Repatriation Through Tax Amnesty: An Effort for Indonesia to Overcome Tax Evasion in Tax Haven Countries

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***Abstract* —The objective of this research is to assess the extent to which Indonesia's endeavor to combat tax evasion in tax haven nations is successful in achieving repatriation via tax amnesty. Indonesia has a tax ratio of 11.6%, which ranks it as the third lowest among 24 Asian and Pacific countries, trailing only Laos and Bhutan. One factor motivating Indonesia's pursuit of asset repatriation via the Tax Amnesty Policy is tax evasion occurring in tax haven nations. The level of tax evasion has not been substantially reduced despite these efforts. This study was compiled through the use of library research techniques and a variety of primary and secondary legal sources. The findings of the study indicate that tax evasion remains prevalent, particularly through the use of tax refuge nations to store assets. This indicates that the tax burden should be distributed equitably, albeit not optimally. In light of the fact that public legal policy ought to be grounded in social justice, taxation policy must adhere to the tenets of equality and universality. In regards to repatriation, there are still numerous aspects that require improvement, including tax law enforcement, taxpayer attitudes, and taxpayer confidence in the government. In addition to facilitating the repatriation of assets from tax haven nations to Indonesia, this measure will ultimately foster greater voluntary tax compliance. It is critical that the objectives of the repatriation policy not be distorted by tax amnesty, and that the government's resolve to establish a just tax system be strengthened.**

***Keywords*—Repatriation; Tax Amnesty; Tax Evasion.**

I. INTRODUCTION

Indonesia consistently endeavors to achieve social welfare as one of its primary objectives through the implementation of national development initiatives. A substantial quantity of funding is required for this structured development, and the tax sector is a significant contributor to state finances. Taxation is a compulsory payment that must be made to the government by either an individual or an entity.[1] It is imposed by law and is coercive in nature, as taxpayers receive no direct benefits in return. The funds collected are utilized for state objectives that aim to promote the overall welfare of the populace. Taxes have up until this point continued to dominate the generation of state revenue.[2] As demonstrated in Table 1.

Table 1. The Realization of State Revenue Year 2021 – 2023

Source of Revenue	The Realization of State Income (Billion Rupiahs)		
	2021	2022	2023
Tax Revenue	1,547,841.10	1,924,937.50	2,016,928.70
Non-Tax revenue	458,493.00	510,929.60	426.259.10
Grants	5,013.00	1,010.70	409.40

Source: The Ministry of Finance in https://www.bps.go.id

According to the information presented above, state revenue taxes play a significant role in financing development. The role of taxes in the formulation of budgetary functions is significantly illustrative. The budgetary function entails the utilization

A. K. Jaelani et al. (eds.), *Proceedings of the International Conference on Law, Economic & Good Governance (IC-LAW 2023)*, Advances in Social Science, Education and Humanities Research 827,
https://doi.org/10.2991/978-2-38476-218-7_39

of taxation as a mechanism to maximize the inflow of funds into the state treasury for the purpose of financing state expenditures.

The national tax ratio in Indonesia has been deemed unsatisfactory. In contrast, the tax ratio itself serves as an indicator of a country's taxation performance. According to data published by the Ministry of Finance in February 2023, Indonesia has the third lowest tax ratio among a total of 24 countries in Asia and the Pacific, at 11.6%. This ranks it behind Laos and Bhutan. One of the factors contributing to the low tax ratio in Indonesia is the inadequate level of tax compliance, with taxpayers' ongoing efforts to engage in illicit tax evasion being one of the contributing factors.[3]

Tax evasion refers to fraudulent activities conducted by taxpayers with the intention of either diminishing the total amount of tax owed or avoiding tax payments altogether. A study demonstrates that tax evasion can have a long-term impact on the viability of state finances. Tax evasion possesses the capacity to diminish tax revenues, thereby impeding the state's ability to provide public services and execute development initiatives. According to an additional source, Indonesia ranks fourth in Asia in terms of tax evasion by both corporate and individual taxpayers, following China, India, and Japan.[4]

Given the empirical evidence presented above, it is evident that tax invasion warrants attention, particularly from the perspective of tax-haven nations. A country that functions as a tax haven imposes minimal or no taxation on expatriates and corporations. Strong-economy taxpayers within this nation are exempt from paying the amount of taxation that should be paid to their home countries. Typically, there is a promise of financial confidentiality with this offer.[5]

