

WEST KOTAWARINGIN REGENCY REGIONAL REGULATION NUMBER 15 OF 2018 CONCERNING SWALLOW NEST TAX IN THE PERSPECTIVE OF LEGAL EFFECTIVENESS

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ABSTRACT

This study examines the Regional Regulation of West Kotawaringin Regency Number 15 of 2018 regarding Swallow Nest Tax based on Friedman's legal effectiveness. The research method employs descriptive legal research with empirical or non-doctrinal legal research properties. The research result analysis of The Regulation Number 15 of 2018 concerning Swallow Nest Tax, reveals that the success or failure of the regulation is affected by three factors. Firstly, the legal substance, in which the imposition of closure sanctions to Swallow's Nest taxpayers is unfeasible if the sanctions are not regulated in the Regency Regulation. Second one is the legal structure in which although the Regional Regulation Number 15 of 2018 has been enforced in a variety of methods, it is ineffectual. The West Kotawaringin Regency Regional Revenue Agency, whose major purpose and function is to collect Swallow Nest Tax, plays a critical role in enforcing the Regional Regulation Number 15 of 2018. Finally the legal culture illustrates West Kotawaringin Regency taxpayers who operate a swallow's nest tax management firm have hardly any awareness. Swallow's Nest Tax is commonly evaded by taxpayers. Thus, the Regulation Number 15 of 2018 concerning Swallow Nest Tax is impeded as a result of this.

Keywords: Regency Regulation, Regional Tax, Swallow Nest Tax, Theory of Legal Effectiveness, Effectiveness of Regional Regulations

INTRODUCTION

Numerous regulations grant the Regional government the authority to administer and develop the interests of its citizens in accordance with its own aim based on their objectives, in order to accomplish long-term regional development and the common good. Mainly, it is cited in the principle of statehood in the opening paragraph of the Republic of Indonesia's Constitution of 1945, Alinea IV. Moreover, Article 18 paragraphs (1) and (2) of the Republic of Indonesia's 1945 Constitution supplement this principle. According to this principle, autonomy and assistance duties, provincial, regency, and municipal governments have the authority to regulate and organize government affairs. With the enactment of Law Number 23 of 2014 concerning Local Government, as amended by Law Number 9 of 2015 concerning the Second Amendment to Law Number 23 of 2014 concerning Local Government, this regulation aims to prompt important and significant changes toward the implementation of regional development.

To achieve this goal, the government and the private sector should work together to provide counseling and assistance to the entire community. There are rights and obligations associated with taxes, which is a legitimate levy by the state on the community, in terms of society's duty. As a result, the regional government has the ability to tax the community. Taxes, levies, and excise as sources of Local Own-Source Revenue are required of regions that cover regencies or cities to some extent.

By definition, tax is the people's contribution to the state treasury under the law (which can be imposed) with unnecessary outstanding services which is stated as counter-achievement identifiable directly and used to pay public expenses (Prof. Dr. Rochmat Soemitro, SH, 2013:1). Taxation is one of the components of Local Own-Source Revenue that contribute considerably to the Local Own-Source Revenue for the implementation of Regional Development in order to achieve people's welfare. Local Own-Source Revenue is regional income collected in accordance with Law Number 1 of 2022 concerning Financial Interdependence between the Central Government and Local Government.

Moreover, according to the Republic of Indonesian Constitution of 1945 taxation is one of the manifestations of statehood. It confirms that people's obligatory duties, such as taxes and other coercive levies, are administered by law. The Law Number 1 of 2022 Governing Financial Interdependence between the Central Government and Local Government administers regional tax collection and regional levy in Indonesia. Article 5 paragraph (1), Article 18, Article 18A, Article 18A paragraph (2), Article 18B, Article 20, and Article 23A of the Constitution of the Republic of Indonesia of 1945 establish the legal foundation for the enactment of Law Number 1 of 2022 on Financial Interdependence between the Central Government and Local Government.

According to Article 4 paragraph (2) of Law Number 1 of 2022 concerning Financial Interdependence between the Central Government and Local Government, the Regency or Municipality government collects 10 (ten) different types of taxes, one of which is the Swallow Nest Tax. According to Article 1 number 59 of Law Number 1 of 2022 Concerning Financial Interdependence Between the Central Government and Local Government:

"Swallow's Nest Tax is a tax on swallow nest collection and/or its business activities".

