Model of Organization and Determination of Tariffs in the Control of Justice, Expective and Efficient Telecommunication Towers

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Abstract. When the formula for calculating the RPMT tariff does not have a standard calculation technique, the implementation of the calculation of the RPMT tariff between one area and another is different. Therefore, it is necessary to do a theoretical and empirical study to find the ideal RPMT calculation formula according to the Constitutional Court Decision Number 46 / PUU-XII / 2014. The results of the study show that the ideal pattern of RPMT calculating is the one that is based on Article 151 of the PDRD Law as it is reinforced by the Court of Constitution through Decision Number 46 / PUU-XII / 2014 which have canceled the Explanation of Article 124 of Law No. 28 of 2009 on the grounds that the imposition of a levy tariff that provides a maximum limit of NJOP without accompanied by a clear calculation system does not provide legal certainty that will cause injustice in its application. So the Central Government must immediately compile and discuss the Draft of Ministerial Regulation on Implementation and Retribution.

1. Introduction
In relation to the existence of the Constitutional Court Decision Number 46 / PUU-XII / 2014 on Tuesday, May 26, 2015 which granted the claim of PT. Kame Communication Indonesia (as the Petitioner) to the Supreme Court against the petition for judicial review Explanation of Article 124 of Law Number 28 of 2009 [1] concerning Regional Taxes and Regional Retributions (PDRD Law) related to Telecommunication Tower Levy Control tariff which states that the levy tariff is set up at a maximum of 2% (two percent) of the Tax Property (NJOP) of telecommunication tower which is contrary to the 1945 Constitution of the Republic of Indonesia so that it does not have legal force. In regard to the decision of the Constitutional Court (MK), the Minister of Finance issued a Circular of the Minister of Finance Number S-743 / PK / 2015 concerning the Calculation of Control Levy Tariffs at Telecommunication Tower (RPMT).

On this basis, the RPMT tariff between one region and another area will also be different because it needs to calculate zoning, tower height, tower type, and travelled distance. In determining these additional components, then a cluster must be made per each component. Technical calculations are in accordance with the Minister of Finance’s Circular Letter Number S-743 / PK / 2015 concerning Calculation of Control Levy Tariffs at Telecommunication Tower (RPMT)[2][3].

When the formula for calculating the RPMT tariff does not have a standard calculation technique, the implementation of the calculation of the RPMT tariff between one area and another is
different. For example, Ngawi District, East Java Province was the first area to implement a
calculation based on the Minister of Finance Circular Number S-743 / PK / 2015 through Regulation
of Ngawi Regency No. 1 in 2016. This regulation has a different RPMT tariff calculation with
Regional Regulation of Karangasem Regency Number 3 in 2016, and Semarang City Regional
Regulation Number 2 in 2016.

Based on the aforementioned considerations, an academic study is needed to account as a basis
for calculating RPMT scientifically according to the Constitutional Court Decision Number 46 / PUU-
XII / 2014. This academic study is expected to be a guideline or standard in the preparation of the
Minister of Home Affairs Regulation on the Implementation and Levy control of the
Telecommunication Tower, so that the uniformity of regional law products can be realized which
regulate the RPMT by referring to the Minister of Home Affairs Regulation.

2. Problem Statements
Based on legal facts in the background, several problems in determining RPMT are drawn as follows:

a. How is the ideal RPMT calculation formula according to the Constitutional Court Decision
   Number 46 / PUU-XII / 2014?
b. How do the steps to calculate RPMT be payable?
c. What is the pattern of implementation, supervision and control of telecommunication towers by
   the Regional Government?

3. Purpose and Objectives
This study is aimed to formulate guidelines or scientific terms of reference that can be used as material
for drafting the Minister of Home Affairs Regulation on the Implementation and Levies Control of
Telecommunication Towers. The goal is expected to provide a framework for thinking with the
assessment of the philosophical, sociological, juridical and technical framework of the standard as the
need for tariff formulation for the drafting of the Home Minister Affairs Regulation on the
Implementation and Levy Control of the Telecommunication Tower.

