autonomy, Independence, and Harmonization with National Laws," *Indonesian Journal of Sports Law* 1, No. 2 (2024), p. 23.

submits a proposal accompanied by the Constitution of Association and Bylaws (AD and ART) of the sport. In relation to golf, golf in Indonesia has a parent organisation, namely the Indonesian Golf Association (hereinafter referred to as PGI) and has AD and ART.³⁶ Secondly, the sport registers the latest management and must get Porkab and Porprov coaching including participating in competitions held by district, national and provincial. From these two requirements, it can be said that Golf in Indonesia has fulfilled various requirements related to qualification as a sport.

Golf is not only a sport but also synonymous with people's lifestyle. This can be seen from the golf sport and golf facilities in certain companies so that golf rather than as a sport, in certain conditions can be identified as a luxury facility and is a lifestyle of people with middle to upper economic levels. Golf which is a corporate facility is subject to in-kind tax in Indonesian law. This indicates that there are two aspects related to golf which on the one hand golf is a sport but on the other hand it is a luxury facility and is a lifestyle of people with middle to upper economic levels. Problems related to golf as a sport or entertainment that is identified with luxury facilities and is a lifestyle of people with middle to upper economic levels

is what has not been regulated in detail in the Sports Law. The Sports Law also has not accommodated entertainment sports that are synonymous with luxury facilities and lifestyle as golf.

Golf as two different aspects between sports or entertainment that are identified with luxury facilities and a lifestyle of people with middle to upper economic levels is what in the context of tax law should be differentiated tax collection efforts, especially related to local taxes. Golf as a sport may only be subject to VAT (PPN) or even exempted from tax because the purpose of golf as a sport is to improve the achievement of Indonesian golf in the international arena. Golf as a lifestyle of people with middle to upper economic level should be taxed, especially entertainment tax which is the domain of local tax.

From the analysis above, golf can actually be placed in two domains, namely as a sport and as entertainment or lifestyle of people with middle to upper economic levels. Golf as a sport is what has been discussed and decided by the Constitutional Court through Constitutional Court Decision No. 52/PUU-IX/2011 so that it can only be subject to VAT tax and cannot be subject to other taxes. Golf as entertainment or lifestyle of people with middle to upper economic level is what is still missing

³⁶ Persatuan Golf Indonesia, "Persatuan Golf Indonesia," n.d., http://www.pbpgi.org/index.asp?fuseaction=about_us_adart, Accessed on March 29, 2024.

from the consideration of Constitutional Court Decision No. 52/PUU-IX/2011 and the regulation of the Sports Law which has not included entertainment sports as part of the types of sports in addition to educational, community, and achievement sports. Golf's position as entertainment or lifestyle for people with middle to upper economic levels should be subject to entertainment tax which is part of local taxes.

2. The Implication of Legal Uncertainty of Golf's Status as Entertainment or Sports Branch in Relation to the Imposition of Local Taxes

Regulations related to the status of golf which is still unclear between entertainment or sports in the context of local tax imposition actually has the potential to cause legal uncertainty. Legal uncertainty is a condition in which the regulation in positive law does not clearly and unequivocally regulate a certain matter.³⁷ The legal uncertainty of golf regulation as a sport or entertainment substantially requires clear and detailed regulation. Golf as a sport can actually refer to the provisions of the Sports Law whether it is a type

of community sport, achievement, or education.³⁸ If we refer to the theory of sports law that emphasizes the aspect of *lex sportiva*, then the understanding of golf must be examined in depth. In sports law, it is referred to as a sport if it contains several elements, namely: (i) the existence of a rule of the game that regulates the mechanics of the game, (ii) the existence of official competitions, specifically oriented towards winning matches up to championships, and (iii) all its implementation is based on the principle of fair play. If we refer to the three aspects related to the elements found in sports mentioned above, it can be said that golf is considered a sport if there are rules of the game, a competitive orientation, and its implementation is based on the principle of fair play. If these three aspects are met, then it can be said that golf is a branch of sports and should be exempt from taxation, both national or central taxes and regional taxes.