According to Soehartono and Mardiatuti (2003) swallows (*Collocalia fuciphaga* Thunberg) are birds that build nests out of their own saliva. Because the nest is edible, it is referred to as an edible bird's nest (EBN). Swallow *C. fuciphaga* produces a white, cup-shaped nest out of saliva produced by a pair of sublingual salivary glands, which is then solidified. However, swallow nests are

not a resource available in many regencies or cities in Indonesia. West Kotawaringin Regency in Central Kalimantan Province is one area in Indonesia with potential resources for swallow nest tax. According to Caesar and Nuswantar (2021:248) swallows (*Collocalia Fushipaga*) have a highly appealing nest to cultivate. Their saliva produces a very valuable nest. At the farm level, the price per kilogram might reach tens of millions of Rupiah. As a result, in some regions, many people are vying for the opportunity to build a house or swallow building. The cultivation of swallow nests has the potential to be very extensive in West Kotawaringin Regency. Swallow nest cultivation is a lucrative business due to high market demands, both domestically and internationally, as well as their high selling price, which ranges from Rp. 10,000,000 to Rp. 15,000,000,000 for grade A swallow nests.

The benefits of swallow nest cultivation are proportional to the magnitude of the potential for Swallow's Nest Tax collection. Swallow Nest Tax collection is mandated in West Kotawaringin Regency by West Kotawaringin Regency Regional Regulation Number 15 of 2018. The West Kotawaringin Regency Regional Regulation Number 15 of 2018 concerning Swallow Nest Tax states in Article 2 that:

- (1) *The tax is entitled Swallow's Nest Tax.*
- (2) *The collecting and/or business of swallow nests is the subject of the tax.*
- (3) *The following are not tax objects, as defined in paragraph (2):*
 - a. *Retrieval of a swallow's nest that has been subject to Non-Tax State Revenue.*
 - b. *The Regent's Regulation requires the pick-up and/or business activities of other Swallow nests.*

On the Article 3 of West Kotawaringin Regency Regional Regulation Number 15 of 2018 concerning Swallow Nest Tax stated that:

- (1) *A person or entity that collects and/or works for swallow nests is the subject of taxation.*
- (2) *A taxpayer is anybody who collects and/or works on bird nests.*

Unfortunately, the significance of the potential for swallows' nest tax is less significant in comparison to the collection of Swallow's Nest Tax in West Kotawaringin Regency, which is still lacking in practice. This is evident from the fact that the amount of Local-Own Source Income derived from Regional Taxes, including Swallow's Nest Tax, in West Kotawaringin Regency has not consummate the specified target:

Table 1 : Target of Realization of Local-Own Source Income from Regional Taxes in 2018 to 2020

No	Year	Target of Local Own-Source Revenue (Rp.)	Realization of Local Own-Source Revenue from Regional Taxes (Rp.)	%
1.	2018	70,180,000,000	61,675,813,242.39	87.88
2.	2019	76,850,000,000	51,525,578,489.52	67.05
3.	2020	69,400,000,000	65,128,605,841.17	93.85

The under-achievement of the Local Own-Source Revenue Target lasted three years in row. It is a firm indication that West Kotawaringin Regency Regional Regulation Number 15 of 2018 regarding Swallow Nest Tax implementation was unlikely to be effective. This is due to a discrepancy between the Swallow Nest Tax norms imposed in the West Kotawaringin Regency Regional Regulation Number 15 of 2018 and what the community perceived as Swallow Nest Taxpayers.

Based on the elaboration in the introduction, the author is interested in examining the West Kotawaringin Regency Regional Regulation Number 15 of 2018 concerning Swallow Nest Tax from the standpoint of Friedman's legal effectiveness theory.

RESEARCH METHODOLOGY

This research employs empirical or non-doctrinal legal research. Based on Irianto (2017:159), it is an approach that perceives law as; 1) a real social institution living in society; and 2) symbolic meanings visible in interactions between individuals in society. Empirical or non-doctrinal legal research involves observing the law in operation, or how it is actually adhered by citizens in everyday life (Irianto, 2017:160). The Regional Regulation of Kotawaringin Barat Regency Number 15 of 2018 concerning Swallow Nest Tax is the law that is actually obeyed by the community in this study.

Furthermore, Salim and Nurbani (2013) explains that a descriptive study takes a legal and conceptual approach. Furthermore, the research gather primary data which is the West Kotawaringin Regency Regional Regulation Number 15 of 2018 concerning Swallow Nest Tax, and secondary data which are obtained from library materials such as receipt documents, books, research results in the form of reports, diaries, and so on (Soerjono Soekanto, 2008: 12). In addition, the secondary data sources also come from expert opinions, documents, writings in scientific books, and supporting literature. Secondary data in the legal field are in the form of primary and secondary legal materials. Interviews and library studies are two elements of the data.