4. Literature Review
4.1 Theoretical study
In a unitary state, essentially all functions and powers of the state are held by the central government.
Both sovereignties (internal and external sovereignty) are held by the central government. Whereas
regions in essence do not have authority, except the authority that is surrendered, delegated and
assigned by the central government. The regional government is a unit of government within the
state. Whatever is the policy of the central government must be adhered to by the local
government[4],[5].

Considering the principles of implementation of the Regional Government, three basic
principles will be encountered often been used by many countries, namely the principles of
decentralization, deconcentration, and the principle of assistance (medebewind). One source of local
revenue as stipulated in Article 285 paragraph (1) of Law Number 23 of 2014 concerning Regional
Government is the result of regional retribution [6],[7],[8]. In Article 1 number 64 of Law Number 28
of 2009 concerning Regional Taxes and Levies [9],[1],[10], it stipulates that "Regional Retribution,
here in after referred to as Retribution, is a levy Regional as payment for certain services or special
permits provided and / or provided by the Regional Government for the benefit of individual or the
Agency"[11].

One type of levy that can be collected by the Autonomous Region is the Telecommunication
Tower Control Levies (RPMT) as one form of public service fees as stipulated in Article 110
paragraph (1) letter n of Law No. 28 of 2009. Based on Article 124 of Law no. 28 of 2009 stipulates
that the object of RPMT is the utilization of space for telecommunication towers by taking into
account spatial aspects, security, and public interests. Based on the explanation of Article 124 of Law
No. 28 of 2009, the RPMT tariff is set up at a maximum of 2% (two percent) of the sales value of the
tax object that is used as the basis for the United Nations telecommunication tower calculation. However, the tariff regulation has been canceled by the Constitutional Court through Decision Number 46 / PUU-XII / 2014 because the determination of RPMT tariff of 2% does not reflect the principle of legal certainty that is fair and the principles of tax collection / retribution[12][13][14].

In response to the Constitutional Court Decision, the Minister of Finance issued Circular Number S-349 / PK / 2015 on June 9 2015. With this basis, the calculation of the RPMT tariff was carried out based on the principles contained in Article 152 of Law No. 28 of 2009 which determines that: (1) The principles and targets in determining the tariff of General Service Levy are determined by taking into account the cost of providing the concerned services, the ability of the community, aspects of justice, and the effectiveness of control over these services. (2) Costs as referred in paragraph (1) include operating and maintenance costs, interest costs, and capital costs. (3) In the case of stipulating tariffs, fully paying attention to the cost of providing services to the tariff setting is only to cover part of the costs. Then, the Formulation of RPMT tariff calculation is as follow:

\[
\text{RPMT} = TP \times TR
\]

Ket:
- RPMT = Levies on Control of Telecommunication Towers
- TP = Level of Use of Services
- TR = Retribution Rates

To determine the standard price of the cost component, the Regional Head must determine rationality and measurable principles based on the development of regional inflation, zoning, height tower, tower type and traveled distance. For more details, the example of the Ngawi Regency RPMT tariff formulation has been adjusted to the formulation in Circular Number S-743 / PK / 2015.

### Table 1. Cost of Control & the Components

| Description                        | Volume | Unit       | Value (RP) | Amount (Rp) |
|------------------------------------|--------|------------|------------|-------------|
| Honor Officer                      | 8      | Org / bln  | 3,900,000  | 3,900,000   |
| Transport                          | 1      | Kend       | 100,000    | 2,200,000   |
| consumption                       | 8      | Org / bln  | 25,000     | 4,400,000   |
| ATK                                | 1,500,000 | Paket     | 1,500,000  | 1,500,000   |
| **AMOUNT**                         |        |            | **12,000,000** |           |