The presence of tax haven nations poses a "threat" to developing countries, particularly those that are striving to maximize their tax sector revenues. According to Zucman, a capitalist system devoid of tax havens is an idealistic concept, and implementing a progressive tax on income and gains is doomed to fail unless we opt for protectionism.[6]

The Pandora papers and Panama papers cases serve as illustrations. Surprising information is uncovered in various documents regarding the involvement of entrepreneurs, government officials, and even politicians from Indonesia who engage in cross-border tax evasion through the ownership of shell companies in tax haven countries. As a result, numerous nations, Indonesia included, endeavor to combat the practice of tax evasion prevalent in numerous tax haven nations.[7]

The occurrence of numerous instances of tax evasion in Indonesia, whether perpetrated by private or institutional taxpayers, possesses the capacity to diminish tax sector revenues. Furthermore, this illicit method of tax evasion has persisted over an extended period of time and is often linked to law enforcement investigations into other criminal activities, including money laundering. An initiative undertaken by Indonesia is the implementation of a tax amnesty policy, which encompasses provisions pertaining to the repatriation of assets that taxpayers have invested overseas, particularly in tax-sheltered nations.[8] This research endeavors to ascertain the manner in which Indonesia accomplishes asset repatriation via tax amnesty as a strategy to combat tax evasion in tax-haven nations.

II. LITERATURE REVIEW

A. Concept of Repatriation and Tax Amnesty

Repatriation refers to a policy or activity that promotes the return of assets or funds held overseas by individuals or companies to their home nation. The primary objective of repatriation is to bolster domestic investment, address balance of payments issues, and foster economic expansion within the nation. Repatriation is sometimes associated with tax amnesty, a policy that grants tax forgiveness or relief to individuals or companies with outstanding tax obligations.

Tax amnesty is a policy tool that rewards individuals or organizations for bringing back money invested or held overseas.[11] This program offers tax amnesty or penalties to individuals who voluntarily repatriate their assets to the country. The government aims to establish a conducive atmosphere for asset or fund owners to repatriate their capital by implementing repatriation and tax amnesty measures.

The primary goals of repatriation and tax amnesty are to stimulate economic growth, enhance tax receipts, and address tax non-compliance. The impact extends beyond the economic realm and encompasses establishing public trust in the tax system, mitigating inequality, and promoting tax equity. Despite its laudable intentions, this policy frequently generates debate, particularly over the equitable allocation of the tax burden and the promotion of social justice. Hence, a comprehensive examination is necessary to understand the complexities and problems associated with repatriation and tax amnesty programs.

B. The Difference Between Tax Avoidance and Tax Evasion

Tax avoidance and tax evasion are two discrete actions with significant disparities in legality and intent.[12] Tax avoidance is a lawful and valid strategy individuals or corporations utilize to reduce their tax obligations within the confines of current tax legislation. This entails implementing strategic financial planning and utilizing tax benefits, credits, and deductions as stipulated by the law. Tax avoidance is commonly regarded as a regular and permissible practice, as individuals and corporations own the prerogative to organize their financial matters to maximize their tax benefits within the limits of the law.

Conversely, tax evasion refers to the unlawful act of intentionally distorting or hiding information to avoid paying taxes. Tax evasion encompasses deliberate efforts to deceive tax authorities, such as concealing earnings, exaggerating expenditures, or employing deceitful tactics to evade the total taxes owed. While tax avoidance is legal, tax evasion is a criminal act explicitly forbidden by the law. Individuals convicted of tax evasion can be subjected to harsh consequences, such as substantial fines and imprisonment. Tax authorities vigorously pursue and prosecute people and corporations engaged in tax evasion to maintain the tax system's integrity.[8] Tax avoidance is a lawful and permissible technique, whereas tax evasion entails illicit actions and has significant legal repercussions. Adhering to legal bounds is crucial for responsible tax planning to ensure compliance and prevent legal consequences.

Difference between tax avoidance and tax evasion. Globalization, which erases borders between countries and facilitates the circulation of money and capital worldwide, also creates tax haven countries. Several countries considered tax havens, such as Switzerland, the Bahamas, the Cayman Islands, and others, emerged due to high tax rates after World War I.

The existence of tax havens provides an opening for cross-border tax evasion practices, as shown in the Panama Papers and Pandora Papers cases. This practice affects tax oversight in Indonesia, allowing Indonesian companies to shift income to tax-haven countries. The Organization for Economic Co-operation and Development (OECD) defines the characteristics of tax havens, including lack of exchange of information, absence or ineffective tax collection, lack of transparency of tax administration, and restrictive policies for citizens and non-citizens.