RESEARCH AND DISCUSSION RESULTS

West Kotawaringin Regency Regional Regulation Number 15 of 2018 concerning Swallow Nest Tax In Perspective of Legal Effectiveness

The term "effectiveness" is derived from the root word "effective." The definition of the term is "having the desired or expected effect; serving the purpose." As a result, the law's effectiveness might be characterized as its ability to generate or elicit events or situations that the law desires or expects. The effectiveness of the law is closely related to how the law works in regulating society to obey the law in order to achieve the law's end goal (Winarno Yudho, Heri Tjandrasari, *Efektivitas Hukum Dalam Masyarakat*, 1987:59). According to Zainuddin Ali, the effectiveness of the law requires a review of the regulations, which must be qualified legally, sociologically, and philosophically (Zainuddin Ali, 2012:62).

When a legal product has been enforced or implemented in practice, it is considered to be effective. Therefore, the ability of the law to generate or yield to circumstances or conditions as planned or expected by it might be viewed as its efficacy. In reality, the law can function as a social control mechanism, a tool for social engineering, or a change agent. As a result, the law's effectiveness can be measured in terms of both its social control function and its usefulness as a tool for enforcing change (Winarno Yudho, Heri Tjandrasari, *Efektivitas Hukum Dalam Masyarakat*, 1987:59-60).

Moreover, according to Soakanto (2008:8) explains that a variety of factors influence the law's effectiveness. The following are some of the factors that may have an impact on the law's effectiveness.

- a. The legal factor itself;
- b. The law enforcement factors, namely parties that formulate and implement the law;
- c. Factors of facilities or infrastructure supporting law enforcement;
- d. Community factors, namely the environment in which the law applies or is enforced;
- e. Cultural factors, namely the work of art, creation and aesthetic based on human nature in the association of life.

As described by Friedman's theory of legal effectiveness, a regulation should know the factors affecting it in advance. When the majority of the society's or legal entities' targets follow the rule of law, therefore it can be said to be effective. Moreover, still according to Friedman, the success or failure of law enforcement is determined by:

Legal Substance

The law substance, according to Friedman's concept of legal effectiveness, demonstrates a significant mechanism that determines whether or not the law is viable to be enforced. Just like a state that follows the civil law or continental European legal systems, the law is a written regulation, whereas unwritten rules cannot be declared as law (Friedman, 2009:32). This is in accordance with the legality principle stated in Article 1 of the Criminal Code (KUHP), which states:

"No criminal act can be punished if there are no rules administering it".

Therefore, whether or not a violation is subject to punishment, depends on laws and regulations. In relation to West Kotawaringin Regency Number 15 of 2018, the implementation of closure sanctions to Swallow Nest Taxpayers cannot be enforced unless the punishments are regulated in the Regional Regulations. Closure sanctions must be enforced as it is listed in the West Kotawaringin Regency Regional Regulation Number 15 of 2018 concerning Swallow Nest Tax, which includes administrative and criminal sanctions. It has had insignificant effect, however, on Swallow Nest Taxpayers who refuse to comply with their tax duties. Article 13 states that administrative punishment is permissible. As understood from Article 13, there will be a 2% interest rate every month for a maximum of 15 months of late tax fine. While criminal sanctions are regulated in Article 31. It is stated that there will be a maximum 1 year of imprisonment for negligent tax payers. In addition, there will also be double the amount of tax to be paid. While taxpayers who purposely avoid paying the tax will have a maximum of 2 years imprisonment and 4 times of taxes to be paid.

Any Regional Regulation's unregulated closure sanctions cannot be declared as law. Thus, these sanctions are unfeasible to be enforced. Sanctions for swallow nest building closure are required to ensure the effectiveness of the Regional Regulation's implementation and to provide a deterrent effect to taxpayers who are disinclined to fulfill their tax obligations. As a result, a revision of West Kotawaringin Regency Regional Regulation Number 15 of 2018 concerning Swallow Nest Tax is required.