Notes: 22 days

### Table 2. Retribution Rates Based on the Use of Services

| Description                        | Day | Tower/day | 1 month | Retribution                                |
|------------------------------------|-----|-----------|---------|--------------------------------------------|
| Tower monitoring & control activities | 22  | 3         | 66      | = Rp. 12,000,000 / 66                       |
|                                     |     |           |         | = Rp. 181.818 / tower / month               |
|                                     |     |           |         | = Rp. 2,181.818 / tower / year              |

If it uses additional calculations, the RPMT tariff is as follows:

- **a. Zona I** coefficient value = 2
- **b. Tower type green field** coefficient value = 1.5
- **c. Mileage 0 - 10 km** coefficient value = 2
- **d. Tower height 52 m** coefficient value = 1.75 +

Total Number of coefficients = 7.25
Average Coefficient = 7.25 : 4 = 1.8125
RPMT = Rp. 2.181.818 x 1.8125 = Rp 3.954.545 / year

4.2. Empirical Study
The following is the list of 8 (eight) regencies / cities that have established local legal products in the form of regional regulations concerning levy tariffs for controlling telecommunication towers:

1. Pati Regency: Regional Regulation Number 10 of 2016 concerning Levies on Control of Telecommunication Towers.
2. Karangasem Regency: Regional Regulation Number 3 of 2016 concerning Amendments to Regional Regulation Number 10 of 2011 concerning Levies Control of Telecommunication Towers.
3. Batang District: Regional Regulation Number 33 of 2016 concerning Amendments to the Batang District Head's Regulation Number 23 of 2014 concerning Guidelines for Collection of Telecommunication Tower Levies Control in Batang District.
4. Batam City: Mayor's Regulation Number 8 of 2016 concerning Procedures for Collection of Telecommunication Tower Levies and Control in Batam City
5. Ngawi Regency: Regional Regulation Number 1 of 2016 concerning Amendments to Regional Regulation Number 20 of 2010 concerning Control Levies of Telecommunication Towers.
6. Semarang City: Regional Regulation Number 2 of 2016 concerning Amendments to Semarang City Regional Regulation Number 2 of 2012 concerning Public Service Levies in Semarang City.
7. Banjarnegara Regency: Regional Regulation Number 1 of 2016 concerning Guidelines for Implementation of Management of Levies for Controlling Telecommunication Towers.
8. Gowa Regency: Regional Regulation Number 3 of 2016 concerning the Control of Telecommunication Tower Levies.

5. Research Methods
This research is a scientific activity that seeks to obtain a solution to a problem related to the formation of the Minister of Home Affairs Regulation as a proposal from the East Java Province to the Minister of Home Affairs which is expected that there will be a uniform way of calculating technical RPMT rates throughout Indonesia. The approach used in this normative research is the statute and conceptual approach. In regard, Legislation approach (statute approach) is an approach taken on various legal rules related to problems in this study. While the conceptual approach (conceptual approach), it is used to examine and analyze the conceptual framework as well as the theoretical basis in accordance with the objectives of this study[15][16].

6. Results and Discussion
6.1. Ideal Calculation Formula
The RPMT tariff formulation in Circular Number S-743 / PK / 2015 is in accordance with the ratio decidendi of Decision Number 46 / PUU-XII / 2014. The formulation of tariff setting has taken into account the frequency of service delivery. Therefore, autonomous regions can make Circular Number S-743 / PK / 2015 as a guide in making changes to Regional Regulations governing RPMT tariffs. However, in order to be uniform, technical guidelines are needed in the form of a Minister of Home Affairs Regulation which regulates the implementation and calculation of the RPMT[17][4].

The following is a description of the RPMT object, RPMT subject, RPMT compulsory, and RPMT tariff: (1) RPMT Object, Control Levies Telecommunication Tower is the use of space for telecommunication towers by taking into account spatial, security and public interests aspects. (2) Subjects and Mandatory RPMT Retribution are individuals or entities that use / enjoy these services[18][19]. Likewise, the Compulsory Public Service Levy is the same party. (3) Levy rates are included in the type of Public Service Levy. The principle of determining service retribution rates is to
pay attention to the cost of providing services in question, the ability of the community, aspects of justice, and the effectiveness of control over these services[20][13][21].