In Indonesia, the definition of a tax protection country is regulated in Law No. 36 of 2008 concerning Income Tax. The existence of tax havens is a challenge for tax revenues and national welfare, which is pursued through national development initiatives.

The importance of tax law enforcement after the tax amnesty is also recognized as an essential step to maintain taxpayer compliance. Public supervision and trust in the government are vital in creating a positive attitude towards taxation, which will support voluntary taxpayer compliance. Understanding social justice and public trust is crucial in achieving successful tax policy, especially in repatriation efforts through tax amnesty.

III. METHOD

The methodology employed to compose this study was library research. An examination of the identified and described matter is conducted in light of the current regulations in the field and in conjunction with pertinent legal theories.[11] Utilizing a variety of primary and secondary legal sources, this library research is able to provide an answer to a question regarding the implementation of asset repatriation via tax amnesty as an effort by Indonesia to combat tax evasion in tax haven nations. In contrast to the statute methodology utilized in this study, the legal concept approach was adopted.[12]

IV. RESULT AND DISCUSSION

Tax avoidance is not the same as tax evasion. Additionally, the fact that globalization has eliminated borders between nations and facilitated the circulation of money and capital across the globe cannot be overlooked. Tax-sanctuary nations are frequently referred to as tax-free nations. Tax-refugee nations initially emerged as a means of evading the tax burden imposed by the high tax rate that followed the First World War. As a result of the countries' reliance on state revenue, they have established high tax rates. Following that, tax-haven nations such as Switzerland, the Bahamas, the Cayman Islands, and others emerged.[12]

The Panama Papers, an instance of cross-border tax evasion facilitated by tax haven nations, once captured the attention of the international community. Mossack Fonseca Law Firms in Panama have identified the utilization of tax haven countries containing millions of offshore investment documents, as well as the retrieval of Indonesian corporations implicated in this case. The compromised document comprises investments made by country leaders, entrepreneurs, politicians, and certain multinational corporations that facilitate transactions within the country by implementing tax regulations that permit low tax rates and safeguard information regarding the source of earned income.[13]

This indicates that the nation's tax oversight is suboptimal, thereby enabling Indonesian corporations to engage in income shifting to tax-haven nations. The Pandora Papers case is the other. There are millions of documents that demonstrate how individuals conceal their wealth from tax authorities. Generally, the method consists of establishing a number of assets in a shell corporation in a tax-haven nation. Such are the terms "investment hubs."[13]

Upon examination of these instances, it becomes evident that the act of transferring assets to tax-haven nations serves only to diminish tax liability, ultimately impairing the tax-sector revenue of the country of origin. The tax function will be diminished in the tax levy sector, particularly with regard to the budgetary function. This function pertaining to the national prosperity of Indonesia is closed. The promotion of societal welfare is a central objective of Indonesia, which is consistently advanced through the execution of national development initiatives, with the tax sector serving as one of the primary sources of funding.[14]

The Organization for Economic Co-operation and Development (OECD) issued a document titled "Anti-Harmful Tax Competition" in 1998, which aimed to prevent detrimental preferential tax competition and establish a blacklist of countries considered tax havens. The defining characteristics of a tax haven are as follows: 1) the absence or ineffectiveness of a mechanism for the exchange of information; 2) the non-collection of taxes; 3) the lack of transparency in tax administration; or 4) the implementation of a ring-fencing policy, which entails differential tax treatment for residents and non-residents.[15]

The definition of tax-refugee countries in Indonesia is specified in Law No. 36 of 2008 on Income Tax. Article 18 (3c) defines tax-haven countries as those that provide tax-haven status. The following is a definition of the criteria for tax haven countries, as stated in Director General of Tax Circular Number SE-04/PJ.7/1993: 1) The state does not levy any taxes; or 2) its tax collection is partially lower than that of Indonesia. The Decree of the Finance Minister Number 650/KMK.04/1994 on the Determination of the Date of Dividend Receipt on Equity Participation on Overseas Business Entities whose Shares Are Not Traded on the Stock Exchange also establishes the list of tax haven countries. The appendix to this decree contains a list of 32 countries that are classified as tax haven countries. The following countries are included in the list: British Virgin Island, Cayman Island, Channel Island Greensey, Channel Island Jersey, Cook Island, British Isle, British Virgin Island, El Salvador, Estonia, Hong Kong, Lithuania, Makau, Mauritius, Mexico, Nederland Antiles, St. Lucia, Qatar, Saudi Arabia, Uruguay, Venezuela, Vanuatu, Greece, and Zambia.The current state of affairs regarding tax evasion benefits not only the countries that commit the offenses but also the tax havens. These tax-haven nations are typically minor, resource-constrained nations. It forces tax-haven nations to seek alternative financial resources to sustain their operations. Those nations that provide certain amenities, such as lodging and investment sector convenience, As a result, numerous entities are anticipated to exhibit interest in allocating capital to tax-haven nations.[16]