The revision should propose on making changes to West Kotawaringin Regency Regional Regulation Number 15 of 2018 concerning Swallow Nest Tax, as stipulated in West Kotawaringin Regency Regional Regulation Number 21 of 2022 concerning Revision to West Kotawaringin Regency Regional Regulation Number 15 of 2018 concerning Swallow Nest Tax. One new article on closure sanctions was supplemented as a result of these changes. Between Articles 29 and 30, one article is embedded, namely Article 29A, which reads:

"For the implementation of supervision, the Regent can provide administrative sanctions in the form of closure/sealing swallow buildings if the taxpayers:

- a. neglect the obligations in the form of not paying taxes;
- b. do not properly serve the officer and/or without any valid basis of reason refusing to hold an examination activity and against the inspector who carries the letter of duty and the Regent."

In the beginning, the Swallow Nest Tax was established by West Kotawaringin Regency Regional Regulation Number 15 of 2018 concerning Swallow Nest Tax, which was later amended by West Kotawaringin Regency Regional Regulation Number 21 of 2022 concerning Amendments to West Kotawaringin Regency Regional Regulation Number 15 of 2018 concerning Swallow Nest Tax. Taxes are regulated by the Local Government. However, revisions to the Regional Regulation are required following the enactment of Law Number 1 of 2022 on Financial Interdependence between the Central Government and Local Government, which repealed Law Number 28 of 2009 on Regional Taxes and Regional Levies. The Regional Head Regulation, in accordance with Article 79 paragraph (2) of Law Number 1 of 2022 concerning Financial Interdependence between the Central Government and Local Government, determines the Swallow's Nest Tax Rate. In 2023, as part of the West Kotawaringin Regency Regional Legislation Program, the Regional Regulation will be revised.

Legal structure

A structural system, according to Friedman's legal effectiveness theory, influences whether or not a law is properly applied. If there are no credible, competent, and independent law enforcement agents, the law will subside. No matter how significant the legal product is, if the law enforcement officials do not conduct their jobs to the best of their abilities, justice will be rendered ineffective. As a result, the personality of law enforcement determines its success (Friedman, 2009:32) .

In particular, the Swallow Nest Tax is levied in accordance with Regional Regulation Number 15 of the West Kotawaringin Regency. It is enforced by the West Kotawaringin Regency Regional Government's law enforcement officers, primarily the West Kotawaringin Regency Regional Revenue Agency. The regulation is stipulated in Article 29 of West Kotawaringin Regency Regional Regulation Number 15 of 2018 concerning Swallow Nest Tax implementation and supervision. In Article 29, the Regional Revenue Agency of West Kotawaringin Regency becomes the managing party of the tax regulation. The supervision team is decided by the Regent's decree.

West Kotawaringin Regency Regional Regulation Number 15 of 2018 on Swallow Nest Tax has been enforced in a variety of ways. One of them is to form a Regional Tax Justice Team, which consists of employees from the West Kotawaringin Regency Regional Revenue Agency and other agencies related to Regional Taxes. These related agencies are the West Kotawaringin Police and the West Kotawaringin Prosecutor's Office, and a Regional Tax Examination Team. This team also consists of the West Kotawaringin Regency Regional Revenue Agency, and the West Kotawaringin Regency Inspectorate. However, the Regional Regulation has not been adequately enforced because these three bodies are underperforming. The absence of Bailiffs and Civil Servant Tax Investigators is one of the performance barriers in the enforcement of West Kotawaringin Regency Regional Regulation Number 15 of 2018 concerning Swallow Nest Tax.

Legal Culture

Legal culture factor, according to Friedman's theory of legal effectiveness, is a set of beliefs, attitudes, thoughts, and expectations that people have about the law. A society's legal culture and legal consciousness are intricately intertwined. If the public is aware of the regulation and willing to follow it, the community will be supportive. On the other hand, the community will act as an impediment to the enforcement of relevant regulations. Legal culture develops into a complex ecosystem of social ideas and forces that shape how the law is applied, avoided, and misused (Friedman, 2009:32).

West Kotawaringin Regency citizens who have managed business as Swallow's Nest Taxpayers are still relatively unaware of the tax. Although the SAS is already in full operation. The SAS is a tax collecting system that allows taxpayers to calculate, pay, and report the amount of tax owed. To put it another way, the system is more likely to emphasize taxpayer participation in tax collection. The usage of the SAS to collect Swallow's Nest Tax demonstrates a growing lack of taxpayer awareness of tax duties. When compared to the potential benefits, the number of taxpayer participation in reporting and paying swallows is still somewhat meagre (Molita Dena, 2022). According to Simpeda of West Kotawaringin report, despite the fact that there are 2,040 swallows buildings in West Kotawaringin Regency, only 391 Swallow Nest Taxpayers have actually paid the swallow nest tax (<https://simpeda.kotawaringinbaratkab.go.id>).