The exemption of a sport from taxation is something that can be justified. This is because, philosophically, taxes can be imposed on anything that is economic in nature. In this context, a sport does not have an economic orientation but has

³⁷ Edi Wahjuni dan Rahmadi Indra Tektona, "Legal Certainty of Geographical Indications in Java Robusta Coffee Raung Gunitir Jember in the Perspective of Islamic Law," *International Journal of Multicultural and Multireligious Understanding* 10, No. 3 (2023): 231-243, <http://dx.doi.org/10.18415/ijmmu.v10i3.4390>, p. 238.

³⁸ Susan Budiarto and Riatu Mariatul Qibthiyyah, "The Relationship of Organizing National Sports Events to Local Tax Revenue in Indonesia," *Jurnal Ekonomi Indonesia* 11, No. 2 (2022): 173-191, <https://doi.org/10.52813/jei.v11i2.208>, p. 184.

a public orientation, which is to bring honor to the nation and country if a sport can achieve national-level success, and a sport can create new job opportunities for both athletes and non-athletes involved in the field of sports. However, in its development, golf has not only become a sport but has also become a lifestyle for the wealthy.

One of the main characteristics that golf is a sport is oriented to maintain public fitness including can also be oriented to achieve certain achievements. This is certainly different from the position of golf as entertainment or lifestyle of people with middle to upper economic levels, because in this aspect golf is identified with luxury and supporting facilities that tend to be luxurious.³⁹ The main difference between golf as a sport and as an entertainment is if golf as a sport is not oriented towards luxurious golf supporting facilities and tends to only comply with the standards or provisions of golf supporting facilities and infrastructure, while golf as entertainment focuses more on the aspect of facilities and infrastructure that tend to be luxurious and not oriented towards improving achievement in sports.

Referring to Constitutional Court Decision No. 52/PUU-IX/2011, although the principles of taxation are not explicitly stated in various laws and regulations, it is

necessary to understand in legal doctrine that the principles of taxation must adhere to several principles, namely: the principle of justice, legal certainty, and equality before the law. The principle of justice emphasizes that in the imposition of taxes, it must be based on the aspect of justice where the object of taxation must truly be something that is economically deserving of being taxed. The principle of legal certainty emphasizes that tax imposition and its procedures must be clear and regulated in various laws and regulations to ensure clarity in tax imposition on taxpayers, including efforts to minimize arbitrary actions by tax officials. The principle of equality before the law ensures that taxes can be imposed without discrimination and are applied proportionally to all members of society.

Another important aspect in Constitutional Court Decision No. 52/PUU-IX/2011 is that a key characteristic of sports is entertainment. This entertainment in Constitutional Court Decision No. 52/PUU-IX/2011 is to entertain the general public. Indeed, in general, every sport has the purpose of entertainment. However, not everything that has an entertainment purpose, such as sports, can then be subject to entertainment tax. In this case, the Constitutional Court Decision

³⁹ Fitri Yuliana, Eri Barlian, dan Fadli, *op. cit.*, p. 18.

No. 52/PUU-IX/2011 was correct in stating that the entertainment element in sports cannot be equated with the entertainment element in anything that can be subject to entertainment tax. HPP Law also does not specifically explain the meaning of entertainment that can be subject to entertainment tax. The HPP Law only explains that entertainment tax is a tax imposed on artists or entertainers who are profit-oriented. The key point of Constitutional Court Decision No. 52/PUU-IX/2011 is to affirm that the entertainment aspect in sports is not suitable to be subject to entertainment tax or art tax because the entertainment aspect in sports is entertainment in the context of a game and aims to attract public interest in a particular sport.

Constitutional Court Decision No. 52/PUU-IX/2011 has rightly positioned the exemption of entertainment tax for sports. The legal issue arises regarding the appropriateness of asserting that golf is a branch of sport so that it can be subject to entertainment tax. If we refer to its development, there is indeed golf that is intended as a means of sports with an emphasis on the competitive aspect. However, there is also golf that is used as a luxury facility, indicating

the economic status of the upper-middle class. In this context, the Constitutional Court Decision No. 52/PUU-IX/2011 has not deeply analyzed the development of golf and has only categorized Golf as a sport. However, there is a need to differentiate between golf as a sport and golf as a luxury facility that can actually be subject to entertainment tax.