The existence of tax haven countries is a consequence of the high tax rates that taxpayers are required to pay, which are disproportionately high in comparison to the costs associated with engaging in tax evasion within those nations. The products and services provided by tax-refugee nations are regarded as ideal instruments for tax evasion. This mechanism via tax haven countries can facilitate multi-country tax evasion. Indonesia's taxation system is the Self-Assessment System, under which active taxpayers are responsible for counting, paying, and reporting their own taxes. The taxpayer is entrusted with a trust to execute a series of tax payment activities; however, certain non-compliant taxpayers exploit this high trust system as an opportunity to engage in tax evasion. As a consequence, the pursuit of tax revenue optimization in Indonesia is diverted.[17]

Internationally, tax haven countries' unfair tax competition practices have an impact on every non-tax haven country. This can show up as a decreased willingness among investors to allocate capital to a particular nation. An investor may even feel "unsafe" in a non-tax-haven nation due to the perception that its tax rate is uncompetitive and thus unattractive. Additionally, tax revenue from the state sector tends to decline in countries that do not have tax havens. The absence of a minimal tax rate in tax-haven nations incentivizes taxpayers, particularly multinational corporations, to transfer profits from countries that do not impose taxes on these nations.

Indonesia has implemented several measures to combat tax evasion, one of which is the implementation of a tax amnesty policy. Tax amnesty was defined by James as "the opportunity to disclose previously unpaid tax liability to the authorities without incurring penalties." In contrast, Fisher defines tax amnesty as "a program that offers taxpayers who voluntarily agree to pay their outstanding past-due tax liabilities reduced financial and/or legal penalties." In essence, taxpayers have the opportunity to settle their outstanding tax obligations without incurring any penalties.

The government hopes that a portion of the assets invested in tax-haven nations can be repatriated via this policy. The tax amnesty policy commences in its initial volume with the enactment of Laws Number 11 of 2016. Tax amnesty is a tax forgiveness program that encompasses the elimination of owed taxes, tax administration sanctions, and criminal tax sanctions on certain treasures acquired in 2015 or earlier that were not disclosed in the payable tax letter. This is accomplished through the payment of tax arrears and the ransom money. Prior to 2016, tax amnesty policies were implemented; however, they were not explicitly recognized in the law as they are now and going forward.[18]

The implementation of the Taxpayers Voluntary Disclosure Program, Law No. 7 of 2012 on the Harmonization of Taxation Regulation, facilitated the second volume of tax amnesty in 2022. The Finance Ministry subsequently issued Regulation No. 196/PMK.03/2021 regarding the implementation procedures of the taxpayer voluntary disclosure program, also known as the second volume of tax amnesty.

However, it is equally imperative that this tax amnesty policy be implemented, as it is frequently linked to the illicit activity of money laundering, which occurs in tax-refugee nations in order to evade taxes. Even Nigel Morris-Cotteril put it another way: "Money laundering is defined as the act of concealing, transferring, and investing the gains from unlawful activities." Illicit funds can potentially transform into unlawful currency if transferred in violation of a nation's foreign exchange controls or other financial regulations. Criminal offenses that involve a loss component of state revenue are subject to taxation under Law No. 25 of 2007 on Capital Investments and the Law on General Provision and Taxation Procedures. According to this part, it is a tax crime to send in a notification letter with wrong information on a tax report, either with the intent to cause the state to lose money or to commit other tax-related crimes, or when the letter's content is missing or not correct. Furthermore, it is a criminal offense governed by the law: money laundering.[19]

According to this article, the majority of the assets of Indonesian taxpayers who have been evading taxes abroad for an extended period of time have been stored in the five countries listed below: Singapore, the British Virgin Islands, Hong Kong, the Cayman Islands, and Australia. Even in Singapore, Indonesian assets account for sixty percent of the total value of Indonesian assets abroad. This is why it is critical for Indonesia to issue a variety of regulations capable of repatriating the assets in question.[20]