The following report shows the lack of legal culture adherence in West Kotawaringin Regency swallow nest farmers. The realization of Swallow's Nest Tax reports for 3 (three) consecutive years has not reached the target set, namely (<https://simpeda.kotawaringinbaratkab.go.id>):

**Tabel 2 : Swallow's Nest Tax Realization Target
From 2018 to 2020**

No	Year	Swallow's Nest Tax Target (Rp.)	Realization of Swallow's Nest Tax (Rp.)	%
1.	2018	5,000,000,000	1,166,826,000	23.34
2.	2019	5,000,000,000	1,033,186,750	20.66
3.	2020	2,000,000,000	1,267,236,400	63.36

In particular, the tax collection is regulated on Article 4 of West Kotawaringin Regency Regional Regulation Number 15 of 2018 concerning Swallow Nest Tax. Moreover, based on Article 5 of West Kotawaringin Regency Regional Regulation Number 15 of 2018 concerning Swallow Nest Tax.

The Simpedita report and the regulation provision opposes the fact. The lack of public awareness of the Swallow Nest Tax is a potential hindrance to the enforcement of West Kotawaringin Regency Regional Regulation Number 15 of 2018. In fact, taxpayers refuse to comply with the provisions of West Kotawaringin Regency Regional Regulation Number 15 of 2018, which mandates every swallow nest business as a Taxpayer to pay Swallow Nest Tax every time their swallows' nests during harvest time.

Based on Ristanto's study (2022) there are three common reasons taxpayers exploit to avoid the provisions of West Kotawaringin Regency Regional Regulation Number 15 of 2018 concerning Swallow's Nest Tax, namely:

- a. Taxpayers are not present when Swallow's Nest Tax is collected because the majority of swallow nest taxpayers in West Kotawaringin Regency come from outside the West Kotawaringin Regency area.
- b. The swallow nest building has not yielded or produced swallow nests.
- c. The harvest of swallow nests is small or non-existent due to poor quality of swallow nests.

CONCLUSION

Legal effectiveness concept, according to Friedman (2009), is determined by three factors: legal substance, legal structure, and legal culture. The ability of the law to produce or yield the circumstances or situations desired or expected by law is referred to as legal effectiveness. It is said to be effective when a legal product is put into practice or enforced. This research has analyzed three factors that affect the effectiveness of the law based on Friedman's theory.

Firstly, whether or not an act is a violation is determined by real-world regulation, based on the substance of the law. Therefore, an act can be penalized if it is under applicable rules or regulations. In relation to this research, if the imposition of swallow's nest closure sanctions is not regulated in local regulations, the sanctions will not be enforced. As a result, it is necessary to propose a revision to the West Kotawaringin Regency Regional Regulation Number 15 of 2018 concerning Swallow Nest Tax. This revision is administered by the West Kotawaringin Regency Regional Regulation Number 21 of 2022 concerning Revision to the West Kotawaringin Regency Regional Regulation Number 15 of 2018 concerning Swallow Nest Tax. The revision is done by adding one article concerning closure sanctions to the West Kotawaringin Regency Regional Regulation Number 15 of 2018 concerning Swallow Nest Tax

The second factor is the legal structure. This legal structure could decide whether or not a legislation may be enforced legally. When there is a lack of credible, qualified, and impartial law enforcement agents, the law is implausible. Therefore, the West Kotawaringin Regency Regional Revenue Agency should supervise the implementation of this Regional Regulation. It is carried out by the Team constituted by the Regent's Decree, as per Article 29 of the West Kotawaringin Regency Regional Regulation Number 15 of 2018 concerning Swallow's Nest Tax. However in the implementation, one of the challenges is the lack of Bailiffs and Civil Servants Tax Investigators.

Finally, the third factor, which is the public's legal awareness, is intrinsically linked to legal culture. Due to the Swallow's Nest Tax collection system, which employs SAS, the realization of Swallow's Nest Tax collection for three consecutive years has fallen short of the target. The number of tax from people who have managed businesses as Swallow Nest Tax taxpayers in West Kotawaringin is still insignificant. It therefore creates an impediment to the enforcement of West Kotawaringin Regency Regional Regulation Number 15 of 2018 concerning Swallow Nest Tax. In fact, many taxpayers frequently avoid the tax obligation of the Regulation by claiming some alibis. First, they are not available to be present in person at the time of tax collection. Second one, they have not harvested or produced any swallow nests. Lastly, they said that the harvest is insufficient or unsatisfactory.

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