6.2. Calculation Analysis
In East Java, Kabupaten Ngawi was the first area to implement a calculation based on the Minister of Finance's Circular Number S-743 / PK / 2015 through the Ngawi District Regulation Number 1 of 2016. There was a mistake in the example of the technical calculation of the RPMT tariff for Ngawi Regency. The coefficient index for the use of telecommunication tower services is not more than 1[22]. This results in a reduction in the RPMT tariff because the costs incurred by the regional government in monitoring and controlling telecommunication towers are multiplied by a coefficient that is less than 1. Therefore, the local government is disadvantaged by an index coefficient of telecommunication towers. The index should be a multiplier that increases the basic tariff of retribution based on 4 coefficients, namely zone coefficient, tower type, distance traveled, and height of telecommunication towers. The basic rate should be the minimum RPMT tariff[23][24][25].

If it is based on Article 151 of the PDRD Law and the Constitutional Court Decision Number 46 / PUU-XII / 2014, then it must pay attention to the following aspects:

a. RPMT formula along with the calculation techniques
b. Object, subject, and compulsory RPMT; and
c. How to measure the level of use of services.

The description of the above 3 aspects is outlined in the Minister of Finance Circular Number S-743 / PK / 2015. In other words, that in order to facilitate and to uniformize the technical calculation of RPMT rates, the technical calculation of RPMT tariffs can be carried out based on the Minister of Finance Circular Number S-743 / PK / 2015 dated November 18, 2015 concerning Calculation of Control Levy Tariffs for Telecommunication Towers[9][21]. The following is a calculation comparison between the old RPMT tariff and the new RPMT tariff:

| No. | Component               | Tarif RPMT old                                                                                                                                                                                                 | Tarif RPMT New                                                                 |
|-----|-------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------|
| 1   | Retribution Rates       | • the cost of providing the services in question; • community capacity; • aspects of justice; • Control of effectiveness of the service. • 2% of NJOP (maximum); and • frequency of supervision and control of telecommunication towers; • Tariffs set as service prices are not calculated from the total of the calculated costs, but only a certain percentage of the total amount of the cost. | The rupiah value is set to calculate the amount of levies owed based on: • honorarium for supervisory officers; • transportation; • meal allowance; and • office stationery |
| 2   | Cost of providing services | • operating and maintenance costs; • interest costs; and • capital costs                                                                                                                                                                           | Number of visits in the framework of control and supervision (determined      |
| 3   | Level of Use of Services |                                                                                                                                                                                                                                                                         |                                                                                 |
Steps to Calculate RMPT Due

The steps and provisions that must be considered in determining the RPMT are as follows:

1. **RPMT object.** The object of RPMT is the use of space for telecommunication towers by taking into account aspects of spatial, security, and public interests.

2. **RPMT Formula:** RPMT formula as regulated in Article 151 paragraph (1) of the PDRD Act is how to calculate the amount of levies owed as follows:

   \[\text{Levies} = \text{Service Usage Rates} \times \text{Retribution Rates} \text{ or } \text{RPMT} = TP \times TR\]

3. **Level of Use of Services.** The level of use (TP) of services is the number of services used as the basis for the allocation of the costs borne by the Regional Government for the operation of PMT services. Thus, the components of TP PMT are as follows:

   \[\text{Level of Use of Services} = \text{Number of Frequency of Control} \times \text{Number of Officers} \text{ or } TP = JFP \times JP\]

4. **Levy Tariff,** is a rupiah value or a certain percentage that is determined to calculate the amount of levies owed. Tariffs Levies can be determined uniformly or vary according to class in accordance with the principles and objectives of levies tariff setting. To get the right PMT retribution rates, the formula used is:

   \[\text{Levy Tariff} = \text{Cost Component} \times \text{Average Coefficient Index} \text{ or } TR = KB \times IKR\]