In addition to promulgating regulations that directly obstruct the implementation of tax amnesty, Indonesia also promulgates Law No. 9 of 2017 on the Establishment of Government Regulations in Lieu of Law No. 1 of 2017 regarding the Availability of Financial Information for the Advantage of Taxation, which is codified in legislation as a legal safeguard against the enforcement of a globally recognized information exchange program pertaining to the financial information of foreign nationals residing in a particular nation. Indonesia utilizes the Automatic Exchange of Information (AEOI), also referred to as the Information Exchange System, to disclose and oversee the current tax potential.[21]By means of this AEOI, Indonesia endeavors to enable authorized taxpayer authorities to lawfully access the financial data of taxpayers, thereby reducing the likelihood of tax evasion.

One of the methods utilized to administer tax amnesty in Indonesia is the repatriation of assets that have been kept overseas, particularly in tax-haven nations. The Regulations of the Ministry of Finance Number 196/PMK.03 Year 2021 on the Administration Procedures of the Voluntarily Disclosure Program govern the execution of asset repatriation. Asset repatriation refers to the procedure by which foreign treasures and assets that were previously invested in Indonesia are returned to Indonesian territory. Repatriation may be interpreted as an expression of nationalistic sentiments. It is anticipated that this investment will contribute positively to society. Repatriation necessitates that the returned treasure be invested for a period of five years in the following categories: infrastructure investment, securities investment, priority-based real sector investment, private company obligation, financing institution obligation, and other authorized investments.[22]

An analysis of the outcomes of the tax amnesty policy in volumes I and II reveals that the regulations pertaining to repatriation necessitate reevaluation, as certain provisions appear "uninteresting" to tax evaders in terms of repatriation. This issue has an impact on the execution of repatriation, resulting in suboptimal benefits for the government and society as a whole. Additionally, enormous socialization, whether domestic or international, must be optimized. Why? The operational aspects of tax amnesty policy can be conceptualized as an expression of public legal policy, as it serves to govern society.[23]

John Rawls argues that social justice should inform public law policy. In assessing the efficacy of the taxation system in Indonesia, the Pancasila version of social justice should also be factored into the taxation law. Fritz Neumark argues that for taxation policy to attain social equity, it must incorporate the fundamental tenets of equality and universality. With the definition of universality, all individuals, excluding those granted tax amnesty, should be subject to tax obligations. In contrast, in accordance with the equality principle, taxpayers whose economic circumstances are identical should bear an equivalent tax burden. That is to say, the tax amnesty policy ought to promote both efficiency and fairness. Furthermore, the degree to which the principles of universality and equality have permeated Indonesia's tax amnesty policy is suboptimal. While there are those who believe that Indonesia should not host the next volume tax amnesty, others contend that such an initiative sets a "bad example" for compliant taxpayers and undermines the concept of justice.

An unsuitable tax amnesty policy will foster a culture of inconsistency and result in noncompliance among taxpayers. Consequently, prioritizing law enforcement efforts towards the perpetrators of tax evasion subsequent to the tax amnesty becomes more crucial. In reality, tax law enforcement can be disregarded. Only then will members of society develop a favorable attitude toward taxation and develop confidence in the government. In the realm of taxation, a positive attitude and the confidence of society are essential, and voluntary tax compliance can be established at this juncture. Empirically, for the state to actualize the distribution equation of rights and obligations in taxation, social justice should be realizable.

V. CONCLUSION

The proliferation of tax evasion in tax-haven nations has prompted Indonesia to pursue the repatriation of assets via the Tax Amnesty Policy. Nonetheless, this asset repatriation policy has failed to substantially reduce tax evasion. The state government fails to maximize tax revenues from members of society who possess substantial wealth, despite the fact that these funds could contribute to the tax sector's efforts to enhance the state economy. This demonstrates that the societal distribution of tax expenditures has been inadequate. This indicates that the efficacy of the taxation system as measured by the principle of social justice has not been maximized. Regarding repatriation, there are numerous aspects that require improvement, including repatriation regulations, their implementation, taxation law enforcement, the mentality of taxpayers, and their trust in the state. Lastly, it is crucial to prevent any diversion of the goals of repatriation policy via tax amnesty and to bolster the government's determination to establish a fair taxation system. An analysis of the outcomes of the tax amnesty policy in volumes I and II reveals that the regulations pertaining to repatriation necessitate reevaluation, as certain provisions appear "uninteresting" to tax evaders in terms of repatriation.

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