The legal uncertainty of the regulation of golf as a sport and as entertainment that has not been accommodated in various existing laws and regulations theoretically as confirmed by Gustav Radbruch, namely the important characteristic of positive law in order to guarantee legal certainty is that positive law must refer to and be based on existing facts.⁴⁰ Facts are the most important aspect that must be referred to by positive law so that positive law can be enforced optimally as well as appropriate interpretation.⁴¹ Referring to Gustav Radbruch's view that requires the need for positive law to accommodate existing facts in relation to the regulation of golf as a sport and as entertainment is what shows that the regulations of the Sports Law, the HPP Law, and the Central and Regional Financial Relations Law actually have not accommodated

⁴⁰ Seow Hon Tan, "Radbruch's Formula Revisited: The Lex Injusta Non Est Lex Maxim in Constitutional Democracies," *Canadian Journal of Law & Jurisprudence* 34, No. 2 (2021): 461-491, <https://doi.org/10.1017/cjlj.2021.12>, p. 472.

⁴¹ Benjamin Nurkić, "Radbruch's Formula in the Constitution of Bosnia and Herzegovina – Untapped Potential for Strengthening the Rule of Law," *Društvene i Humanističke Studije (Online)* 7, No. 3 (2022): 169-188, <https://doi.org/10.51558/2490-3647.2022.7.3.169>, p. 174.

relevant facts related to golf because both the HPP Law, and the Central and Regional Financial Relations Law only identify golf as a sport. Golf in fact is not only a sport but on the one hand is a lifestyle and special sports facilities for elite groups, especially people with middle to upper economic levels.

Legal uncertainty related to the regulation of golf as a sport and as entertainment specifically has implications for the imposition of local taxes. The assertion that golf is a sport actually implies that golf cannot be imposed in relation to the imposition of local taxes. This is actually in line with the ratio decidendi of Constitutional Court Decision No. 52/PUU-IX/2011 which in principle holds the view that as a sport, golf cannot be subject to local tax, because on the one hand it is already subject to VAT. The imposition of two taxes in one sport is contrary to the purpose of tax imposition, one of which is not allowed to burden the community. The Constitutional Court Decision No. 52/PUU-IX/2011 at first glance does have a positive orientation in the form of a prohibition of excessive taxation on sports, but the Constitutional Court Decision No. 52/PUU-IX/2011 can be said to be less comprehensive because it only qualifies Golf as a sport which factually golf is not only a sport but in certain aspects it becomes a lifestyle and luxury facilities for people with middle to upper economic levels so that it can be qualified as entertainment that can be subject to local taxes.

D. CONCLUSIONS

The status of golf in terms of sports law can actually be categorised in two domains, namely as a sport and as an entertainment or lifestyle of people with middle to upper economic levels. The status of Golf as a sport has been discussed and decided by the Constitutional Court through Constitutional Court Decision No. 52/PUU-IX/2011 so that it can only be subject to VAT tax and cannot be subject to other taxes. The status of golf as entertainment or lifestyle of people with middle to upper economic level should be subject to entertainment tax which is part of local tax. The legal uncertainty of golf's status as entertainment and sports related to the imposition of local taxes has implications that golf as a sport can only be subject to VAT (PPN) so that it cannot be subject to local taxes. Factually, golf in certain conditions is an entertainment, namely when golf is used as a lifestyle and luxury facilities for people with middle to upper economic levels so that it can be subject to local taxes. Suggestions related to this research are that the legislators (DPR and Government) need to consider golf's status as entertainment and sports related to the imposition of local taxes has implications that golf as a sport can only be subject to VAT (PPN) so that it cannot be subject to local taxes. Need for categorise golf in two aspects, namely golf as a sport that can only be subject to VAT, while golf which in certain cases becomes a lifestyle and luxury facilities for people with middle and upper economic levels can be categorized as

entertainment that can be subject to local taxes. The Harmonization of golf-related laws and regulations is also important so that the tax imposition related to **golf** can be optimal and ensure legal certainty.

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