KB consists of employee honorarium, meal costs, transportation. IK office stationery consists of zoning, tower height, tower type, distance traveled. Examples of KB assignments are as follows:

| COMPONEN       | UNIT     | AMOUNT       |
|----------------|----------|--------------|
| Honorarium     | 1 person | Rp. 300,000  |
| Meal allowance | 1 person | Rp. 50,000   |
| Transportation | 1 person | Rp. 100,000  |
| ATK            | 1 person | Rp. 50,000   |

| COMPONEN       | INDEKS   |
|----------------|----------|
| Zoning         |          |
| I. Settlement  | 1        |
| II. Industry   | 0,8      |
| III. Agricultural | 0,5     |
| IV. Ect.       |          |

| Tower Height   |          |
|----------------|----------|
| I. < 30 meters | 0,5      |
| II. 31 meter – 50 meters | 0,8 |
| III. 51 meter – 70 meters | 1 |
| IV. Ect.       |          |

| Type of Tower  |          |
|----------------|----------|
| I. Conventional| 0,5      |
II. Non-conventional

III. Or other types such as single and shared towers

| Mileage |  |
|---------|---|
| I. ≤ 1 Km | 0,5 |
| II. 1,1 Km – 5 Km | 0,8 |
| III. 5,1 Km – 10 Km | 0,1 |
| IV. Ect. | |

5. Calculating the amount of RPMT with the formula \( \text{RPMT} = TP \times TR \). TP is the frequency of supervision or field visits in a year and the number of officers in each supervision. So, the full RMPT formula is: \( \text{RMPT} = TP \times TR = (FP \times JP) \times (KB \times IKR) \)

7. Conclusion

Based on the results of the above discussion, the following conclusions are gained:

1. Whereas the ideal pattern of RPMT calculation is a calculation based on Article 151 of the PDRD Law as reinforced by the Court of Justice through Decision Number 46 / PUU-XII / 2014 that has canceled the Explanation of Article 124 of Law No. 28 of 2009 on the grounds that the imposition of a levy tariff that provides a maximum limit of NJOP without accompanied by a clear calculation system does not provide legal certainty that will cause injustice in its application. Through this decision, the Constitutional Court also requires the Government to make technical regulations governing the RPMT tariff formulation. On this basis, the Minister of Finance has issued 2 Circular Letters namely the Minister of Finance Circular Letter Number S-349 / PK / 2015 and the Minister of Finance Circular Letter Number S-743 / PK / 2015.

2. That the steps for calculating the RPMT owed in accordance with Article 151 of the PDRD Law and the Constitutional Court Decision Number 46 / PUU-XII / 2014, are to use the following formulas:

\[
\text{Levies} = \text{Service Usage Rates} \times \text{Levies or RPMT Rates} = TP \times TR
\text{Service Usage Rate} = \text{Number of Frequency of Supervision} + \text{Number of Officers Or}
\text{TP} = JFP + JP
\text{Retribution Rates} = \text{Cost Components} \times \text{Average Coefficient Index Or}
\text{TR} = KB \times IKR
\]

3. Whereas the pattern of implementation, supervision and control of telecommunication towers by the Regional Government is to stipulate Regional Regulations concerning the Implementation and Control Levies of the Telecommunication Tower based on the Minister of Home Affairs Regulation which becomes the Norms, Standards, Procedures and Criteria in determining the RPMT, so that uniformity occurs. RPMT calculation patterns throughout Indonesia.

8. Suggestion

Based on these explanations and the empirical facts, the Central Government must immediately compile and discuss the Draft Ministerial Regulation concerning the Implementation and Control Levies of the Telecommunication Tower so that the problems faced can be overcome or eliminated thus the availability of network access telecommunications infrastructure can reach all regions of Indonesia with good quality, without obstacles and disruptions, and in accordance with development targets and national policies, and become guidelines or basis in the preparation of regional regulations by the District / Regional City Governments.

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